



EMPLOYMENT TRIBUNALS

Claimant: Ms D Robson
Respondent: Mayborn (UK) Ltd
Heard at: via CVP at Newcastle Employment Tribunal
On: 25, 28, 29, 30 June 2021, 1, 2, 5, July 2021, 17, 18, 19, 20,
21, 24 January 2022, 23 February 2022
10 and 11 March 2022 - in chambers
Before: Employment Judge Jeram, Mr Gallagher and Mr Shah
Representatives:
Claimant in person
Respondent Mr Andrew Webster of Counsel

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is as follows:

1. The claims of failure to make reasonable adjustments dismissed on withdrawal by the claimant;
2. The claims of indirect discrimination dismissed on withdrawal by the claimant;
3. The claims of disability discrimination are not well founded and are dismissed;
4. The claims of sex discrimination are not well founded and are dismissed;
5. The claims of harassment related to sex and to disability are not well founded and are dismissed;
6. The claims of victimisation are not well founded and are dismissed;
7. The claim of unfair constructive dismissal is not well founded and is dismissed.

REASONS

1. By claim presented on 15 July 2020, the claimant complains of unfair constructive dismissal, disability discrimination, sex discrimination, harassment related to sex and disability, and victimisation.

Issues

2. The issues were identified by the parties and agreed between them as directed at a case management hearing on 10 March 2021. They prepared a Scott Schedule. We spent a day at the outset of the final hearing refining the allegations further. The Scott Schedule and the Final List of Issues are appended to this judgment.
3. For the avoidance of doubt, and because of some ambiguity, the Tribunal explored with the claimant her allegations of breach of express terms. The claimant contended that the breach of the express terms were part of and not advanced separately to the alleged breach of the implied term of trust and confidence. The List of Issues reflects that agreement. We have, nevertheless, and for the avoidance of doubt, dealt with the matters on both bases in our findings and conclusions.
4. The relevant law is set out in an appendix to this judgment

Evidence

5. We had regard to a bundle, prepared by the claimant and agreed by the respondent.
6. We heard from the claimant. On behalf of the respondent, we heard from: Justine Cain (Global Product Support Manager), Helen Taylor (Head of Talent), Rob Jervis (Head of Industrial Design), Stuart White (Head of Global Category), Sonya Potts (Facilities Manager), Chris Beeley (former employee, Head of Global Quality), Tracey Elvin (former employee, Head of Organisational

Effectiveness), Ashleigh Vaughan (HR Business Partner), Anne Armstrong (Business Systems Manager), Karen Crosby (Global Head of Consumer Services), Neal Austin (Global Operations Director).

7. Both parties were asked, but neither party sought any specific reasonable adjustments to the hearing procedure; they were informed of their ability to request breaks whenever necessary and offered breaks at regular intervals.

Applications

8. On Thursday 20 January 2022, the claimant sought to strike out the whole of the respondent's response, and in the alternative permission to amend to add a claim of victimisation. For reasons given orally at the time, we rejected both applications.
9. The facts are set out below in broadly chronological order and are found on the balance of probabilities. We consider it necessary and appropriate to begin with our observations on credibility and our findings in relation to disability and knowledge.

Credibility

10. In making observations, we have borne at the forefront of our mind, the claimant's case that her claimed impairment adversely affects her verbal communication skills. Nevertheless, we find the claimant to be inherently unreliable witness of fact, for the reasons we set out below.
11. The claimant was undoubtedly bright and a competent employee. Her claims were around 200 in number. Whilst she had plainly prepared, thoroughly and was adept at challenging witnesses, she needed to be reminded, repeatedly, to put her many allegations of discrimination and victimisation. We had doubts about the conviction with which she was advancing any allegation of discrimination.

12. We found troublesome the claimant's determination to pursue claims that were, on any objective view, unsustainable. She often replied that her interpretation of a document was '*implicit*', when on no reasonable objective reading, could it bear her interpretation (allegation 24, or allegation 11 where the contemporaneous correspondence, generated long before the claimant had made any relevant complaint, and in which a third party software provider stated that he had provided KC with erroneous evidence, thereby leading to the termination of her software licence, she alleged that KC, had '*made the facts fit*' retrospectively and that both KC and NA were '*lying*'; there were many other similar instances). The claimant alleged sex discrimination (numbers 6 and 7) because she had been '*prevented*' from applying for the role of Product Improvement Manager, the specification for which was a engineering qualification or equivalent experience, and the claimant had neither; she challenged the suitability of the successful candidate on the basis of a Google search she conducted, she accepted that she was '*guessing*' the involvement of the alleged perpetrators before, eventually, accepting that she was not qualified for the role. We agree with Mr Webster's submission that, although the allegation was withdrawn in cross examination, it '*is a microcosm of her wider approach, of which it is symptomatic*'.
13. Of significant concern to us was a readiness on the claimant's part to allege, with a frequency that was almost casual, that all of the respondent's witnesses were, repeatedly '*lying*' to the Tribunal, irrespective of whether the particular circumstances were within her knowledge, and often, seemingly simply on the basis that she did not agree with their contemporaneous documentary, or oral, evidence.
14. In answer to short, precise questions, the answers to which were likely to undermine her case, the claimant gave regularly deflected with a non sequitur, a lengthy and irrelevant reply, or by adding new or implausible flourishes.
15. We had no reservations about the credibility of the respondent's witnesses; where there was a conflict of fact, we preferred the evidence of the respondent's witnesses to that of the claimant.

Disability and Knowledge

16. The claimant says she is disabled by the mental impairment of autism. The respondent does not admit the impairment.
17. The claimant says that her autism affects her 'social communication skills', specifically her verbal skills and ability to socially interact. In her claim form and her impact statement, the claimant describes a difficulty in understanding the 'meaning or substance' of what is being said, as well as non-verbal cues or for example isolating what is expected of her, from other social aspects of a conversation. She says she is hyposensitive to sounds and that she finds it difficult to listen and concentrate. She *'will not generally recognise metaphor, subtext or code and will take the statement literally'*. She feels compelled to correct people when they say something that is contrary to the available information, or an emotive reasoning rather than logical or factual reasoning. She finds all social interactions tiring. She finds it difficult to make friends, conduct and maintain friendships and relationships. She avoids initiating contact if at all possible, even telephone calls to make an appointment. She avoids social chit chat, social interactions, and events, describing herself as visiting friends 3-4 times per year, at their invitation. She finds it difficult to verbally ask for things. She prefers to use email or text as she is better at communicating in writing.
18. In her impact statement, the claimant stated that she first realised she may be autistic when her son was referred for the diagnosis in 2015. His diagnosis was confirmed in December 2016. In evidence she described the similarities between his symptoms in her own as *"we are like twins, our personalities are the same, we think alike, when they said this is autistic traits, I thought 'I do that, that's bonkers, is this me?'"*. The claimant's partner was diagnosed with autism in February 2016. The claimant described his presentation as *"completely different"*. The diagnoses, she said in evidence, did not prompt her to think she may be autistic.

19. The claimant completed a medical underwriting questionnaire on 16 February 2017. She was asked whether she had ever suffered from 'symptoms' of autism; she answered 'no'. Her explanation for her reply was that it was not in her medical notes.
20. In November 2018, around the time that her relationship with JC was causing difficulties, she confided in Helen Taylor, Senior HR Business Partner, that she believed she had '*traits*' of autism, but asked her to keep it confidential.
21. On 11 December 2018, during a discussion about JC's grievance against her, she told Chris Beeley and Ashleigh Vaughan that she had '*got Asperger's*' and when asked if there was anything the respondent could do to help she replied '*no – live with it*'.
22. She made no mention of her impairment during a mediation on 17 December 2018, but in a discussion about 'ground rules' of engagement to prevent further friction, she said she had difficulty '*reading people and situations*' and liked to use headphones to focus.
23. Having stated in her claim form that she told Anne Armstrong in February 2019 that she had autistic traits and Karen Crosby on 29 May 2019 that she had Asperger's, the claimant accepted in cross examination that she may not have done; she did not.
24. On 21 August 2019 Catherine Munroe ('CM'), Returns Inspector, the claimant's only direct report, sent an email to Karen Crosby ('KC'), Global Head of Consumer Services, about a particular machine. KC replied to CM, copying in the claimant, asking for it to be fully assessed, for reasons stated in the email and she believed it necessary to determine whether there was a problem.
25. The following day, the claimant emailed KC, CB's manager Simon Ely ('SE'), and KC's manager Neal Austin ('NA'), Global Operations Director. The email was written in what we consider to be combative and inflammatory terms. It stated that CM had forwarded the email to her and that matters she had raised

verbally with KC in the past required putting on a formal, written, footing. She complained that a product had been returned to KC personally, when in the claimant's firm belief, it should not have been. The email was 1.5 pages in length and about one third of the way down the email the claimant stated that KC was asking her for trivial information, asserting that the way she was going about it was causing her *"real offence because I don't think it's because my Asperger's makes me a poor communication partner and I know I am good at my job and can deliver results"*.

26. Half an hour later, NA replied to the claimant and KC, copying in JC, SE and CB with two lines in which he stated, *"can I suggest we meet to discuss as there are clearly some deep-rooted issues here that need to be discussed"*.

27. At 12.19 on 22 August 2019, the claimant replied to NA copying in SE and CB. She stated:

"thanks Neil. Apologies as I know email is not your preferred format. I have tried, several times to discuss this face-to-face with Karen and it keeps happening again. I've been constructive, offered solutions, alternatives. So, I'm not sure what other options I have here? I have Asperger's <https://autism.org.uk/about/what-is/asperger.aspx> so these periodic face-to-face negotiations can require a lot of effort on my part navigate to a satisfactory resolution sometimes, email is the only way I can be effective to be heard and get positive change".

28. The email continued with what she required as a resolution.

29. The claimant struggled to explain the relevance of the reference to Asperger's. On her own case, the written form is her preferred method of communication; we reject her suggestion that she was *"sort of saying"* this to be the case and we do not understand, given the length and detail of her correspondence, why she did not just simply write that.

30. This was the first knowledge that NA, SE or CB had of the claimant claiming to have Asperger's. We reject the claimant's contention that by accessing the web link he would have understood that the claimant was declining to meet, because of a difficulty in verbal communication. It would have been quicker, to simply write to him and tell him as much. Furthermore, we fail to understand why she would provide a generic web link in circumstances where, on her own case, her symptoms are not only individualised but in stark contrast to those of her partners.
31. Thirty-five minutes later, Neal Austin replied to the claimant, copying in KC, JC, SE and CB. In his short reply he said as follows *"can I suggest we meet to discuss as there are clearly some deep-rooted issues here that need to be resolved. Email is not really the answer. I will ask Lorraine to put some time in the diary to discuss next week. Regards Neal"*.
32. The claimant replied to NA at 12:19, copying in SE and CB; she omitted KC and JC from this reply. She stated that she had repeatedly tried to discuss matters *"face-to-face with Karen and it keeps happening again. I have been constructive, offered solutions, alternatives. So, I am not sure what other options I have here? I have Asperger's so these periodic face-to-face negotiations can require a lot of effort on my part to navigate to a satisfactory resolution"*
33. In his reply, timed at 13:58, Neal Austin wrote *"thanks Deborah, I understand. Let's start by unpicking the process as it stands and clearing up those blurred lines. I think if you and Karen can sit down together that would also help. Regards Neal."*
34. In her reply, the claimant *"disagreed strongly"* that there were *"blurred lines"* and said of the suggestion that the claimant sit down with KC to have a discussion *'unwise'*, making three points, all critical of KC, and nowhere did she state that she had difficulty expressing herself verbally.

35. In an email to KC on 23 October 2019, the claimant said her son had gone through the diagnostic process in 2015, and that that, together with her partner's diagnosis in 2016, led her to take a diagnostic test '*more out of curiosity*' and that she was '*surprised*' by a score that suggested she had a reasonably high correlation with Autistic Spectrum Disorder. In evidence the claimant said that she had taken the Baron Cohen test a number of times and obtained varying results. She continued in her email that she had sought a diagnostic referral from her GP, who had dissuaded her due to scarcity of resources. As she accepted in evidence, the first relevant entry in her GP records was made on 31 January 2020.
36. The claimant was referred to Occupational Health and Dr O'Reilly provided a report on 14 November 2019 after a face-to-face assessment. He stated that the claimant told him that "*She, herself, is always recognised, looking back, some difficulties with communication especially life, perhaps a more subtle nature than some of the ones that she dealt with in her family. They have never come to the fore very much because she has always found ways around them and come to terms a long time ago with how she was and her own traits. Some of those traits involve, for example, some difficulty understanding some social interactions between people, especially people who particularly enjoy certain types of humour or perhaps more frivolous interactions. . . Nevertheless, she has always been generally comfortable with most of the interactions she has had and, if anything, has tried to modify some of her interactions as the years have gone by. . . She often reflects on the best way of approaching situations and tries to do so sympathetically, and she did describe a good degree of understanding about human interactions today and political considerations between departments etc.*"
37. Dr O'Reilly asked about tolerance of different environments because some people with ASDs have difficulty with noise, for example. The claimant reported that she "*does not tend to find difficulties that way but does sometimes make use of a quiet area, put it also headphones and concentrating on work for a while . . . It is not something she needs every day and is quite happy working in wherever [sic] environment she finds herself.*"

38. He continued *“to summarise, I could not find any problems really from her perspective, no communication traits which seem to make it difficult for her to function day-to-day, either internally or externally; certainly nothing which is stressing her . . . I would put [the claimant] in a class of people who may indeed be mildly on a spectrum, but I do not believe [the claimant] is at a level which impact significantly on her general functioning day-to-day certainly does not seem to be holding her back; she does not feel it is either. I would therefore be very doubtful today that there would be any benefit at all from going further with more for autism assessment, because I do not think she would require anything in the way of adjustments current time. This is either within work or outside it. . . . Currently I don't believe there to be benefit in seeking any further advice from ASD specialists, and neither does she.”*

39. In evidence, the claimant said that Dr O'Reilly *“referred to it as overkill, if it is not going to impact on your life what is diagnosis going to get you”*.

40. Dr O'Reilly confirmed that neither short-term nor permanent adjustments were required. In response to the question whether the claimant met the criteria for disability as defined by the Equality Act 2010, he stated *“This Act covers long-term conditions causing significant impairment of day-to-day activities and communication difficulties could, in theory, be covered. It all depends on whether they are having a significant rather than a minor or trivial effect on day-to-day activity like communication, and that is what will be doubt here, whether it was significant or not”*. He said that was a legal question that he could not determine.

41. No meeting to discuss the report of Dr O'Reilly was conducted before the claimant went on sick leave on 3 February 2020, or thereafter.

42. On 31 January 2020, the claimant attended her GP who noted *‘wonders if she may be suffering from Asperger's syndrome – ref for assessment’*. She was referred for an NHS assessment on 6 March 2020.

43. The claimant asked on 12 February 2020 to defer a referral to Occupational Health until the completion of her grievance process. They were concluded on 30 April 2020 and she was almost immediately re-referred to Occupational Health.
44. Dr O'Reilly prepared a second report on 14 May 2020, after a telephone assessment. In respect of those parts of his report relevant to our findings on disability, Dr O'Reilly stated that “. . . *she may well suffer from autism*” and reporting what the claimant had told him “[*she*] *underwent an assessment for this in March, and was told that it was indeed quite possible she had this condition and she would be put forward to the next stage of assessment towards a diagnosis*”.
45. He stated “*she describes continued difficulty understanding the meaning, often misinterpreting it . . . Equally, if she is talking to people and she has to ask people to repeat things or challenge what they say to ensure she has the correct reading to find sometimes people get annoyed about that the whole communication issue as always seemed very difficult for her. For that reason, she herself does feel that she does have features of autism as a diagnosis and it seems to fit her life*”.
46. On 7 July 2020, the claimant underwent private assessment with Dr Javier Ferreiro-Pisos, Consultant Psychiatrist, via a Zoom remote consultation. He was not called to give evidence. His report states that his assessment comprised of a clinical interview, assessment measures completed by the claimant, and his own observations. TE completed the same assessment after the relevant period, and obtained, erroneously, a score suggesting ‘severe autism’; the claimant accepted in evidence that it was possible to manipulate the scores of the assessment.
47. Dr Ferreiro-Pisos concluded that the claimant’s “*suspicion was corroborated by the clinical interview and psychometric tests, therefore the Autistic Spectrum Disorder is a diagnosis that fits with her idiosyncrasy and challenges*”. The claimant’s “*Presenting Difficulties*” were noted as being “*difficulties with social*

interaction, communication and rigidity". The claimant was reported as finding social interaction 'draining and prefers to be on her own', that 'she does not seek out social events but is aware of their benefits', that 'she works in an open office which compounds the lack of control over the level of social interaction'. She described the deterioration of her relationship with a particular colleague which 'made life at the office more complicated'.

48. He continued *'[the claimant] does not have a problem in communication with literal interpretation and joke recognition but with the ability to convey herself, sticking to the main thread and not using too many words'*.

49. Under the heading 'Educational/work based adjustments', Dr Ferreiro-Pisos wrote: *"an assessment from an Occupational Therapist will be of paramount importance to decide which special arrangements for her work should be in place"*.

50. Dr Ferreiro-Pisos' report was not disclosed to the respondent before the claimant resigned from her employment on 10 July 2020. The respondent does not admit the diagnosis.

Disability – Discussion and Conclusions

51. The claimant says that her autism affects her 'social communication skills'. The matters relied upon by the claimant are plainly day to day activities.

52. On the claimant's own account, she struck up a friendship with Justine Cain, which deteriorated in October 2018 and she felt that she had a 'good relationship' with her other colleagues, until Autumn/November 2019 (statement to Stuart White).

53. Before her relationships soured, the claimant did socialise with her colleagues, in respect of events where her participation was not only voluntary, but sometimes initiated by her. She attended social events as part of her team outside of work, e.g. attending the opening of new bar/restaurant in Jesmond;

during a business trip in Hong Kong, the claimant organised a boat trip, followed by dinner at the Hard Rock Café. She suggested to JC that they meet for drinks. They took photographs of their nights out. Sonya Potts gave unswerving and detailed but measured evidence of occasions to support her evidence that they *'socialised quite a lot'*; they met for lunch, arranged to meet a colleague's boyfriend for lunch as well describing the claimant's plan to attend a tapas meal, which she could not attend due to an emergency, but that in respect of which she had made arrangements for those attendees who had children. She described their relationship as being one of *'friends'*. The claimant's challenges to SP's evidence varied from the claimant having *'no recollection'* of the events, to accusing SP of *'embellishment'*, to lying under oath *'to support JC'*. We accept SP's evidence in full. The claimant agreed with Anne Armstrong's evidence that they socialised, qualifying it by stating that they were *'work occasions'*. We bear in mind that at allegation 14, the claimant alleged that AA discriminated against the claimant by failing to invite her to the Christmas party in December 2019. The claimant declined the invitation because she had an appointment with a supplier that, initially, at least, prevented her from attending. She said *'[AA] handed around menus, deposits were already taken, that is when I said, 'oh hang on, I'm going' and then I went'*. She accepted a lift to the venue from AA.

54. We accept in full the respondent's evidence of the claimant's willingness to socialise and initiate social contact.

55. The evidence before us does not suggest that the claimant does have any, or any significant, difficulties with communications more generally, either. At allegation 28, the claimant alleges that the respondent discriminated against her for suggesting in correspondence a link between her use of headphones to create a *'quiet environment'* and her autism; at the outset of the hearing, the claimant told us her use of headphones was connected to her autism; her impact statement states that she is hyposensitive to sound, which might suggest that her use of headphones is a preference after all. When Neal Austen on 22 August 2019 invited the claimant to meet with Karen Crosby to deal with a matter that the claimant had, on her own account, discussed extensively with

KC, she provided three reasons as to why it was *'unwise'* to do, amounting to criticisms of KC and none of which included her alleged difficulty with verbal communication. We find that omission particularly surprising given the extensive experience of autism that the claimant will likely to have acquired through the diagnoses of her son (with whom she told us she shares identical traits) as well as her partner.

56. We noted that in her oral evidence as well as her written communications in the bundle, the claimant appeared to freely use metaphors such as: *'it went tits up'*, *'red flags'*, *'jump the shark'*, *'Trojan horse'*, *'blowing smoke'*. We have made observations on the frequency with which the claimant resorted to what we considered to be unsustainable suggestions that her own interpretation of written documents was *'implicit'* in the reading. We note that Dr Ferreiro-Pisos reported, contrary to the claimant's impact statement that the claimant has no difficulty with literalism, and we are unclear whether that was reported a consequence of an assessment made by him or simply repeats what the claimant told him; he was not called to give evidence. Either way, we do not consider it appropriate to do as the claimant invites us to do i.e., accept that the true position is *'a little bit of both'*.

57. Dr O'Reilly could not identify any communication traits which impacted on her day-to-day functioning either at work or outside it. We have considered whether and if so to what extent the claimant adopted coping strategies to, as she describes *'mask'*, any adverse effects. Our difficulty is that the claimant did not simply contend that she socialised, occasionally but reluctantly, but that the respondent's witnesses were dishonest about the other occasions when we have found that she did engage in social activities voluntarily; we cannot reliably assess any coping strategies in those circumstances.

58. We have no difficulty accepting that the adverse effects that the claimant describes in her impact statement are those that are, or might be, consistent with Autistic Spectrum Disorder (see for example D17 of the Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability) , but on any scrutiny of the evidence before us, we have

significant difficulty identifying how those matters affect her, on the evidence before us.

59. Such is our concern about the claimant's credibility, we are not satisfied that the claimant suffered any, or any substantial adverse effect on her ability to carry out the day-to-day activities she describes, where substantial means more than minor or trivial.

60. The claimant did not call Dr Ferreiro-Pisos to establish the existence an impairment. As a result, we were unable to ask him what weight he attached to the assessment measures as opposed to the interview, how reliable the assessment measures were, whether the account of the claimant's difficulties is a repetition of her account to him, and whether his diagnosis was based on an application of the assessment measures completed by the claimant and facts as they were reported to him, to the DSM criteria, or whether additional clinical input was involved and if so, what. Given our own doubts about the weight to attach to the claimant's evidence, in particular, and our inability to seek clarity from Dr Ferreiro-Pisos, we are able to attach only limited weight to his diagnosis. The claimant has not satisfied, on the evidence that she produced to the Tribunal, that she suffered from the mental impairment of autism.

61. On the evidence before us, we are not satisfied that the claimant is a disabled person within the meaning of s.6 Equality Act 2010. The allegations of disability discrimination are not well founded.

Knowledge – Discussion and Conclusions

62. Notwithstanding our findings above we consider the question of knowledge of the disability. It is for the respondent to show the absence of actual or constructive knowledge of the disability.

63. The respondent did not, during the claimant's employment have actual knowledge of a diagnosis. Consistent with what the claimant was telling the respondent, the reports of Dr O'Reilly raise only the possibility of an impairment. The respondent did not receive the report Dr Ferreiro-Pisos during the claimant's employment. Dr O'Reilly was unable to say whether the claimant was *'mild on the spectrum', 'or just out with it'*. He did not believe that the claimant was at a level where any communication traits impacted significantly on her general day to day functioning *"and she does not feel it is either"*. We find that the respondent did not know that the claimant was suffering adverse effects on her ability to carry out day to day activities which were more than minor or trivial.
64. As to whether the respondent ought reasonably to be expected to have known, it is for the respondent to show that they have done all they can reasonably be expected to do to find out if the claimant had a disability.
65. The respondent could reasonably have been expected to offer to the claimant a referral to Occupational Health in December 2018, when the claimant first mentioned to it that she had Asperger's. However, had it done so, we are not satisfied that the claimant would have accepted the offer; she did not wish to discuss the matter on 11 December and only a month earlier she had asked HT to keep the matter confidential. Even assuming that the claimant was agreeable to a referral, there is nothing before us to suggest that had a report produced by Occupational Health 11 months earlier than it was, it would have contained any different information than the report they received in November 2019; the condition is lifelong and there is nothing before us to suggest that symptoms were likely to alter over time.
66. We also consider that it is reasonable to have expected the respondent to have met with the claimant to discuss the contents of the report of Dr O'Reilly dated 14 November 2019. We have found, below, that that was Tracey Elliott's intention, and that between November 2019 and January 2020 she had a significant and inescapable workload. But we see no reason why arrangements to address this important matter could not have been made; they should have

been made. Had that discussion had taken place, however, given the claimant's evidence to this Tribunal that the report of Dr O'Reilly accurately captured what she told him, we are unable to find that the respondent could reasonably have expected to know any more than it did from a reading of the report, and the claimant has never suggested otherwise.

67. After a delay, at the claimant's request, the respondent received the second report. In essence it repeated the possibility, but made no comment on the probability, of the claimant having Asperger's.

68. It follows that we are satisfied that it was unreasonable for the respondent to be expected to know of the claimant's disability during her employment.

69. The allegations of disability discrimination are not well founded.

Background Facts

70. The respondent is a company engaged in the global manufacture and distribution of baby and toddler feeding, sleep and hygiene products.

71. The claimant was employed from June 2015 initially as a Quality System Coordinator, then as a Quality Returns Manager, she held the position Product Support Manager (UK/ANZ region) from October 2017 until March 2019 and then became Product Investigation and Improvement Manager in March 2019. She resigned from her employment on 10 July 2020.

2018 - 2019 - 'Bird seed' and Bird Tray

72. In or around 2018, the claimant went on a business trip with Justine Cain ('JC'), then Product Support Manager (EMEA / US) and others to Hong Kong. On her return she joked with CB, asking why he did not keep sweets on his desk and refer to them as '*bird seed*' as she had witnessed a male manager in Hong

Kong do. The reference to *'birds'* was a reference to women. The claimant found the quip *'hilarious'* and teased CB whether the office staff here in the UK were not good enough for *'bird seed'*. CB eventually did, at the claimant's instigation, bring in a bowl of sweets which he kept at his desk; this was the first time in his career, whether employed at the respondent or elsewhere, that he had ever done such a thing. We are not satisfied that CB ever specifically said words to the effect that he was *'offering up bird seed to attract the birds'*, but we are satisfied that the team generally, including the claimant, adopted a joke of referring to sweets being *'bird seed'*. Staff took it turns to replenish the bowl, including the claimant.

73. The claimant did not raise this matter until February 2020, although she made various other complaints beforehand, because, in her own words, she considered it to be a "*minor*" issue.

74. In late 2019, Anne Armstrong ('AA') made plans for the Quality Team Christmas party. It was to take place on 10 December 2019. The claimant had a meeting with a supplier on that date, so she told AA that she would not be attending. AA therefore did not offer her a menu from which to pre-order her meal or seek a deposit for the meal from her.

75. The meeting with the supplier was subsequently cancelled and the claimant attended the party after all. AA offered to the claimant a lift to the party, and the claimant accepted; she travelled to the party with AA and Chris Beeley ('CB') Head of Global Quality. At the party, AA gave CB a token present comprising of a tray featuring birds, and a pen. Some team members were aware of AA's plans to give CB a gift.

October 2018 – March 2019 - Change in Job Titles

76. JC was employed in the Quality Team as a Product Support Manager (EMEA and US). She met the claimant for the first time at work. When the claimant

moved into the role of Product Support Manager (UK, ANZ) in October 2017 they worked alongside one another.

77. JC and the claimant got on very well, initially. They socialised together as well as worked together. They shared personal information. JC told the claimant about her relationship history.

78. Their relationship became strained and then deteriorated in 2018; the reason for that is in dispute and irrelevant to our findings. JC received an email from the claimant on 13 October 2018 that she found to be aggressive; she raised it with her manager, Chris Beeley ('CB'), Global Head of Quality, who told her that he would deal with it, but she heard nothing further. The claimant therefore raised an informal grievance with Helen Taylor ('HT') Senior HR Business Partner. She was told that CB would update her; she heard nothing further from him. HT suggested to the claimant the meeting should take place between the claimant and herself, facilitated by HT and CB.

79. The claimant and JC agreed, and the meeting took place on 3 December 2018. It did not last long; the claimant told JC that she was *"playing the victim"*. Despite her initial attempt to suggest otherwise to the Tribunal, when she made this remark, she knew, because of personal details that JC had previously shared with the claimant, why JC would find the comment highly distressing. JC was extremely upset at the comment. HT brought the meeting to an end. JC was off sick from work with stress for a week following the meeting.

80. JC formalised her grievance against the claimant. Meetings took place. On 11 December 2018, the claimant met with CB and Ashleigh Vaughan ('AV'), HR Business Partner, to discuss the complaint made by JC that the claimant was bullying her. When the claimant was asked whether she had detected a change in the atmosphere when after she had sent the email of 13 October 2018, the claimant said, *'I've got Asperger's so, no, I didn't'*. When asked whether there was anything the respondent could do to help, she replied *'no – live with it'*.

81. The claimant submitted a counter grievance against JC the following day, 12 December 2018. In it, she complained that when JC's boyfriend, who also worked for the respondent, had approached her on 22 November 2018, he had bullied her. HT had a discussion with JC's boyfriend and reported back to the claimant that he accepted that he had shaken the back of the claimant's chair to get her attention. The claimant took matters no further.
82. On 13 December 2018, JC having been told of the counter grievance, but not been given a copy of it, agreed, with hesitation, to participate in mediation with the claimant. In a call on 13 December 2018, the claimant told AV that the "*ideal*" solution would be to not work alongside JC.
83. A mediation took place on 17 December 2018, facilitated by AV. JC and the claimant apologised to one another and resolved to move on. They agreed to work on their communication until such time as their workload could be formally reviewed.
84. The claimant did not mention her belief that she had Asperger's at this mediation, but she did tell JC that she found reading people and situations '*very difficult*'. As part of the new 'ground rules' of how to engage with one another, the claimant stated that she preferred to have her own personal space to work alone, and that if she was wearing one headphone, she was listening to music whilst she worked and was amenable to being spoken to about work-related matters, but that if she was wearing two headphones that signalled 'do not disturb unless urgent'.
85. On 20 December 2018, the claimant sent a lengthy email with attachments to AV and CB outlining her suggested split in the roles held by herself and JC. The claimant's preferred area of work was how to take corrective action on a faulty product.
86. CB decided that the claimant could concentrate on corrective action, whereas JC could be responsible for both geographical areas of Product Support.

87. Accordingly, on 8 February 2019 CB sent the claimant a draft job brief, for a new role, entitled 'Product Investigation and Improvement Manager'. The change in job role would be effective from March 2020. Her terms and conditions of employment stated that her basic hours of work were 37.5 hours per week, and that she reported to the Global Head of Quality.
88. The claimant was "*completely*" happy with the job description for her new role. On 11 February 2019, the claimant replied "*thanks Chris. It's spot on. I don't need any amendments at all. Very happy indeed 😊*".
89. On 6 March 2020, the claimant was sent an outcome to her (counter) grievance in which the claimant was formally offered an amendment to her role, and a job description for the new role of Product Investigation and Improvement Manager. Unsurprisingly, she did not take up the opportunity to appeal the outcome.
90. Similarly, JC was sent a proposed amendment to her contract to the role of 'Global Product Support Manager'. She was now responsible for both regions i.e., US and EMEA that she was already responsible for, as well as UK and ANZ.
91. The claimant and JC both commenced their roles in early March 2019.
92. An internal communication was drafted to announce the new roles. It was not distributed. There is no contemporaneous evidence before us to support the contention that CB '*promised*' the claimant that it would be circulated. Furthermore, the contention appears to have come about after receipt of the claimant's Subject Access Request. We are not satisfied that any such '*promise*' was made.

September 2019 - Oracle software

93. On 29 August 2019, and subsequent to a conversation she had had with NA about cost cutting measures, KC asked its third-party software supplier,

Concentrix, whether a number of people, including the claimant, had in the last year used their Oracle licence. She was told, erroneously, in an email from Concentrix that the claimant had last logged on over 4 months ago. The claimant's licence was therefore cancelled, as were others'; KC stating her belief that now that the claimant did a different role, she could receive the small amount of data she needed from KC directly.

94. About a week later, on 5 September 2019, the claimant emailed Karen Crosby stating that she noticed that her access to Oracle was disabled; KC explained in her reply to the claimant, what Concentrix had told her. The claimant sent a lengthy email to KC and NA complaining that she had last logged on 7-10 days earlier. KC took the matter up with Concentrix, who sent an email on 9 September 2019 in which it confirmed that the error was theirs and that the claimant had indeed last logged on in late August.

95. Between 16 and 17 September, KC and the claimant emailed back and forth, attempting to restore full access. After discussion with NA, KC left the access as partial, in part in response to NA's heightened nervousness about unnecessary access to data and the need for GDPR compliance to limit access to sensitive data, and in part to keep costs down. On 7 October, with a view to identifying the claimant's precise needs, KC suggested they sit down to discuss the claimant's requirements; the claimant responded aggressively. KC did not respond.

2 October 2019 – Email from Mothercare and claimant's reply to Mothercare

96. In late September 2019, Mothercare emailed the claimant. The email was about a customer who had complained to the respondent directly, but who was dissatisfied with the response given by KC's department and who had therefore taken the matter to Mothercare. The email from Mothercare asked the claimant for her help, or alternatively to pass the email to the relevant person. The customer was complaining about the product and the service she received from the respondent; Mothercare asked whether the claimant would be '*kind enough*

to review the details of the complaint . . . and let us have your thoughts on the matter’.

97. On 2 October 2019, the claimant wrote a lengthy email to Mothercare. In her reply, the claimant volunteered her own views of the level of service she believed the customer had received; we consider apt the respondent’s description that the contents were “*scathing*”, ‘*disrespectful*’ and ‘*inflammatory*’ about the respondent. It was it was gratuitously so; the claimant did not know the person she named in her email as being someone who she claimed she was ‘*embarrassed to be associated with*’, and furthermore, a complaint about KC’s department did not, in any event, lie with the claimant. The email was deeply unprofessional and inappropriate.

98. Only after she sent the email to Mothercare, did the claimant email KC, describing the original response to the customer as ‘*cringeworthy inaccuracy*’ and subsequent to that, she forwarded the email to CB, describing KC’s department as ‘*mishandling*’ the complaint.

99. The email was, by 22 October 2019, forwarded to NA for his attention, raising issue about the content of the claimant’s reply.

22 October 2019 - Stakeholder Meeting

100. Tracey Elvin (‘TE’) had commenced working with the respondent as a Senior HRBP from March 2019. She had been meeting or speaking to individual employees in the organisation over time but had been tasked with handling a number of matters at other offices nationally and abroad, including the closure of the Exeter office and the handling of consequential redundancies.

101. On 25 September 2019 TE emailed the claimant as follows: “*hope you are well, wondered if we could have a catch up? Nothing to worry about, I am just trying to get around all my stakeholders.*” She did not here suggest that she was having meetings with them, only ‘*catch ups*’.

102. As a result of discussions with NA, she was aware of the claimant's email to Mothercare, as well as her email to NA in which she had included a link to a website about autism before she met with the claimant a month later.
103. They met on 22 October 2019. The claimant, who was keen to talk, led the meeting. She offered to TE that she had a poor working relationship with KC and JC and that she had had a recent issue about an email. TE asked whether this was a reference to the Mothercare matter; the claimant said it was. TE asked the claimant whether, on reflection, she thought the tone of email appropriate; the claimant responded by becoming tearful and telling her about her autism. There followed a referral to Occupational Health about this disclosure.
104. By the time of the meeting, TE was aware of the email that the claimant had sent to Mothercare, as well as the fact that someone had complained to NA about the claimant's reply to Mothercare. There was no suggestion before us that the claimant was on 22 October 2019, or indeed at any stage before 17 March 2019, aware of the internal complaint made about her reply to Mothercare.
105. The claimant also raised with TE the fact that her access to Oracle had not been fully reinstated
106. Before the meeting ended, the claimant volunteered to TE that she had previously taken her partners employer to the Employment Tribunal for disability discrimination on the grounds of his diagnosis for autism and that he had received a particularly favourable sum of money. TE was taken aback by the comments. We in fact heard from three witnesses (JC, SP and KC) who gave separate and detailed accounts of the claimant revealing to them that she had during her employment prepared, and succeeded, in Employment Tribunal proceedings brought by both herself and her partner (in the latter case, a claim of disability discrimination on the basis of his autism). We accept their accounts in full. In cross examination the claimant conceded that she had raised an equal

pay grievance with her previous employer and that her partner had successfully sought ill health retirement. We agree with the respondent's submission that this is but one example of evidence before us that, during her employment, she was also prone to exaggeration.

107. On 22 October, JC told the claimant that she was yet to catch up with TE. That same day, TE emailed JC to ask for a catch up meeting, adding that she had spoken to the claimant *"who shared some insight into the department and cross functional working and would love your views on how things are working (or not, as the case may be!)"*.

108. On the morning of 23 October, JC accepted an invitation from TE to meet with her later on 23 October 2019. JC did not, as the claimant contends, tell the claimant that she had not met with TE *'well into January 2020'*.

109.

110. At a time that TE was unable to recall, she was told by KC that the issue over the claimant's access to Oracle had been resolved. TE did not feed back to the claimant about it. The claimant does not suggest (or for that matter deny) that TE understood the situation had been resolved. The claimant did not chase TE for a reply to her query.

14 November 2019 - Occupational Health report

111. On 14 November, TE received the Occupational Health report of Dr O'Reilly. On 19 November she emailed the claimant to check whether she had received her copy of the Occupational Health report. She added that she was in Exeter that day – a reference to the fact that she was assisting with the closure of the office and consequential redundancy exercise – but offered to support her from afar.

November 2019 Line Management Support

112. On 25 November 2019, the claimant met with CB for a one-to-one meeting. One of the issues she raised was her concern about performance issues in this relation to her one and only direct report, CM. CB appears to have suggested that the claimant “wait two days”. The claimant did not, thereafter, return to CB; instead, she approached TE for assistance. The claimant was very keen to retain the only direct report she; she did not at any stage want CM to be moved to another manager.

113. The claimant asked TE for information about ‘the process’ and whether she could recommend any tools to use reflective management. A week later, on 12 December 2019, TE responded by apologising to the claimant, adding “*it has been the craziest time ever!*”. This was a reference to the fact that the time she had been leading a project to close the Exeter office and make redundancies. TE asked the claimant whether she would prefer to meet and talk through the process she said, ‘just let me know and either you and/I can pop sometime in the diary’. It was a month before the claimant responded, on 15 January 2020 when she wrote “*sorry it’s taken so long to get back to you. It’s been a hectic time everywhere!*.” She agreed to a meeting and informed TE that her diary was up to date.

114. TE was on leave 22 to 27 January 2020.

July 2019 – January 2020 Product Integrity Manager role

115. Sean Neasham (SN) commenced work with the respondent in the Quality Department at grade 1. He possessed two degrees, in law and IT. CB was impressed with his capabilities and identified him as potential management material. He mentored SN until such time as a promotion opportunity arose. That opportunity came about in 2017 when SM was promoted to Global Compliance Manager. The claimant does not complain about this. CB mentored the claimant and JC. We accept the career progression will be discussed in this relationship. SN may well have been discussed. Staff

structure was a matter for the respondent's board; appointments were not within CB's gift and the claimant knew this.

116. On 10 July 2019, at an informal one-to-one meeting with the claimant, the claimant said she was interested in taking over the role of the Product Integrity Manager ('PIM'), which sat in the Engineering Team. She had heard rumours that the incumbent, TH, was planning on leaving.

117. The role of PIM was an engineering role. The claimant was keen to explore a more technical role, but she had a degree in creative art, and so the opportunities for a promotion into a technical role were limited in the absence of a degree or significant experience in engineering.

118. The claimant knew that an appointment into the role of PIM in the Engineering Team was not within CB's gift; on her own account, CB "*indicated it would be Rob Jervis*" who made the decision. Rob Jervis ('RJ') was Head of Industrial Design, under whom the Engineering Team and the PIM role sat.

119. The height of what CB told the claimant during any discussion about the PIM role was that she had potential.

120. At no stage did CB suggest or intimate that the claimant had any prospect of securing the role of PIM: it was a technical role, and the claimant was wholly unqualified for it. We note that at one stage, the claimant in oral evidence ventured that CB had suggested that the claimant secure a qualification in engineering and that she had been working towards a qualification, but then resiled from the suggestion when it was pointed out that she had not, in fact secured the qualification.

121. The claimant knew that her chances of obtaining the role were all but non-existent; when it was put to her in cross examination that she was seeking a job in '*engineering*', she qualified her answer by stating that she was seeking "*a management job in engineering*".

122. In fact, her position was far clearer and more realistic, at the relevant time: she knew, as she stated in a text to CB on 8 November 2019, that the role was for an engineer; in a grievance interview with TE on 17 February 2020, she said:

“I told Chris I was still interested in this role when Tony suddenly left. Not qualified, but worth a shot”.

123. On 1 November 2019, TH resigned from his role as Product Integrity Manager in the Engineering Department.

124. On 8 November 2019, the claimant texted CB to say that she had heard that TH had left his job. Inconsistent with her case before the Tribunal, she made no reference in her text to CB having promised her the role, or the role being within his gift to give her.

125. Instead, she asked CB to put in a good word with Rob Jervis and Michael Hodgson. She said, *‘I would love to take it on’*. She continued by setting out what she meant by *‘it’*. She stated, *‘in her opinion’* the role did not require *‘an overqualified Design Engineer’*. She suggested the role required *‘an organised sheep herder, to own the process and draw it together, rather than a revolutionary who wants to reinvent the wheel. The system is broken it just needs steady Continues Improvement’*.

126. It is plain from reading the text message that the claimant appreciated that her lack of engineering experience was an obstacle to her appointment for the PIM role.

127. The claimant conceded in cross examination that, contrary to her allegation, CB had not sent her any texts to suggest that she would or may be appointed to the PIM role, or be appointed as a head of a new department.

128. CB said he would put in a good word for her; he did not offer to lobby for her. The claimant knew it was not in CB's gift to offer to the claimant a role in the Engineering Department; he suggested she speak to RJ.

129. On or around 25 November 2019, the claimant and CB had a one-to-one meeting. A number of matters were discussed. One of those matters was the idea which he was seeking approval for at Executive level, i.e., that, as part of the internal structure, the claimant's existing product analysis role current might sit more logically in the Engineering Department; the sole consequence, of the move, at that time, was expected to be a change in her reporting line from CB to RJ. This proposal was part of an internal review and the idea was not a confidential one; a number of people in the Quality Department were aware of this possibility.

130. The claimant was not told by CB or RJ to keep the possibility of a move to the Engineering Department 'a secret' and nor was anyone else; the suggestion that CB required the claimant's consent to share this information with others we thought confounding.

131. There was also a discussion at the meeting on 25 November of there being a proposal to create a new department. Consistent with the claimant's own written and documentary evidence, CB said it an 'idea' for a new 'Life Cycle Management Department' but told her that 'no detailed plan' had been made or agreed. On her own oral evidence, she knew that CB did not have the authority to create a new department; adding that she nevertheless believed he had 'the power and the influence'.

132. CB did not tell her then, or at any time, that she would be given the PIM role as well as further, additional, responsibilities to lead a new 'Aftermarket Department'. CB did not tell her that this plan had been discussed and agreed with others, or for that matter, "*everyone*".

133. We found the claimant's oral evidence about her contention that she had been led to believe that she had been appointed to the PIM role, or was to head

a new department most unsatisfactory. Despite steadfastly maintaining that she had been offered a role, she was unable, when pressed in cross examination, to state when any offer was made, in respect of what role, and by whom. On her own written and oral evidence, CB had provided the claimant with no details of the new role, or the structure of any new department; in cross examination, she accepted that no 'deal' had been agreed by 9 or 11 December 2020, whether 'officially' or otherwise.

134. On or around 16 December 2019, the claimant asked to meet with RJ. RJ believed they were to be talking about the repositioning of the claimant's existing role in the Engineering Team if the restructure proceeded as indicated. Instead, when the claimant met with him, and consistent with the suggestion in her text to CB on 8 November 2019 to rewrite the job role, she appeared to pitch to him for a new role, sharing with him her capabilities. RJ was unable to give any meaningful response.

135. The claimant accepted in cross examination that she had not been offered any role, by either CB or RJ in December 2019.

136. Despite maintaining a claim that CB had offered her 'a job' during a one-to-one meeting on 15 January 2020, again, when pressed, the claimant was unable to state what the job was *'he wouldn't tell me, and it wasn't clear'*.

137. In an email, seemingly unsolicited, on 20 January 2020, the claimant wrote to CB, in an email headed *'revised role & pay'*, volunteering what she believed to be an appropriate level of pay *'for my role as discussed last week'*. She referred to national benchmarking of roles and set out that her *'minimum pay expectations'* were £40k, adding *'I could have pitched higher depending on what my new job description will be'*.

138. In late January 2020, CB presented his proposal to the Executive Board, for an internal restructure which included a move of the Product Investigation and Improvement Manager role to the Engineering Department. It was authorised, but it was not implemented during the claimant's employment.

January 2020 – Audits

139. In approximately 2018, the claimant had written a document entitled 'Complaints Procedure'. It was about the procedure to be adopted when feedback from customers was received about products and services. It was, on the claimant's own oral account, a procedure that was due to be reviewed. AA was responsible for the procedure and she asked JC to contribute to revision; JC was, since March 2019, responsible for interactions with customers.
140. Auditors were due to visit the respondent's premises between 28 – 31 January 2020. On 28 January at 3pm, a named auditor was due to conduct a Corrective Action Plan audit (the responsibility for which would ordinarily lie with the claimant) as well as customer complaints audit (the responsibility for which lay with JC). AA wrote JC's name against both; that was a mistake. AA invited the claimant to attend the audit; she declined the invitation. According to her own statement, the claimant was due to be on annual leave from 27 January to 31 January 2020. AA agreed with CB to ask JC to take responsibility for the audit instead; she was available and that was the reason she was selected.
141. Although the claimant appeared to advance in her cross examination of JC and AA an allegation that she was also excluded from an audit in August 2019, that was not something she alleged in her written evidence or stated in her oral evidence when she was being cross examined about this matter. In any event, we have no reason to doubt AA's evidence that although she was not included in a CAP audit in August 2019, she was included in others, such as a PCR audit.
142. Later, on Thursday, 23 January 2020, the claimant raised, in an open plan office, an issue she had with documents for the forthcoming audit. The claimant accused AA of changing the roles for the CAP audit; she became aggressive and raised her voice at AA. Having seen both witnesses give

evidence, we have little difficulty accepting AA's evidence that her response to the claimant's challenge was to simply withdraw from the situation. AA told the claimant that if she had a problem with her work, she should raise the issue with CB; AA walked away and sat in a room on her own to compose herself.

143. The claimant suggested that AA's account was '*complete fiction*'. We note that in her own written evidence, the claimant described her own conduct as '*firm and assertive*' and that, furthermore, she emailed CB and TE and stated that she '*appeared to have upset AA*'. The claimant accepted in evidence that she had, in fact, upset AA.

144. AA raised the matter with her line manager, SN and with his agreement, also TE who happened to be on leave that day; she told both that she sought to raise an informal grievance about the claimant's behaviour towards her. TE arranged for AA to speak to a colleague in her absence.

145. The claimant accepts that insofar as JC '*laughed*' at the situation unfolding before her, she does not seek to criticise the response, which she accepted was borne of shock.

146. In her email to CB that morning, the claimant's stated "*hi Chris, if you can give me a call when you get this email please*". The body of email set out the altercation between the claimant and AA that same morning, concluding "*if this is correct, this is very serious not only in terms of the trust and my contract of employment but it represents a serious breach of my rights to confidentiality. The suggestion I moved engineering has been yours, and I have told nobody. Why does [AA] know about this?*".

147. CB typically worked in the Mansfield office on a Thursday and Friday and the claimant knew this. CB was in meetings that morning.

148. TE was copied into the email, but it was not addressed to her. The claimant did not describe the email of the grievance nor did she seek a response from TE. Although the claimant contends that TE was at work and

available to respond to her, we are satisfied that TE was on annual leave that day. TE did not read the email at the time.

149. Almost exactly an hour after the email, the claimant sent to CB a text, as follows:

"I am working from home until you sort this clusterfuck out. It's not fair to engage in cloak and dagger or to play people off against each other."

150. CB received a call from SN, who told him that AA wished to raise a grievance against the claimant and wanted to speak to HR. CB resolved to leave the matter until the following Monday when he returned to the Newcastle office, so that he could deal with all matters in person. He had forgotten that the claimant was on leave the following Monday, for a week.

151.

152. On 27 January 2020, that is to say, the day she returned from leave, TE emailed invitation to a meeting on 29 January 2020 entitled "*Occupational Health follow-up*". At the time of sending, TE had not realised that the claimant was herself on annual leave that week.

153. The Occupational Health report was dated 14 November 2019; TE was in Exeter to assist with the closure of that office when it was first received, and she had alluded to the workload that that was creating for her when she emailed the claimant on 12 December. Given intervening holidays, the fact that TE was on leave for a week on 22 January, together with the fact that the report did not suggest any adjustments were required to the claimant's role, we accept that there was nothing sinister in the delay to meet with the claimant to discuss the report.

154. The claimant declined the invitation by apologising for her inability to attend the meeting explaining that she was on annual leave and asking to meet with TE in the absence of CB. TE responded an hour later by agreeing to meet with the claimant in the absence of CB.

155. The claimant did not return to work on Monday 3 February 2020. She remained on sick leave as a result of work-related stress until her return to work on 15 June 2020.

February 2020 – Emails between JC and RJ ‘demoting’ claimant

156. On 5 February 2020, JC was covering for the claimant’s role in her absence. An issue arose with a particular product, a blender; this was the fourth time this particular issue had arisen. JC spoke to CB; they recognised the matter needed addressing promptly. CB instructed JC to approach RJ to ask if he could deal with it.

157. In an email from JC to RJ and the claimant, copying in CM, JC wrote as follows:

“Hi All, Please see attached Product Investigation Brief (this is not a registered form as yet just trying it out before it is added to the QPulse. This has been raised with regards to the Steamer blender issue blades not turning. I have raised this today as we now have a total of 4 with the same issue. Rob I know you have had a look at issue Friday in the lab but think its needs investigation starting with your team and supplier asap. Many Thanks, Justine.”

158. RJ responded in an email sent to JC, the claimant, CM, and others. He wanted information, he was unconcerned from whom; he simply was trying to assist in the resolution of the issue from an engineering perspective. He wrote:

“Hi Deb’s, When you are back please can you pull together the Fault Investigation Report for the attached PIB, please come and find me to discuss when you are back. Sudhir please can you [. . .] Thanks, Rob”.

159. At the time RJ wrote this email, he was unaware that the claimant had submitted a grievance.

160. The claimant claim that this email effected a demotion of her role. Two days after this exchange, on 7 February 2020, the claimant sent an email to TE in which she described the exchange of 5 February as 'upsetting'; she did not describe it as a demotion, or tantamount to a demotion.

161. Also two days after the exchange between JC and RJ, an Induction Presentation was created. It contained thumbnail pictures and a short description of roles held by those reporting to CB as Global Head of Quality.

162. The respondent had created an 'Aftermarket Flowchart', as the title suggests, the document does not illustrate tasks and responsibilities, but a process with no mention of any individuals.

March – May 2020 – MAP scores

163. The claimant does not dispute that the reason she did not receive her performance rating or as it is known, the Mayborn Aligned Performance Scores (MAPS) at the same time as everyone else was because she was on sick leave.

164. It is for a line manager to provide feedback for a MAPs score. On 17 March 2020, the claimant asked TE for her score. On 22 April 2020, TE offered to the claimant either a call with CB as her line manager to discuss the rating or simply the rating letter which would not give her any context to the rating. In response the claimant asked for the rating letter and written feedback from CB.

165. The claimant in April received a letter from Steve Parkin, the CEO, explaining that her MAP score was sufficiently good to receive a bonus, and confirming the value of the bonus. On 6 May 2020, the claimant emailed TE and CB confirming that she sought written feedback scores.

166. The claimant contends that TE failed to raise the matter with CB because '*she had it in for me*'; in fact TE did raise the matter with CB verbally, in addition

to the fact that CB was copied into the same email requesting feedback that the claimant sent to TE.

4 February 2020 – grievance / protected act

167. On Tuesday 4 February 2020, the claimant submitted a grievance by email. It was addressed to SE and TE. In it, the claimant claimed that she had raised an allegation of breach of contract and disability discrimination 13 days ago to CB, both of which had remained unaddressed. She claimed that her autism was within the general knowledge of the respondent by February 2019. In evidence, the claimant accepted that, contrary to her assertion in her grievance, she had not, in fact, raised any allegation of disability discrimination to CB.

168. The claimant continued by stating that the effect of AA's actions was to give *'the majority'* of her role to JC. She stated that CB had *'indicated'* that she *'could potentially be lined up'* for the PIM role and that a new department *'was likely to be formed with me at the centre'*. She wished to know *'is the promotion real'*, why AA was acting as she was, and what was *'going to be done to redress the hurt, damage and loss'*.

169. TE acknowledged the grievance same day and agreed to set up a meeting to discuss her grievance.

17 February 2020 – TE / claimant grievance preliminary discussion

170. On 17 February 2020, TE met with the claimant for an hour to discuss her grievance, and minutes of the meeting were taken. The claimant agreed in evidence that TE correctly identified the two main strands of her grievance; that elements of her job had changed (but not, significantly, that CB/RJ had reneged on a promise to give her the PIM role / create a new department for her to lead) and her social exclusion from the Quality Team due to her disability. The

claimant gave specific examples in the meeting of how she believed elements of her role had been taken away from her. When asked by TE why she believed her colleagues behaviour was related to her disability, the claimant's answers were lengthy and unclear.

171. During the meeting, the claimant said that "there was a text using the word '*clusterfuck*'". TE explained '*that's not appropriate*' to which the claimant answered that "*it was from a personal phone, but yes, that was wrong language*".

Grievance investigation

172. TE interviewed CB, AA, JC, EC, CM and SN, all members of the Quality Team. JC was interviewed on 6 February 2020.

173. CB was asked about the claimant's claim that she had been '*potentially lined up*' for the PIM role. CB responded by saying that he thought a move would be a good opportunity, he was noted as saying '*don't think she managed CM*', and later, in the context of moving the claimant's role to the Engineering Department under RJ and '*the only thing I hadn't been clear on was Catherine reporting line*'. When CB's proposal to move the claimant's role to the Engineering Department was approved by the Executive in January 2021, it was approved on the basis that CM's role remain in the Quality Department.

174. During their interviews, four witnesses described the atmosphere in the presence of the claimant negatively, including '*toxic*' and two described the claimant herself as '*very Jekyll and Hyde. . .never know what you will get if you try to engage*' and '*very disruptive*'.

17 March 2020 – Grievance Outcome Discussion

175. On 17 March 2020, the claimant met with TE to explain the outcome of the claimant's grievance. It took place via Skype due to the escalating concerns about the covid pandemic. The claimant was asked three times about the level of interference on the call; the claimant suggested it was the noise of her 'scribbling', but she did not tell TE that she was covertly recording the meeting.

176. TE attempted to explain the rationale and outcome of her investigations; she was constantly interrupted by the claimant, who not only disagreed with TE's attempts to explain her rationale, she disagreed at length. In her own evidence the claimant said that she did not want to allow TE to '*continue with her horror*'.

177. TE explained why she did not uphold the claimant's grievance that the respondent had breached her contract of employment; she had found no evidence that CB had reallocated tasks from the claimant's job description so as to erode her role; it continued to exist in its entirety. TE began to explain why she had not upheld the second aspect of her grievance either, but resolved, with the claimant's agreement, to simply send the outcome letter to the claimant.

178. They discussed the Mothercare complaint. TE mentioned that a complaint had been made against the claimant about the email she sent to Mothercare. The claimant denied knowing of a complaint about her. TE replied "*then it might just have been dealt with internally but I think you and I followed up, we had a conversation in the diner and I think that was the first time you mentioned to me about having potentially autism or Asperger's*" and later, after some further comments from the claimant "*I'm only trying to go through the history, Deborah*".

179. TE was of the view that the employment relationship was "*pretty fractured*". Therefore, approximately forty minutes into the hour-long meeting, TE indicated that she wished to conclude the grievance part of the meeting before raising the possibility of having a protected conversation with the claimant. The claimant said that she did not know what that meant. TE

explained before asking again whether she would like to have that conversation; she added that she wanted to talk to the claimant about the text message she had said CB. The claimant accused TE of wanting the claimant to leave. TE said she wanted to have a protected conversation. The claimant began to explain why she sent the text message, before returning to the subject matter of the grievance, and accusing TE of washing the hands of a disabled employee. TE responded by denying that she had washed her hands of anything, reminded her that she had investigated and concluded the claimant's grievance and said that she wanted to try to have an open and transparent conversation with the claimant because there seemed to be a number of '*disputes and disconnects*'. The claimant continued to return to her grievance; she became argumentative. TE asked the claimant "*how do we move forward?*" There followed a difficult and unproductive exchange before the meeting ended. In evidence, the claimant maintained that she was '*completely unaware*' of any disputes that TE spoke of.

17 March 2020 – Grievance Outcome Letter

180. On 17 March 2020, TE also sent to the claimant her conclusions on the grievance. She addressed both strands of the grievance, explaining the claimant's issue with both matters before addressing the evidence relevant to each strand, and providing conclusions based on the evidence.

181. The second strand to the grievance was that the claimant had been subject to 'coordinated discrimination based on disability'. It was necessary, therefore for JC to address the question of knowledge of the disability. She stated that the claimant had 'alluded that you believed you are autistic as your mitigation to [JC's] grievance and that in October 2019, 'in connection with the Mothercare matter' the claimant had advised her., as mitigation to the issue, that it was likely you had Asperger's. She stated that whilst the Occupational Health physician noted that she preferred to work in a quiet space with headphones, and observed that the report suggested that the claimant may be mildly on the spectrum.

17 March 2020 – Letter regarding Settlement Discussions

182. Later, on 17 March 2020, TE emailed the claimant, attaching a letter. In the covering email, TE explained that her inability to have a protected conversation on a without prejudice basis during the meeting earlier that day had meant that she had been unable to outline the response proposal and she have therefore summarised the proposal in the attached letter. She added *“I do appreciate that this is a difficult time for you however I believe it would be beneficial to explore this route is it could be to the interest of both parties”*.

183. The attached letter set out proposal in which the respondent identified the text message to CB potentially amounted to gross misconduct, in respect of which the claimant would be invited to a disciplinary hearing. This the letter continued that *“it is clear that there are difficulties in the working relationships in addition to the potential discovery process”*.

184. It set out a settlement offer, which was not described as a final offer, stating that a settlement agreement would be provided thereafter upon which the claimant would need to seek legal advice, before continuing *“this offer is open to you to accept until close of business on Thursday, 19 March 2020. If I do not receive any communication from you, I will assume you are not minded to explore the settlement agreement the disciplinary process will go ahead as per your invitation letter. If you want to discuss any aspect of this letter, please let me know.”* (emphasis applied).

185. It continued by stating that the claimant would need to take legal advice on settlement terms that the respondent would send to her and in respect of which the respondent was prepared to make a financial contribution.

17 March 2020 – Letter, Invitation to a Disciplinary Hearing

186. Also on 17 March 2020, the claimant was invited to a disciplinary hearing on Monday, 23 March 2020. The meeting was said to take place by Skype, due to the coronavirus restrictions in place the time, but no time was stated in the letter. The three allegations the claimant faced were: *'leaving work without prior permission'*; *'stating that you will work from home without authorisation'*; *'sending a text message using inappropriate language to your senior leader'*.
187. The letter confirmed the respondent's understanding that the claimant was on sick leave and continued *'please note that, should you return to work prior to that date, you will be placed on suspension. . '*
188. The letter concluded by asking the claimant to confirm that she would *"attend the disciplinary hearing at the time stated above"*. The lack of reference to the start time of the hearing was plainly an oversight.
189. The respondent has a disciplinary policy which provides that evidence will be sent in advance of the disciplinary hearing. It states that a written warning may be imposed where misconduct is found. It provides for an appeal stage.

23 March 2020 - Disciplinary Hearing

190. The claimant attended the disciplinary hearing at 4pm on 23 March 2020; it was conducted via Skype. It was chaired by Michael Hodgson ('MH'). The claimant, despite having what she described as a *'good relationship'* with MH, also covertly recorded this hearing. The claimant confirmed that she was content to proceed without a companion. The claimant confirmed that she understood the policy and procedure. She read out a section of the respondent's own disciplinary procedure, relating to how meetings are to be held and conducted, before asking about a prior issue, namely why there was no investigation stage. She did not deny sending the text. She was told that a level of investigation had taken place and she had been provided with the only evidence, in the form of the text message, that the respondent possessed.

191. Questions were put to the claimant; they were relevant and appropriate. To almost every question put to her, the claimant simply answered: “*covered in my statement*”. At the end of the hearing, she read from her statement.

Grievance appeal 23 March – and second grievance

192. The claimant had submitted an appeal against the outcome of her grievance, as decided by TE. She submitted it on 23 March 2020. She addressed it to the CEO, SP the Global director of HR, LR.

193. NA dealt with the grievance appeal. He is one of four on the board of directors; SE, who dealt with the grievance at first instance, is not. NA is a legal director, registered with Companies House; SE is not.

194. It was 6 pages long and it raised new allegations in which some acts were described as ‘victimisation’, only some of which specifically alleged to be a statutory contravention. It included 16 appendices. The claimant said that TE had victimised her by ‘reframing her grievance’ following the meeting on 17 February 2020 and by ‘fabricating a grievance’ about her in relation to the Mothercare matter and that this had come to light on 17 March 2020. Appendix 14 bore the title ‘Victimisation – Fabricated Complaint re Mothercare issue’.

195. On 9 April 2020 the claimant was invited to a grievance appeal meeting on 15 April 2020. At 7:52am on 15 April 2020, the claimant emailed the respondent with a list of demands that she required to be matched before she could attend the appeal hearing. On 17 April 2020, the claimant indicated that she wished the grievance appeal hearing to be conducted as a paper exercise the respondent agreed.

196. On 30 April 2020, Neal Austen, Global Operations Director, dealt with claimants’ appeal as well as the new matters she raised her appeal letter. NA

is senior to SE, who dealt with the grievance at first instance; NE is a statutory director, registered at Companies House, whereas SE was not.

197. NA's response was detailed, attempted to apply structure to the claimant's complaints, and lengthy, comprising as it did of 12 pages and 4 appendices. The claimant accepted in cross examination that she had '*no doubt they carefully considered the issues*'.

198. NA stated that TE met with the claimant to discuss the points raised in her grievance and that they were summarised as 'clarification of your current role whether there had been any discrimination based on people's knowledge of your perceived disability, you were sent a copy of these minutes'. The letter proceeded on the basis that the summary of the claimant's allegations was correct.

199. NA dealt with the proposal with the claimant's role of Product Improvement Manager to the Engineering Team. He stated that the proposal was part of an overall business review, and that a move to the Engineering Department would expedite product improvement. NA went on to say that there could be some additional engineering responsibilities as part of the role, which were yet to be defined, but that the change did not constitute a promotion or demotion, but, he observed, was in line with her own development goals.

200. NS also responded to the allegation that TE had victimised the claimant on 17 February 2020, by 'fabricating a complaint' about the Mothercare matter; when he did so, he was unaware that the claimant had a covert recording of the meeting on 17 February. He explained that the claimant's version of events differed from TE's recollection of the discussion and that NA was unable to determine the exact version of events, although he stated that he was satisfied that the difference had no significant impact on the outcome of the grievance. He found that TE had been made aware of an internal complaint about the tone and content of the claimant's email to Mothercare, albeit the complaint was not a formal, written complaint, by someone else in the organisation and that she

was aware of that before she spoke to the claimant on 22 October 2022. That was the reference to the internal complaint about the claimant.

201. NA stated that he was unable to comment on the allegation of a protected conversation.

202. Having addressed the claimant's grounds of appeal in a detailed letter comprising of 12 pages and 4 appendices, he dismissed it, but made 4 recommendations. One of those recommendations was for the claimant to meet with CB and HR to conclude discussions about the change of reporting line from CB to JR in the Engineering Department.

1 May 2020 – Disciplinary Outcome

203. In a disciplinary outcome letter dated 1 May 2020, MH concluded that, in relation to the first two allegations, although the claimant's conduct was not in line with the respondent's attendance policy, he accepted the claimant's explanation.

204. Of the last allegation, i.e. of the text that the claimant sent to CB, he considered that the *“language/tone could be seen as an ultimatum/threat and these behaviours are not in line with our Company values and I do not find it acceptable behaviour of someone in your position”*; he concluded that the giving of her line manager an ultimatum was improper conduct, rather than the fact of the swearing itself. MH concluded that the claimant had given CB only an hour to respond to her prior email and that whilst her action may have been born out of frustration, it remained unacceptable.

205. MH gave the claimant a first written warning, to remain live for 12 months.

10 May 2020 - Disciplinary Appeal

206. On 10 May 2020, the claimant submitted an appeal against the disciplinary outcome. The claimant wished for the appeal to be conducted in writing. She did not complain that the lack of reference to a start time in the invitation letter. The claimant alleged that there was no evidence of harm done by the sending of the text, that TE had made a professional assessment at the meeting on 17 February 2020 to deal with the matter informally that TE had accepted her apology, that there was context and provocation in the sending of the text, that there was no investigation, that the decision was based on opinion, that she is aware of the code of behaviour applicable to her, but the sanction was disproportionate when compared to what other people do.

207. The respondent identified and agreed with the claimant that she had sought to raise grievances in her appeal letter that were unrelated to the disciplinary appeal and would be dealt with separately. They were different grievances to those raised earlier and were 5 in number.

208. The disciplinary appeal was determined by Matt Maplesden (MM), Financial Controller and Steph Carter (SC), HR Business Partner, without a hearing. In an outcome dated 26 May 2020, SC stated:

- a. The hour between the claimant's escalation of the email to the text was '*disproportionate*';
- b. The text was inappropriate in tone, language, it was of a threatening nature and the claimant did not attempt to seek permission to leave work or not return;
- c. There was no evidence to suggest that TE had resolved the matter on 17 February 2020;
- d. The claimant had confirmed she was ready to proceed at the outset of the disciplinary hearing and what investigation was required had been done before the imposition of the sanction;
- e. There was no direct comparison between the examples of behaviour the claimant had provided and her own behaviour.

209. The appeal panel upheld the original sanction dismissed the appeal.

210. On the same day as the claimant received the outcome to her appeal against disciplinary sanction, she was asked to clarify her new grievances; she did. She accused TE of victimisation by alleging that TE had accused her of gross misconduct in the sending of the text to C, that she was made to attend a disciplinary hearing, that she was subject to an unnecessarily long suspension and delay in completing the hearing; that the sanction was unjust and disproportionate.

211. On 8 June 2020, nine strands identified as new grievances were considered and dismissed by MM and SC.

14 May 2020 – Second Occupational Health Report

212. TE had maintained contact with the claimant by telephone and email notwithstanding the country went into lockdown in March 2020.

213. The claimant, who had hitherto declined invitations to meet, remotely or otherwise, to discuss her health and absence, had asked on 12 February 2020 to defer a referral to Occupational Health until the completion of the grievance process. When the claimant's grievances were concluded on 30 April 2020, she was re-referred to Occupational Health.

214. On 14 May 2020, Dr O'Reilly the OH physician reported on the claimant.

215. We have set out the extracts of the letter relevant to the issue of autism above.

216. The report stated that the underlying medical condition affecting the claimant's attendance at work was "*currently, some stress symptoms of anxiety, low mood and tearfulness*". Dr O'Reilly opined that the claimant would be in a position to return to work "*as early as two or three weeks, or might be two or three weeks after that*".

May and June 2020 – Discussions about a Return to Work

217. In an email dated 28 May 2020, TE having regard to the report of Dr O'Reilly, suggested that the claimant and the respondent '*aim for 15 June 2020*' as a possible return to work date. The claimant agreed to a tentative return date of 15 June in her reply on 1 June. The claimant accepted in evidence that at no stage did they agree, or confirm, a return date of 15 June 2020.
218. In the same reply, the claimant raised '*as a necessary step to facilitate my return to work*' the recommendation in the grievance appeal outcome letter from NA that she meet with CB and HR to conclude discussions about the change in reporting line from CB to JR in the Engineering Department. She said she '*need[ed] to have the proposed job changes. . detailed in the same fashion (duties, responsibilities, team structure etc)*' as her current job description. She continued that '*in line with current practice I would prefer such 'discussions' could be conducted via email*'.
219. TE sought to clarify her understanding of exactly what the claimant meant. In two, short, numbered paragraphs, she conveyed her understanding of what the claimant's requirements i.e. that she '*would like to begin discussions on a return to work, but these should be via email exchanges*' and '*before entering an email exchange on a return to work, you feel there are areas of your responsibility which are extremely unclear*' before asking the claimant to share the areas which were unclear to her, so she could respond.
220. TE's interpretation of the claimant's email of 1 June was not only reasonable, it left no room for doubt as to what she understood of the claimant's requirements. In her reply of 5 June, the claimant did not confirm or, for that matter, reject TE's understanding but instead compounded TE's impression, by asking TE to send her a new job description '*as soon as possible so we can commence fair discussions*'.

221. TE commenced work on a new job description.

15 June 2020 – Return to Work

222.

223. On 15 June 2020, without notification to anyone, the claimant returned to work. CB was on annual leave that day.

224. At 10:50am the claimant emailed CB and LR. She did not copy her email to TE. She stated *“I just want to remind you I have returned to work today”*. In fact, the claimant had not discussed a return to work at all with either CB or LR; she was not ‘reminding’ them of anything.

225.

226. She said she did not know what the return to work process should be, that the respondent had failed to comply with the recommendations of the Occupational Health physician *“so my anxiety and distress levels are currently very high and rising as a consequence”*.

227. Aside from the somewhat surprising claim that, as a line manager, she was unaware of the ‘return to work process’, Dr O’Reilly had concluded that no adjustments were necessary; he had not made any recommendations for a return to work, for example, on a phased return basis. We have been taken to no evidence to suggest why CB or LR would know that.

228. She continued *“I had expected a business and work update, return to work interview to be diarised for today; and a phased return based on the occupational health doctors recommendations. Just so we are on the same page, I have not been provided with anything facilitate or support my return”*.

229. TE emailed the claimant, expressing surprise about the claimant’s return to work; it was the claimant who said she wanted a job description in order to progress discussions. In relation to the suggestion that absence management procedures had not been followed; she reminded the claimant that she had

raised the matter in her email to the claimant in May, but that it was the claimant had sought to prioritise discussions about the job description first.

230. TE said she noted that the claimant had, now on more than one occasion, stated that her anxiety and stress levels were currently “*very high and rising*”; she recommended the claimant remain absent until such time as they were able to discuss it and the return to work process; TE added that she expected to finalise the job description by the next day. TE asked for a fit note to cover the period until 12 June, and ‘*recommended*’ that the claimant speak to her GP ‘*and possibly ask*’ for another 7-day fit note. That, she said, would provide ample opportunity to undertake relevant discussions. The following day, TE repeated that she made a ‘*suggestion*’ as a direct result of the claimant describing a deterioration in her health. Her suggestion that they speak to avoid future misunderstandings was ignored by the claimant.

231. The claimant replied, stating “*this is not how I have interpreted the situation at all*” and later that same day, stated “*sorry, I don’t think Tracey did clarify the situation at all*”. The claimant insisted that discussions about the job description were “*in no way connected*” to her return to her current job.

15 June 2020 – CM’s access to files

232. In the meantime, JC was also unaware of the claimant’s return to work on 15 June 2020. CM contacted JC; she was upset. The claimant had logged onto the system, and certain files had become ‘locked’ i.e. set to ‘read only’ as a result of which CM was unable to save information about tests that she had conducted. JC knew that CM was scared of the claimant; she herself was worried that the claimant would look at her work and find fault with it.

233. JC contacted TE; TE said she would investigate but suggested that in the meantime JC was to create a duplicate file that only she and CM could access, until TE had resolved the situation. In the late afternoon, JC emailed TE to say that, with the assistance of someone in the IT department, the files

had been temporarily unlocked, thereby enabling JC to 'move' certain folders into the 'OneDrive'. She attached a screenshot to her email of the file manager programme. In her email JC states nothing explicitly to TE about whether the files being 'moved' were all Parenthub audits, or not.

234. Although in her email, JC used the word 'move', she had, in fact, duplicated the file into the OneDrive; the file/s that was present on the 'Quality folder' at the beginning of the day remained there, in its/their untouched state.

235. The next day, at 12:24 TE, in an email to the claimant, informed the claimant that *"I also wanted to share with you, that I have today spoken to [JC], she has told me that [CM] was very distressed yesterday she was unable to access some of the files within the Quality folder for 2-3 hours. This has meant she has a little behind in terms of her work. The file holds all information in relation to Parenthub audits and is named Porcupine, this folder was set up due to the loss of some data earlier in the year which we are still investigating. As the information is solely related to Parenthub audits and only relates to Catherine and Justine, for GDPR reasons, I advised Justine to move the file to a OneDrive account. I just wanted to ensure I was transparent to avoid any unnecessary conflict"*.

236. At 13:56 the claimant responded with a long list of points she wished to make about TE's email. One of her points was that TE was wrong to state that the Porcupine file 'holds all information in relation to Parenthub audits'. She stated that the naming of the file Porcupine, was a 'misogynist, obscene slur' directed at the claimant. She said she was upset that *"rather than investigating the bullying I have described, you have accepted lies about the contents of the folder named Porcupine."*

237. For the avoidance of doubt, we are amply satisfied that the naming of the file 'Porcupine' was because of a naming convention adopted by the respondent to name folders or projects after animals; we were taken to numerous other examples of the convention being applied. On the claimant's own evidence, she had not witnessed the use of the word 'porcupine' before or

since, as she suggests, an urban slang reference to a sexually promiscuous woman, and nor did she adduce any evidence that it was a slur that was directed at her, other than the assertion that *'it is my belief'*.

238. The claimant said she no longer had a fit note, that there was no obligation for her to under a further medical examination before returning to work and that she considered that the only way the respondent could prevent her returning to work was if she were suspended or on garden leave. She directed TE to respond to her work email address.

239. In her response, TE proposed that the claimant take 7 days sanctioned paid leave commencing 17 June, to allow her to work on the return to work plan on terms that were acceptable to both parties. She stated she would not respond to the claimant's comments about the files, as it required further investigation.

240. The claimant agreed, albeit reluctantly. TE told the claimant that she intended to temporarily suspend access to the claimant's work account so that she could conduct an investigation into the files and the naming of the file. We see no basis for the claimant's evidence that this was a *'lie'*. TE reassured the claimant it was not a reflection on her, but it enabled her to carry out a thorough investigation.

Proposed Revision to Job Description

241. On 17 June 2020, TE emailed the claimant with a copy of the job description she had sought. CB had written it. It differed in two material ways to the earlier job description; her role now reported to RJ in the Engineering Department and line management responsibilities for the role that CM held had been removed. She knew it was a proposal only; she described it as such in a letter she later wrote to Stuart White.

242. The next day, the claimant replied to TE, saying she had reviewed the job description. She did not criticise its contents.

243. In evidence, the claimant contended that the job description was an *'unambiguous demotion'* on the sole basis that line management responsibility for CM's role had been removed. She accepted, however, that at all times, RJ's role was senior to her. She later suggested that *'80%'* of her role had been removed, but could not explain why the respondent would do that, only to continue to pay her 100% of her salary; she also said that she was effectively left her doing CM's job.

June 2020 - Investigation into Breakdown in Working Relationships

244. On 19 June 2020, TE wrote to the claimant to inform her that the respondent had decided to conduct an investigation *'to try to ascertain whether [the claimant's] working relationships with colleagues have now fundamentally and irretrievably broken down'*. She said that numerous matters had come to light during the various disciplinary and grievance proceedings. The claimant was to be suspended on full pay, to allow an investigation to be conducted impartially and fairly and she was told that the measure was *'in no way a form of disciplinary sanction against [her]'*. The investigation was to be led by Stuart White ('SW'), Head of Global Category. The claimant was told that the respondent anticipated that the investigation would be concluded by 30 June 2020.

245. Between 24 and 26 June 2020, SW interviewed via Skype CB, SN, KC, JC, CM, TE, AA and Lynne Armstrong. None of the interviewees were complementary. They said that a return to work to the Quality Department was likely to be problematic, several described the environment when the claimant was present as *'walking on eggshells'*, others called it *'strained'* and *'tiring'*, AA described it as *'very intimidating'* such that she would consider retirement if the claimant were to return to the Quality department; JC said she did not want to work with the claimant, and that people were *'wary'* about what they said in her

presence; Lynne Armstrong stated that she was aware that the claimant belittled and shouted at CM and witnessed her crying and upset, but who in the claimant's absence was 'lovely', SN stated that the claimant was '*had a dry sense of humour, then she can flip into another person, got to point never knew what she'd be like*', '*objectively . difficult to work with. Don't see bridges being repaired, couldn't see how a sense of normality could be resumed*', CB described the claimant as causing conflict only when he was away, TE could not conceive of any recommendations to manage the situation, and KC described the dynamics in the Quality Team as having '*changed completely*' for the better in the claimant's absence.

246. SW entered into email correspondence with the claimant with a view to arranging a meeting. During their exchanges, the claimant decided to copy in LR (Global Head of HR). Her partner asked SW to send written questions. SW agreed and sent them to her the same day. The document asked questions about a number of matters, including the circumstances in which the claimant had come to return to work on 15 June without indication to the respondent, and why she had decided to email CB and LR mid-morning rather than TE.

247. A few days later, on 4 July 2020, the claimant sent her written responses. It was peppered with criticism of TE, she '*failed to see what is confusing*' about her return to work on 15 June 2020, she said that she had a good relationship with her colleagues until Autumn 2019/November 2019 (albeit her case before us is that the deterioration occurred a year earlier) and attributed that to CB's plan to '*remove [her] from the department and [her] managerial responsibilities*'. She said that, with the exception of CB, she had the most experience in the Quality Team, and that she missed her work and was looking to return to work with a positive mental attitude.

248. On 6 July 2020, SW produced his investigation report. He concluded that the claimant's behaviours had consistently been drawn into question by her team and that a number of working relationships appear to be now beyond repair. He noted that the claimant had undergone an initial assessment in March 2020 which suggested that she may have autism but that she was

awaiting a second, confirmatory, assessment. He observed that the respondent had a duty of care towards the team generally. He recommended that the matter proceed to a disciplinary hearing.

249. On 7 July 2020, the claimant had an assessment for autism with Dr Javier Ferreiro-Pisos, Consultant Psychiatrist.

250. On 9 July 2020, TE wrote to the claimant inviting her to a disciplinary meeting on 15 July 2020 to discuss whether there was a breakdown in the working relationships between herself and the other members of the Quality Team. The letter stated that the hearing would be conducted by Scott Rontree ('SR'), Global Head of Manufacturing. She was informed that the matter was serious and could lead to the termination of her employment, if upheld. The claimant was told she could be accompanied, by her partner she wished, and that the claimant should let TE know of her preference. The letter did not include any supporting evidence, and nor did it include any reference to when the claimant could expect to receive it. The claimant does not challenge that the evidence was to arrive the following day. Before it was sent to the claimant, however, she sent a letter of resignation.

10 July 2020 - Resignation

251. In her letter of resignation, sent on 10 July 2020, the claimant stated that the letter inviting her to the disciplinary hearing contained '*no evidence nor allegations of misconduct whatsoever*'; the claimant had not raised these matters with the respondent before resigning. She described this as '*the final straw*'. She added that she had lifelong autism when she commenced employment in 2015 and that she did not consider the respondent provided a safe place to work for autistic women.

252. The claimant accepts that the respondent's intention was to send her the supporting evidence. She knew she was entitled to it, because she confirmed that she understood the disciplinary policy at her hearing in March 2020, she quoted passages from it and they discussed the amount of evidence the

respondent had given her. On her own evidence, she believed she was entitled to time to consider the evidence. The reference in her letter of resignation to there being 'no evidence . . . whatsoever' was therefore opportunistic. The claimant understood the allegation; she had answered written questions about the areas of concern, and in her reply to SW accepted that her relationship with her colleagues had deteriorated and furthermore, that she was attributing the reason for that to CB. She recognised that there was a significant chance that she would be dismissed in circumstances where she had only recently received a 12-month warning. The reason she resigned was to avoid being dismissed by the respondent.

253. The claimant adduced no evidence, other than an expression of her conviction, that the disciplinary hearing was to be a '*show trial*' or that TE selected SR because she '*knew that he would sack [her]*'. SR knew of some of the employees, but his contact with them was limited since he was based at the Mansfield office and he was unaware of the background to the claimant's employment relationships. Furthermore, the claimant does not suggest he had any bias against her personally; we are satisfied that he was an appropriate to chair the hearing.

Discussions and Conclusions

254. Allegation 1 - **CB frequently referred to women in derogatory terms including as "birds". He kept a bowl of sweets at his desk, described him as "bird seed" in order to, in his own words "attract the birds, because birds love sweets".**

255. Contrary to the claimant's evidence, this was a joke was initiated by her; she found it funny and she encouraged others to join in. They did join in, at her instigation and it was adopted as a team joke. In cross examination, the claimant accepted that she only raised the matter for the first time in February 2020 because she considered it a minor issue.

256. The claim for harassment related to sex fails; it was on her own case a trivial act causing minor upset.
257. Further and in any event, the comments were not unwanted; the claimant initiated and encouraged the joke; she thought it was hilarious and she found the joke highly amusing and she participated in the joke; it a team joke, and like others, she replenished the sweets. The comments were not made for the purpose of creating the proscribed environment and they did not have the effect of doing so, either for the same or similar reasons as above i.e. she initiated and encouraged the joke, she continued it by replenishing the sweets, she delayed raising it on her own account because it was a 'minor issue'. In the circumstances, therefore, although the comments were related to sex, it was not reasonable for the conduct complained of to have the proscribed effect.
258. The claim of direct sex discrimination fails. The reason why CB made jokes about sweets being bird seed was because the claimant initiated and encouraged that joke.
259. Allegation 18 - **AA a subjecting the claimant to witnessing a surprise Christmas gift presentation “from the team” to CB of offensive “bird tray” for his “bird seed”. The claimant was unaware but the other guests had made been made aware I knew about the gift beforehand and appeared to find both appropriate unamusing.**
260. The gift that was given by AA to CB was a personal gift; it was not a 'team gift'. The giving of the gift did not require AA to have a discussion with the claimant first, much less, as she appeared to suggest in her oral evidence, obtain her consent to give it.
261. The allegations of direct sex discrimination and harassment related to sex are not well founded.

262. Allegation 2 - **When the respondent changed the claimant's job title on 6 March 2019, she was given a title with less status than that of her named comparator (or constructed non-disabled comparator) where both have previously had the same job title and the respondent failed to issue the promised business communication to explain the new job titles.**

263. The re-structure of the roles that she and JC held was something that the claimant sought. She complains not about her own role, which she was very satisfied with, but the conferring of the job title '*Global Product Support Manager*' on JC; to put it bluntly, the claimant was very happy with that she got what she wanted, but very unhappy with what JC got. She took umbrage at what she perceived as an increase in status for JC. The title of JC's role was not only a necessary descriptor of JC's new role, but there is no evidence before us to suggest that it was conferred upon her for any other reason, including, as the claimant sought to argue, '*favouritism*'. The claimant adduced no evidence of the impact of the failure to issue an internal communication about the new roles.

264. Allegation 12 - **TE failed to investigate the claimant's complaint regarding the removal of the claimant's Oracle access in November 2019 despite promising the claimant that she would.**

265.

266. TE did ask KC about the claimant's access to Oracle and she was told it had been resolved; she failed to feed back to the claimant the results of that conversation. The claimant did not chase TE for a response and there is nothing else before us to suggest that her failure to feedback to the claimant was anything other than an oversight.

267. Allegation 13 – **TE singled out the claimant for a 'Stakeholder catch-up meeting' and misrepresented the purpose of that meeting first proposed by TE on 25 September 2019.**

268. **Allegation 28 (in part)** – The respondent also falsely accused the claimant of using Asperger's as an excuse in mitigation in connection with the 'Mothercare Complaint'
269. Allegation 29 – The claimant was unaware of any such complaint against her until 17 March 2020 when during the Grievance Hearing TE referred to it as the reason for TE holding a 'Stakeholder Catchup' meeting with the claimant. The claimant immediately denied all knowledge of the complaint and challenged TE's recollection of events. TE then acknowledged the claimant had not in fact been informed of any complaints. TE agreed the claimant was unaware and the issue may have been 'resolved by management in the background'.
270. All these allegations relate to a complaint as to the purpose of the meeting, and the claimant's belief that TE suggested that she had raised the internal complaint to NA about the claimant's email to Mothercare. We can deal with it briefly.
271. The claimant was not 'singled out' to have a stakeholder meeting with TE; JC had a meeting with her the following day.
272. The claimant led the conversation; she voluntarily raised a matter about an email. TE asked, and the claimant confirmed that she was speaking about the Mothercare matter; it does not follow, that a discussion about the Mothercare email was the purpose of the meeting.
273. When asked whether she thought the email was appropriate, the claimant became tearful and volunteered that she had autism. We do not consider it an unreasonable description of that exchange (as per the grievance outcome letter of 17 March 2020) that the claimant referred to the impairment 'in mitigation'.
274. The respondent has never suggested that the claimant knew on 22 October 2019, or at any stage before 17 March 2019 that there had been an internal complaint made about the claimant's reply to Mothercare. That was

the reference that TE made in the meeting on 17 March 2020 to it having been resolved by management. Although these are our conclusions, we note that they are not novel; they were the same as the conclusions that NA drew in his reply to her grievance appeal.

275. The allegation of victimisation against TE is not well founded.

276. Allegation 17 - **CB and TE did not provide help and support requested by the claimant with line management of CM between November 2019 – January 2020. TE promised to but did not act, and CB repeatedly avoided the subject when it was raised by the claimant.**

277. This is but one example of what appears to be the claimant's expectation that she need only raise matters once with individuals, before alleging unlawful conduct on their part. The claimant did not return to CB for assistance after the two days he asked her to wait.

278. The claimant criticises TE failing to have responded to her between 5 to 12 December 2019 and 15 to 22 January 2020. The 'delay' of a week in December, was for reasons that were provided to, and not challenged by, the claimant. The claimant did not tell TE that the matter was urgent, and neither did she behave as if it was urgent; she took a further month to respond to TE. She did so by effectively leaving the responsibility for making the arrangements to meet in order that TE could assist the claimant, with TE. It was the claimant who wanted help; she was told she could book time out in their respective diaries for the meeting, but she did not herself take any further steps in the following two weeks. We fail to see what reasonable criticism could be levelled at TE.

279. The claimant did not present her grievance / do the protected act until 4 February; it cannot be the cause of the alleged inaction on the part of either CB or TE in the preceding months. The allegations of victimisation against both are not well founded.

280. Allegation 3 - **CB brought up the topic of the claimant's career progression and promised to assist the claimant using his promotion and development of SN as a comparison. This was to mislead the claimant because CB did the opposite.**

281. Inherent in a mentoring relationship is a promise to assist, but that is a far cry from promising or assuring career progression. CB mentored the claimant, as he did JC and SN. Insofar as this allegation is intended to suggest that CB raised the possibility of the claimant taking up the PIM role, we have found that that was the solely the claimant's ambition. CB did not mislead the claimant about his abilities to assist her. He did not *'do the opposite'*.

282. The allegations of direct sex discrimination and harassment related to sex are not well founded.

283. Allegation 4 – **CB informed the claimant that he had had discussions in the background and if the claimant was interested, she would be lined up for succession planning within the Directorate for Tony Hindmarch's role (Product Integrity Manager) when he left the business, which he expected would happen within the next 'year or two'. The claimant indicated that she was interested.**

284. The ambition to occupy the PIM role was a flight of fancy on the claimant's part, as she herself recognised in her discussion with TE on 17 February 2020. We have roundly rejected any suggestion that CB encouraged that ambition.

285. The allegations of direct sex discrimination and harassment related to sex are not well founded.

286. Allegation 5 – **Upon learning that the Product Integrity Manager had abruptly left the business (without notice), the claimant followed up the July conversation with CB to formally express her interest in the role. CB then would provide multiple confirmations in both text message and in person that led the claimant to reasonably believe he had successfully advocated for her and she was either being appointed into the Product Integrity Manager role or would line manager role as the head of a new department. Between November 2019-January 2020 the claimant was misled by CB that SP, SE, MH and had all agreed to place the claimant at the head of “Aftermarket Department”, built around her, and she was being developed and promoted. CB and the claimant never discussed a simple transfer to the Engineering Department, any reduction in her managerial responsibility, or leaving the Quality Department for any reason other than promotion.**

287. The allegation is framed to state that the claimant was led to believe she was either to be appointed to the PIM role, or heading up a new department and yet the claimant’s own witness statement states that one was to be ‘in conjunction’ with the other. This significant change in the claimant’s case is illustrative of the evolving nature of the claimant’s assertions. We deal with both contentions.

288. There was a meeting on 25 November 2019 in which CB mentioned his plan to create a new aftermarket department. It was not, even on the claimant’s own notes, a detailed plan. She knew it required approval and that CB had not yet secured, even on the claimant’s own account, final approval; the lack of objection does not amount to formal approval.

289. There was no discussion at this meeting, or at any other time that the claimant could occupy the role of PIM; she was wholly unqualified to carry it out. There is nothing to support the alleged link between the proposal to create a new department and the claimant’s occupation of the PIM role, other than the claimant’s unevicenced attempt to create a link.

290. The claimant's claim that CB sent to her '*multiple confirmations*' by text is entirely unsupported by evidence, as the claimant herself accepted in cross examination and she was unable to adduce any rational basis to support her claim that he provided '*multiple confirmations*' verbally, either.
291. There was, in reality, no discussion that came close to amounting to '*an offer*' of a new role; what she had been told, in a conversation that we might have, in other circumstances considered to be quite ordinary, was CB sharing with the claimant, his view that a new department could be created, which, if green lit by the executive, would be directly relevant to her role.
292. The claims of direct discrimination and harassment related to sex are not well founded.
293. **Allegation 20 – In a meeting arranged by the claimant with JC on 20 January 2020, AA revealed that she had excluded the claimant and her subordinate from a recent audit that related to their work. AA then requested the claimant remove her work processes from the new procedure as the claimant would not be part of the Quality Department going forward. This alarmed the claimant as she had not been offered a new job yet, nor agreed to any move out of the Quality Department and had been told the proposed Aftermarket Department was highly confidential. The claimant having been explicitly requested by both CB and RJ not to mention or discuss it with anyone else in the business.**
294. Whether or JC or the claimant should be contributing the necessary revision of the feedback procedure is secondary to the point that AA was responsible for it. She took the view that JC was the appropriate person to contribute to a rewriting of the procedure; we were given no evidential basis to suggest that she was wrong or even unreasonable in her view, other than the claimant's belief that she was. The claimant was not told to keep the proposal of a new department confidential by CB or by RJ and her email of 23 January is consistent with that; it alleges that AA's knowledge of the new department

was *'a breach of [her] right to confidentiality'*; nowhere does she assert that CB or RJ told her to keep it a secret.

295. Allegation 21 – **the humiliating events of 23 January 2020, when in response to being asked why AA kept excluding the claimant from internal and external audits, meetings and consultations over procedural changes that directly affected the claimant which due was making work difficult and stressful for the claimant; AA slammed her hands on the desk, stated, “I’m not doing this”, got up, walked approximately 3m towards the office door, then, still within the open office they shouted at the claimant that if she “had a problem”, the claimant should “talk to [CB]”. JC, who sat next to the claimant laughed AA’s outburst. The claimant was alarmed and confused by both women’s reactions.**

296. The altercation occurred because of the claimant’s belief that she had been excluded from the January audit. The claimant was not excluded from the January audit; she was invited but declined the invitation because, as she stated in her own witness statement, she was on annual leave.

297. The exchange did not occur as the claimant describes; it was the claimant who aggravated the situation by being aggressive and raising her voice at AA; AA responded by informing the claimant that if she had a problem with anything she, AA, was doing, the claimant should speak to their line manager, before removing herself from the situation. That was a sensible and appropriate response to a situation that the claimant was escalating.

298. Allegation 22 – **CB and TE ignored the informal grievance email received by the claimant on 23 January 2020, and instead contrived a meeting with the claimant about 14 November 2019 Occupational Health report.**

299. This is the email that the claimant sent one hour before sending the text to CB for which she was disciplined. CB was in working in the Mansfield office and in meetings; TE was on leave.

300. The claimant did not send a grievance to CB; she asked him to give her a call and if she had intended it to amount to a grievance, there was nothing preventing her from describing it as so. TE was not the primary recipient of the email – she was simply copied in - and its contents called for contact from CB, not TE.

301. TE's invitation, sent on 29 January 2020 to discuss the Occupational Health report dated 14 November 2019 was delayed, but for genuine reasons and during a time when the claimant was emailing TE to say that she, too, was very busy.

302. There was no evidential basis, so for the claimant's repeated contention this meeting was a ruse, a *"lies, completely untrue, a concoction that defies belief"* *"to discuss things related to [the claimant's autism]"* that TE *"dare not put in writing"*.

303. TE had emailed the claimant on 19 November 2019 to suggest a meeting to discuss the report. The Occupational Health report did not suggest any adjustments for the claimant. There were pressing matters occupying TE's time in December and January and the claimant was aware of this. The invitation for a meeting to discuss the Occupational Health report was delayed for genuine reasons. Indeed, the claimant's response to TE suggests that the claimant did not at the time believe it to be anything other than that, either.

304. Allegation 27 – On 17 March 2020, the respondent dismissed the claimant's grievance without a proper investigation. They failed to consider all aspects of the grievance, and did not consider evidence provided by the claimant, nor did they weigh evidence on balance of probabilities.

305. In evidence, the claimant contended that the fault with the investigation was that it was *'bad, wrong and horrible'*; in cross examination of TE, she maintained that TE had *'not investigated at all'*. She had. As the claimant accepted, TE had correctly identified the two strands to her grievance, she carried out a reasonable investigation of them by interviewing the relevant members of the Quality Team. The claimant does not suggest what other steps ought to have been done.

306. Allegation 28 (part) – **The 17 March 2020 grievance outcome letter includes statements the respondent should have known were untrue, including creating depictions of the claimant that are defaming and stereotyping. This includes the attempt to explain and justify ostracising the claimant by making the false assertion that the claimant herself had required a *'quiet silent environment'* and wore headphones in order not to engage with the Quality Team due to her perceived disability. The respondent falsely accused the claimant of using autism as an excuse to mitigate allegations made by JC in December 2018.**

307. TE correctly to asserted in her letter that the claimant her first mentioned her belief that she was autistic in connection with the grievance made about her by JC in her discussion with AV on 11 December 2018. At the mediation on 17 December 2018, when setting ground rules, the claimant had stated she had difficulties reading people before stating her preference to use headphones. On 14 November 2019, Dr O'Reilly reported that the claimant may be mildly on the spectrum and that since noise tolerance was an issue for some people with autism, he asked her about it; the claimant indicated to him that her preference was to use headphones. The claimant had not, by the date of the grievance outcome letter, yet discussed the Occupational Health report with TE as yet, so as to disabuse her of any connection between the two. We are confused as to whether she would have disabused her of a connection between the use of headphones and autism, since she told the Tribunal that there was a connection between the two.

308. It was reasonable for the respondent to connect the use of headphones to the claimant's autism in circumstances where the claimant had not told the Occupational Health physician, or her employer that there was no connection.
309. The allegations of victimisation against TE and SE are not well founded.
310. Allegation 23 – **Email communications from JC to the claimant indicating the processes implemented that day. The effect was to demote the claimant that day with the claimant's managerial responsibilities by JC. These processes were devised and written by JC. The new process involved JC and RJ intercepting and directing the work of the claimant. This was work the claimant had previously had long-standing individual responsibility and autonomy over. These emails also informed the claimant that her product investigation work now sat outside the Quality department in Engineering under RJ. This was done without the claimant's involvement, knowledge or consent. The claimant found this to be both devastating and humiliating.**
311. Allegation 24 – **The attempt to move the claimant out of the Quality Department without following a fair selection process. Including giving the claimant's duties and management responsibilities comparator JC rendering the move a demotion.**
312. The respondent describes these allegations as '*absurd*'; we find them unfathomable.
313. We set out the claimant's rationale, provided in oral evidence. She contends that the email of 5 February 2020 '*has the effect of demoting*' her because JC is demoting the claimant by instructing the claimant to report to RJ in the Engineering Department, and that is '*implied*' from '*all the words*' of the email. When pressed, the claimant relied on JC's use of the word '*asap*' to convey the implication of demotion; those are words written by JC and directed at RJ, not the claimant.

314. The claimant further contends that RJ acted in concert with JC, because his words *'completely implied'* that she was to report to the Engineering Department – and was therefore demoted.
315. Having originally contended that the use of the word *'upsetting'* amounted to an assertion that she had been demoted, she later added that *'it would be much later before I realised was a demotion'*.
316. We consider the claimant's heavy reliance in her oral evidence on an *'implication'* of demotion is indicative of her own recognition that the emails say nothing of the sort that she suggests. Similarly, the claimant's reliance on other documents did not add weight to her argument. The Induction Programme could not possibly shed light on the matter; it predated the emails in question and contains nothing to that could reasonably be construed as a change in status. The aftermarket flowchart does not shed any light on what the claimant seeks to argue, either; it is about processes, not people.
317. All that had happened was that others carried on with their tasks, as well as hers, in her absence, as it was necessary to do. There was no demotion, no change in the claimant's duties or responsibilities and her reporting line did not change; she remained accountable to CB, the Global Head of Quality.
318. The allegations of direct sex discrimination and harassment related to sex are not well founded. There is no detriment as alleged; the allegations of victimisation against CB, JC and RJ are not well founded. There is no breach of an express term that the claimant's reporting line was to be to the Global Head of Quality.
319. Allegation 47 – **JC gave TE a false account of the contents of the Porcupine Folder, TE instructed JC to delete the folder/files from the Quality drive and move them to her personal drive and then failed to**

investigate if that was bullying or discrimination by JC when given substantial prima facie evidence.

320. The claimant stated in cross examination that the *'false account'* given by JC was not contained in the email sent by JC to TE but evidenced by TE's email to the claimant. She stated that it was all false, save for the was underscored in our findings, and that JC was responsible because JC had provided that false account to TE. When pressed, she said it was false because the suggestion of data loss earlier in the year implicated her.

321. We do not understand, in truth, the claimant's criticism here. TE did not instruct JC to delete files in fact, but to duplicate them, which is what JC did, albeit we accept that JC erroneously in her email said described what she did as *'moving'* them. The consequence of that duplication was that the claimant still had access to all files in any event. There was no act of *'bullying or discrimination'* to investigate.

322. TE stated that she was investigating a loss of data earlier in the year in email exchange about access to data, and in circumstances where the claimant had herself pressed TE to investigate the contents of the Porcupine file. We do not agree that TE was implying that the claimant was responsible for any data loss, but even if she were we fail to see how that would be any basis to find that the email was *'false'*.

323. The allegations of victimisation against TE and JC are not well founded.

324. Allegation 26 – **the respondent delayed issuing the claimant's MAPs score and withheld the associated written feedback. The rest of the business got the scores and feedback by 1 March 2020. The claimant was informed of hers in late April 2020. The scores demonstrated acceptable to good performance by the claimant in every category through 2019 (averaging 3.49 out of 5). CB's evaluation comments were promised by TE, but these were never provided to the claimant. According to the**

documents provided on the Subject Access Request, CBs feedback comments have either been destroyed by the or never existed.

325. The claimant did not receive her scores at the same time as others, because she was on sick leave. CB was responsible for providing the scores and although he was agreeable to providing verbal feedback, he did not provide the written feedback that had been offered to the claimant.

326. Albeit we note that the parties have identified that this was an allegation of victimisation in their Scott schedule, the claimant's pleadings do not allege that this was an act of victimisation. We have no jurisdiction to consider the victimisation claims against TE and CB.

327. Allegation 30 - **During the grievance hearing on 17 March 2020, TE made 5 attempts to coerce the claimant into a protected conversation. The claimant was warned by TE to agree to leave the company or face disciplinary action for sending CB a text message. Even after the claimant had made it clear to TE she was refusing to engage, wanted only to return to her work job, and became distressed by TE's repeated attempts; TE made further repeated, unsolicited attempts to engage the claimant in a protected conversation.**

328. TE had concluded the discussion about the grievance before she attempted to raise the possibility of a protected conversation; the claimant accepted this in her evidence. TE was attempting separate the grievance from the protected conversation. TE did make a number of attempts to discuss the protected conversation, once to raise the subject matter, the second time to answer the claimant's query as to what it was, and three attempts to bring the conversation back the issue, when the claimant insisted on returning to the subject matter of the grievance. The conversation was, itself, fractured. The claimant deflected from the topic that TE sought to raise with her; at no stage did the claimant tell TE she was not prepared to engage with her or ask TE to refrain from raising the subject of a protected conversation. Read in its proper

context, we find that TE did no more than given the claimant a reasonable opportunity to engage with her about a protected conversation. There is nothing in the exchange that could be said to amount to a threat that if the claimant did not enter into a protected conversation, she would face disciplinary process.

329. The allegation of victimisation against TE is not well founded.

330. Allegation 31 - **on Tuesday, 17 March 2020 at 17:44 the claimant was sent an email and letter from TE a written settlement offer to terminate her employment, the offer expired on Friday, 20 March 2020 (three days later). Neither the claimant, nor her solicitor engaged with settlement negotiations which expired on Friday, 20 March 2020 as claimed by the respondent in the meeting. The claimant solicitor only contacted the respondent on one occasion several days after the respondent had carried out the threat associated with the claimant not accepting the settlement offer, namely the disciplinary hearing arranged by the respondent on the 23 March 2020.**

331. Allegation 32 - **Immediately after, on 17 March 2020, also at 17:44 another email from TE invited the claimant to a disciplinary hearing with Michael Hodgson (RJ's manager) on Monday, 23 March 2020. The letter accused the claimant of gross misconduct and warned of possible dismissal. The letter advised the claimant she would be suspended if not on sick leave, and the outcome could be having her employment terminated. The letter was a threat and coercion to attempt the settlement agreement.**

332. The 'settlement offer' was an offer to engage in settlement discussions; that is what it specifically stated it was. The time scale was one in which the claimant was to indicate her readiness to engage in a discussion. The monetary offer was not described as a final offer, and the other terms of settlement had not been disclosed to her at all. Furthermore, the claimant was told that she could not simply accept the offer but that she was required to

engage legal advice before she did so. Quite aside from the fact that the claimant says she was taking legal advice at the time, on no objective and reasonable reading could the letter be construed as, what the claimant described as a 'binary choice' to take the money or be subject to disciplinary proceedings.

333. The letter inviting the claimant to a disciplinary hearing was not surprising. Her text message to CB plainly a very serious matter; it used wholly inappropriate language, it was directed at her senior manager, it was gratuitous, and, as the claimant herself accepted in cross examination, it amounted to an ultimatum to him to '*sort out*' matters before she returned to work. It was comfortably a disciplinary matter. The respondent had reasonable and proper cause to invite the claimant to a disciplinary hearing.

334. The respondent was at liberty to commence disciplinary proceedings; that the claimant was made an offer to engage in settlement discussions does not convert that entitlement into a threat.

335. The allegations of victimisation against TE are not well founded. The allegation that item 32 amounted to a breach of the express term that her basic hours were 37.5 per week is not well founded.

336. **Allegation 33 -** The respondent not following their own disciplinary procedure. The confecting of disciplinary allegations against the claimant, amounting to gross misconduct, and summoning the claimant to a disciplinary hearing on 23 March 2020 without providing the time of the hearing, providing evidence from an investigation to enable her to prepare a defence. One of the charges had been resolved on 17 February 2020, the other two of the allegations made against the claimant were acceptable contractual custom and practice activities for many employees of Mayborn including, the claimant during the majority of her employment. One was also an express term of the claimant's contract.

337. We consider the claimant's contention that the respondent 'confected' i.e. invented an allegation against her as illustrative of her inability to take responsibility for her own actions. The text message was highly inappropriate. We consider fanciful the claimant's suggestion before us that by simply acknowledging to TE in the meeting with her on 17 February 2020 that the text was '*wrong language*' meant that it was somehow reasonable for her to '*infer*' that the matter was '*resolved*' or, as she described to NA, that TE had exercised her professional assessment to deal with the matter and accept her apology (none being evident in the minutes of the meeting). The other matters were open to her to argue at the disciplinary hearing itself and she did so, successfully at that; MH took on board her arguments and accepted them. She had a fair hearing. The claimant was given a copy of the text message; she accepted she sent it. It is plain from a reading of the letter that the lack of reference to the time of the hearing was an oversight; we cannot see the basis for any complaint now: the claimant did in fact attend the disciplinary hearing and did so without complaint. She did not raise this matter at the appeal stage.

338. The allegation of victimisation against TE is not well founded.

339. Allegation 34 - **Suspending the claimant from work on 17 March 2020 to 1 May 2020 was a knee-jerk reaction and without justification.**

340. At no stage was the claimant suspended between 17 March 2020 to 1 May 2020. She was informed in the letter inviting her to a disciplinary hearing that if she were to return to work from sick leave, she would be suspended; she did not at any stage return to work from sick leave in this period.

341. The allegation of victimisation against TE is not well founded.

342. Allegation 36 - **The purpose of the disciplinary allegations and process undertaken against the claimant was to intimidate, humiliate and harass the claimant into leaving her employment. The claimant had to**

request the time of the hearing as it had been omitted on the invitation. The claimant was only given notice of the time to attend the disciplinary hearing a few hours before the hearing. How the disciplinary hearing the respondent presented no case whatsoever. The chair and HR was asked by the claimant to follow the written procedure and ACAS guidelines by beginning the hearing with putting the case to the claimant. They declined to do so. The chair asked the claimant questions to fill in the gaps for him. These were preprepared questions that were very basic, establishing basic facts including asking the claimant to inform the chair the date (23 January 2020) the alleged misconduct have occurred. The chair did not appear to have any information outside that contained in the invitation letter sent the claimant. The chair of the hearing did not in the present or refer to any evidence during the hearing is adjourned the hearing of the claimant read and prepared statement.

343. The claimant attended the disciplinary hearing at 4pm, she raised no complaint during the preliminary exchange. She did not suggest that the lack of a reference to a specific time in the invitation letter had disadvantaged her in any way, much less did she seek an adjournment. She did not take the point on appeal. To suggest that the respondent had '*no evidence whatsoever*' is incorrect; she was presented with a copy of the text message that she knew was the subject matter of the disciplinary hearing. MH's questions were sensible and structured; we see nothing in the criticisms that the claimant seeks to make of his conduct of the hearing. We received no evidence to suggest that MH was aware of the protected act.

344. The allegations of victimisation against TE and MH are not well founded.

345. Allegation 39 - **The respondent failed to investigate or remedy TE's victimising acts that first claim to light on 17 March 2020, and were first complained of on 22 March 2020 to CEO Steve Parkin and director of HR Louise Rich as instructed. The claims of victimisation were made in subsequent grievance and disciplinary processes, including the**

grievance submitted by the claimant on 11 May 2020 but were ignored and only when the claimant insisted during the disciplinary appeal to the respondent agree to look at the victimisation claims if the claimant agreed to resubmit it separately; which the claimant did on 22 May 2020. That investigation failed to consider the evidence or weigh the balance of probabilities.

346. The claimant raised two allegations of ‘*victimisation*’ by TE in her letter of appeal against TE’s grievance outcome that was addressed to SP and LR and they were both dealt with by NA:

- a. The first, the allegation that TE had ‘*reframed*’ her grievance was dealt with by NA; he set out the purpose of the meeting on 17 February, the summary of the complaints identified at the meeting and the fact that the claimant had received a copy of the minutes of that meeting. It is plain from his letter that he did not believe that the claimant’s grievance had been recast by TE. We observe here that the claimant accepted to us that TE accurately encapsulated her grievance;
- b. The second allegation, which was specifically described as a contravention of the Equality Act, was that TE was said to have fabricated a complaint about her regarding the Mothercare complaint; it was accompanied by its own appendix. NA addressed the matter explicitly in his appeal outcome letter. He stated that there had been a complaint about the claimant and that is what TE had in mind when she referred to it on 17 February 2020. He said that that made no difference to the grievance outcome.

347. The claimant raised different allegations of ‘*victimisation*’ in her appeal against sanction on 11 May 2020. None of them suggested that TE had ‘*reframed*’ her grievance or ‘*fabricated a complaint*’. She agreed to have them dealt with separately to the disciplinary appeal. They were dealt with separately and dismissed.

348. We add that the number, length, and imprecise wording of the claimant’s complaints were such that we simply cannot reasonably attach any particular significance to any omission or partial response by any of the grievance officers

in dealing with the claimant's complaints, to anything other than simple oversight or misunderstanding. NA's grievance outcome letter was impressively thorough and well structured.

349. The allegations of victimisation are, we note, against MH and SC; in any event, they are not well founded.

350. Allegation 42 - **1 May 2020, claimant given 12 month first written warning for sending text to line manager, and described the claimant as being threatening. The victimisation claims by the claimant had been ignored.**

351. As the claimant herself accepted in cross examination, her text could reasonably be seen as an ultimatum; that until her line manager sorted out this '*clusterfuck*', she would work from home. The respondent had reasonable and proper cause to give the claimant a first written warning.

352. Even assuming that MH knew of the claimant's protected act, and we are unable to identify any evidence to suggest he was, there is no other evidence before us that is sufficient to transfer the burden of proving that the detriment was because of the protected act; if anything, the claimant's own evidence that she had a good relationship with MH suggests otherwise. We accept on the evidence before us that the warning was wholly unconnected to the protected act.

353. The allegation of victimisation against MH is not well founded.

354. Allegation 43 - **26 May 2020 disciplinary appeal upholds 12 months written warning**

355. The appeal panel addressed the claimant's grounds of appeal, they were entitled to reject them and maintain the sanction on the same or similar grounds

as the disciplinary panel before it. The respondent had reasonable and proper cause to maintain the sanction.

356. There is no evidence before us that SC and MH were aware of the contents of, rather than the existence of, the claimant's original grievance. Even assuming that they were aware, there is no further evidence before us sufficient to shift the burden of proof to the claimant. We accept on the evidence before us that the appeal outcome was wholly unconnected to the protected act.

357. The allegation of victimisation against SC and MH are not well founded.

358. Allegation 37 - **CB lied in interview with HR claiming that JC had line management responsibilities for CM, when he knew she did not have any line management of CM. CB gave a dishonest depiction and criticism of the claimant as CM's line manager, including claiming that C 'didn't really manage her' and that he 'felt sorry' for CM.**

359. The claimant confirmed in cross examination that the '*lie*' CB allegedly told was stating '*don't think she managed Catherine*'. That the claimant was CM's line manager was, at all times, was wholly uncontroversial - to lie about it would be utterly pointless. We agree with Mr Webster's submission that the words reflect CB's opinion of the quality of the claimant's management of CM, rather than the fact of it. Further, the words attributed to CB were not written by him, they are words noted without context, and the notes later refer to CB stating his indecision as to whether, if the claimant's role were moved to the Engineering Department, that would affect CM's reporting line. In truth, the claimant complains that CB held a view that questioned her effectiveness as a line manager; he did not '*lie*'. We were not taken to the comment where it is noted that CB '*felt sorry*' for CM, but we note it is an opinion that he was entitled to hold; we received evidence elsewhere, that CM was distressed by the claimant.

360. The allegation of victimisation against CB is not well founded.
361. Allegation 38 - **The primary reason given by CB for removing responsibilities from the claimant and given them to JC and transferring her and the remainder of her duties to Engineering was that she was a better fit in Engineering.**
362. The sole proposed change to the claimant's role was the removal of line management responsibility for CM's role; all other responsibilities were unchanged. The respondent was entitled to conduct a review of its structure and indeed, the claimant in mid- to end-2019 was, on her own case, eager for her role to move to the Engineering Department.
363. The allegation of victimisation against CB is not well founded.
364. Allegation 40 – **The grievance appeal was unfair because NA was same level of management as heard the Grievance, and not an impartial arbitrator – should have recused himself.**
365. NA's role on the board of directors, and his legal director status are sound bases upon which to draw a hierarchical distinction. We are not persuaded, as the claimant seeks to argue, that it is simply a matter of '*opinion*', nor did we receive any basis for why we should prefer her opinion. We received no explanation why NA was not '*impartial*'.
366. The allegation of victimisation against NA is not well founded.
367. Allegation 41 – **1 May 2020, grievance appeal outcome emailed to the claimant it failed to consider the evidence fairly, impartially or weigh evidence on balance of probabilities.**

368. We were particularly impressed with thoroughness, detail and clear structure in the grievance outcome letter, delivered without the benefit of a discussion with the claimant to provide assistance; that was no easy exercise given the volume and prolix nature of information that the claimant had passed to NA. Having accepted in cross examination that she believed NA would have considered her allegations ‘*very carefully*’, she makes no reasonable challenge to the contents of the grievance outcome letter on the basis that any particular conclusion could be reasonably and objectively described as unfair, biased, or contrary to the evidence. By way of example only, the claimant was asked more than once by the Tribunal to clarify what, at page 863 of the appeal outcome letter, she contended was a lie on the part of NA; she failed to do so. She contended that NA had ‘*lied*’ at page 867 when he concluded that TE learned of her Asperger’s on 22 October 2019; the letter makes no reference at all to the date of TE’s knowledge. In truth, the claimant simply disagrees with the conclusions drawn by NA, and disagrees vehemently. She has no provided no objective or reasonable basis for her disagreement.

369. The allegation of victimisation against NA is not well founded.

370. Allegation 44 - **From 3 June 2020, TE insisted on multiple occasions that the claimant’s return to work was conditional on multiple factors not related to health.**

371. When asked, the claimant confirmed in evidence the “*multiple factors*” that she refers to in this allegation is, in fact, a single factor, being the agreeing the job description. TE did not insist on agreeing a job description; the claimant did and even then, she did not require it before commencing work, without warning, on 15 June 2020.

372. The allegations of victimisation against TE, and the allegation that this was a breach of the express term that the claimant’s basic hours were 37.5 per week, are not well founded.

373. Allegation 45 - **Failing to implement Attendance Management Policy, holding any sickness reviews, or work meetings with the claimant, or implementing any recommendations from Occupational Health reports in both May and June. Failure to implement the recommendations of the OH report of 14 May 2020 concerning communication, working practices, and phased return.**

374. The claimant knew that the respondent would be unprepared for her unexpected return to work on 15 June 2020. She emailed CB and LR, who she had not had contact with, and omitted to copy in TE, who was the only person who could give an account of their interactions. Dr O'Reilly had made no recommendations for adjustments, or even her return to work, and the claimant had no reason to believe CB and LR would know the truth of the matter. She claimed that her health was deteriorating as a direct result of the respondent's lack of preparedness; that they were unprepared for her return to work was of her doing.

375. The content of her email on 15 June was unnecessary, antagonistic and designed to cause disruption.

376. The victimisation allegation against TE is not well founded, and nor is the allegation that the respondent breached an express term of her contract that her basic hours of work were 37.5 per week.

377. Allegation 46 - **The respondent denied the claimant had returned to work and TE requested the claimant to get a sick note so she would not return to work for another week**

378. The claimant had not informed anyone that she intended to return to work, after an absence of 4.5 months. But when she did, she told TE that the lack of preparedness on the part of the respondent was impacting on her health; she said her *"anxiety and stress levels were currently very high and rising"*. It

was a short time before TE could finalise the job description, which the claimant had sought from her. TE's suggestion, for it was no more than that, that the claimant considered speaking to her GP and asking for a short-term fit note was a sound, sensible suggestion made in direct response to the claimant's comments that her health was deteriorating. The time would enable both parties to discuss the job description that the claimant sought clarity about, as well as discuss practical steps to manage a return to work. TE did not 'deny' the claimant's return to work; she did not a request to obtain a sick note for a further week.

379. The victimisation allegation against TE is not well founded, and nor is the allegation that the respondent breached an express term of her contract that her basic hours of work were 37.5 per week.

380. Allegation 48 - **The respondent prevented the claimant from returning to work, by TE accusing the claimant of upsetting CM and destroying company data by implication; leading to TE to coerce the claimant into acquiescing into taking a week's paid leave.**

381. TE did not prevent the claimant from returning to work; she made a proposal that the claimant take a further 7 days' sanctioned leave in direct response to the claimant's statement that she was fit to work, but the respondent's lack of preparedness as a result of her unexpected return to work was causing her health to deteriorate.

382. TE did not accuse the claimant of upsetting CM; she said that CM was upset. She explained why steps had been taken with the Porcupine file, explicitly to '*ensure I was transparent to avoid any unnecessary conflict*'. We understand why TE volunteered this information; by now she was being placed in a '*no win*' situation by the claimant.

383. The allegation of victimisation against TE is not well founded, and nor is the allegation that the respondent breached an express term of her contract that her basic hours of work were 37.5 per week.

384. Allegation 49 - **The respondent prevented the claimant returning to work when on 16 June 2020 at 18:26 after the claimant had agreed to take a week's leave, the respondent removed the claimant's access to all computer systems, making it a defacto knee jerk suspension.**

385. The suspension of the claimant's account was temporary; the claimant was told the reason for it was to enable an investigation to take place, including the matter which the claimant herself raised. The claimant was on paid leave; she had no need to access the system. The claimant was told that the suspension of the account was not a reflection on the claimant.

386. The claimant suffered no detriment; it was an unjustified sense of grievance. The allegation of victimisation against TE is not well founded.

387. Allegation 50 - **The job description provided to the claimant on the 18 June 2020 confirmed that the role offered to the claimant was a demotion. CB, Global Head of the Quality Department wrote the job description for the proposed new job that was in the Engineering Department.**

388. The claimant's terms and conditions were to remain exactly the same, save that she was now to report to RJ rather than CB, and that CM was no longer reporting to her. We do not accept that those changes amount to a demotion, where RJ has always been senior to the claimant; the claimant could not explain how it did, either. When pressed, she suggested that the demotion was *'implicit'*.

389. The claimant simply disliked the proposal to move her existing role she occupied to the Engineering Department in circumstances where she had not

been given any additional incentive to move, such as the Product Improvement Manager role in the Engineering Department, or the creation of a new 'Aftermarket Department' for her to lead.

390. The allegations of victimisation against TE and direct sex discrimination are not well founded.

391. Allegation 51 - **The respondent prevented the claimant returning to work when on the 19 June 2020, the respondent emailed the claimant informing her she was suspended and subject to investigation. No clear accusations were made or any justification for the suspension was put to the claimant. Suspending the claimant from work on 19 June 2020 as a knee-jerk reaction and without justification.**

392. The claimant was suspended by letter on 19 June 2020. The content of the letter was clear. There was to be investigation to ascertain whether her working relationships had broken down irretrievably. She was told that suspension was necessary to allow the respondent to conduct an investigation fairly, and she was reminded that it was not form of disciplinary sanction. She was given a short timescale, 11 days within which the respondent anticipated concluding the investigation.

393. The reasons that it was necessary to suspend the claimant were obvious. There was already evidence as a result of TE's grievance investigation that her relationships with colleagues was strained. The claimant's correspondence had become protracted, demanding and contained a litany of complaints. We do not doubt that that the time and energy invested in simply managing the claimant's correspondence during her absence was a significant draw on the respondent's resources. It is illustrative of our point that the allegation of victimisation here is made against Louise Rich, Global Head of HR, where her only apparent involvement was that the claimant decided to copy her into correspondence about this matter.

394. On the occasion she had returned to work, she did so in a manner that was highly disruptive and antagonistic and entirely avoidable, had she simply indicated her intention to return to TE. She did not do that, but instead emailed CB and LR alleging that the respondent's lack of preparedness, as a result of her own inaction, was damaging her health. JC had already submitted a formal grievance of bullying against the claimant in late 2018 and AA had indicated an intention to submit an informal grievance against her in January 2020 just before the claimant went on sick leave. Before the respondent had conducted it commenced its investigation, the respondent had a basis for believing that the claimant's presence at work might cause unnecessary disruption and hamper the investigation; it had reasonable grounds to suspend the claimant pending its investigation.

395. In any event, there is no evidence before us to suggest that the suspension was calculated to destroy the relationship and nor was it likely to; that the relationship had deteriorated, was evident in and as a consequence of the claimant's own behaviour. In any event, we do not find that suspension was the reason or part of the reason for the claimant's resignation.

396. In relation to the allegation of victimisation against TE, there is before us no evidence beyond knowledge of the protected act, and the detriment; that is insufficient to shift the burden of proof to the respondent, but in any event there is ample evidence before us that the suspension because there was a genuine and significant concern that the working relationships broken down irretrievably. The allegation of victimisation is not well founded.

397. The claimant has adduced no evidence to suggest that her sex was factor in decision to suspend; the allegation of direct sex discrimination is not well founded.

398. The allegation that the respondent breached an express term of her contract that her basic hours of work were 37.5 per week is not well founded; there was no obligation to provide the claimant with work, much less require the claimant to work, for 37.5 hours per week, where she was being paid.

399. The allegation of victimisation against LR is not well founded and is dismissed.

400. Allegation 53 – **The letter inviting the claimant to a disciplinary hearing on 15 July 2020 was against natural justice and the final straw act. The claimant was informed she could have her employment terminated. The respondent provided no clear allegation or any evidence for which could have understood the allegations or prepared a defence. It would have amounted to a show trial and there was a foregone conclusion of dismissal.**

401. The claimant was invited to a disciplinary hearing to discuss what the letter described as a serious matter and, if upheld, may result in termination for 'some other substantial reason' namely the breakdown of working relationships between her and the rest of the Quality Team. Interviews revealed colleagues who described dread and consternation at the prospect of the claimant returning to work in the team; one was considering leaving in the event the claimant return; they gave responses which questioned how sustainable any return to work would be. The respondent did have a duty of care towards the Team, as well as towards the claimant. TE, who taken the primary responsibility for communicating with the claimant and had done so, politely and effectively in circumstances that were often highly testing, could see no realistic way of managing the claimant's return to work. The claimant in her own reply recognised her relationships with her colleagues had deteriorated but she maintained that she believed herself to be second only in experience to CB in the Quality Team.

402. The respondent had reasonable and proper cause to invite her to disciplinary hearing to consider whether her relationships with her colleagues had irretrievably broken down. The allegation was clear. No evidence was contained, or referred to, in the letter; it was to arrive the next day. The claimant was aware of her right to see the evidence in advance of the hearing; during

her disciplinary hearing in March 2020, she had confirmed she understood the disciplinary policy, quoted extensively from it, and had had a discussion about the amount of evidence disclosed. She did not enquire about the evidence. We have found no reason to believe that the claimant was to receive anything other than a fair hearing.

403. The allegation of victimisation against TE is not well founded and nor is the allegation that the respondent breached an express term of her contract providing that her basic hours of work were 37.5 per week.

Unfair Dismissal

404. The last act complained of which the claimant says caused, or triggered, her resignation was the invitation to a disciplinary hearing. It was not, by itself a repudiatory breach of contract, for the reasons we have set out above.

405. As to the earlier acts which we have found to be factually sustained, they are: allegation 26 (failure to provide written feedback on MAPS scores), allegation 30 (being asked repeatedly whether the claimant wanted to enter into a protected conversation), allegation 32 (invitation to a disciplinary hearing regarding text message), allegation 42 (12 month written warning for text message) and allegation 43 (upholding the 12 month written warning on appeal).

406. We are satisfied for the reasons given, that the respondent acted with reasonable and proper cause in respect of all allegations above, save for allegation 26. The failure on the part of CB to provide written feedback does not, objectively amount to a repudiatory breach showing that the employer no longer intends to be bound by one or more of the essential terms of the contract. The claimant did not resign, in whole or in part to the failure to provide written feedback for her MAPS scores.

407. The allegation of unfair dismissal is not well founded.

Employment Judge Jeram
Date: 17 June 2022

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AGREED LIST OF ISSUES

1. Direct sex discrimination (Equality Act 2010 section 13)

1.1 Did the Respondent do the following things:

1.1.1 Item references: 1, 3-7, 18, 23-24, 26¹, 50

1.2 Was that less favourable treatment?

The Claimant relies on the following real comparators: Sean Neasham and /or Mark Buxton

The Claimant relies on a hypothetical comparator, whose characteristics are: [tbc]

1.3 If so, was it because of sex?

2. Direct disability discrimination (Equality Act 2010 section 13)

2.1 Did the Respondent do the following things:

2.1.1 Item references: 2, 5-14, 17, 19-31, 35, 37-39, 41, 44-53

2.2 Was that less favourable treatment?

The Claimant relies on the following real comparators: Justine Cain

The Claimant relies on a hypothetical comparator, whose characteristics are: [tbc]

2.3 If so, was it because of disability?

¹ C verbal confirmation 1.7.21

3. Discrimination arising from disability (Equality Act 2010 section 15)

3.1 Did the Respondent treat the Claimant unfavourably by:

3.1.1 Item reference: 5, 8, 12-14, 22, 24-25, 27, 28, 30, 31, ~~36~~² 37, 38, 42-43, 45, 50-51, 53

3.2 Did the following things arise in consequence of the Claimant's disability:

3.2.1 [See claimant's email of 29 June 2021 at 09:33 as amended by email of 30 June 10:50]?

3.3 Was the unfavourable treatment because of any of those things?

3.4 Was the treatment a proportionate means of achieving a legitimate aim? The Respondent says³ that its aims were:

3.4.1 In respect of items 42 and 43:

- Ensuring that communications between employees are unthreatening, appropriate and professional.
- Maintaining a workplace that is safe, respectful, dignified and productive.
- Warning employees about unacceptable conduct so that they have the opportunity to address their behaviour.
- Reassuring employees that inappropriate behaviour will be addressed.

3.4.2 In respect of items 51-53:

- Maintaining/achieving appropriate and positive interpersonal relations and/or workplace harmony.
- Enabling the workforce to operate as an effective team.
- Maintaining an atmosphere that is conducive to work/productivity/business efficiency.

² C's email 30.6.21 at 10:50

³ R's email of 30.6.21 at 09:25

- Maintaining a workplace that is safe, respectful, dignified and productive.
- Reassuring employees that inappropriate behaviour will be addressed.

3.5 The Tribunal will decide in particular:

3.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

3.5.2 could something less discriminatory have been done instead;

3.5.3 how should the needs of the claimant and the respondent be balanced?

3.6 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

4. Harassment related to sex (Equality Act 2010 section 26)

4.1 Did the Respondent do the following things:

4.1.1 Item references: 1, 3, 4, 5, 6 and 7 and 18

4.2 If so, was that unwanted conduct?

4.3 Did it relate to sex?

4.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

4.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

5. Harassment related to disability (Equality Act 2010 section 26)

5.1 Did the Respondent do the following things:

5.1.1 Item references: 9, 10, 11, 13, 14, 46⁴, 19, 20, 21, 22, 23, 25, 29 – 36, 38, 42- 44, 46 – 49, 51 and 53

5.2 If so, was that unwanted conduct?

5.3 Did it relate to disability?

5.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive . 4 March was one Environment for the Claimant?

5.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

6. Victimisation (Equality Act 2010 section 27)

6.1 Did the Claimant do a protected act as follows:

6.1.1 See grievance dated 4 February 2020?

6.2 Did the Respondent do the following things:

6.2.1 Item reference: 7, 23-24, 26-53

6.3 By doing so, did it subject the Claimant to detriment?

6.4 If so, was it because the Claimant did a protected act?

6.5 Was it because the Respondent believed the Claimant had done, or might do, a protected act?

⁴ C withdrawn verbally on afternoon of 5.7.21

7. Unfair dismissal

7.1 Was the Claimant dismissed?

7.1.1 Did the respondent do the following things:

7.1.1.1 Item references: 1, 2, 5–7, 12-13, ~~45~~⁵, 17, 20-24, 26-34, 36-53

7.1.1.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

7.1.1.3 whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

7.1.1.4 whether it had reasonable and proper cause for doing so.

7.1.2 Did the respondent do the following things?:

7.1.2.1 Breaches at item reference⁶: ~~6, 7, 15, 36, 37, 42, 43~~, 23, 24, 32, 44-46, 48, 51-53?

7.1.2.2 Did those things breach the following said to be express terms of the claimant's contract:

7.1.2.2.1 Item reference 23 and 24: that her reporting line was to Global Head of Quality;

7.1.2.2.2 Item reference: 32, 44-46, 48, 51-53: that her basic hours of work will be 37.5 hours per week.

⁵ Allegation of breach of trust and confidence abandoned during cross examination of C on Wednesday early pm 30.6.21

⁶ On Monday 28.6.21: Allegations of a breach of an express term at item reference 6, 7, 15, 43 verbally removed; On Tuesday 29.6.21: allegation at 32 amended/clarified to read 33 - and allegations 36, 37 and 42 removed verbally. See also C's email at 09:33 – and re-confirmed verbally at approx. 12:00 on Wednesday 1.7.21

- 7.1.3 Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the Claimant was entitled to treat the contract as being at an end.
- 7.1.4 Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.
- 7.1.5 Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that they chose to keep the contract alive even after the breach.
- 7.1.6 Did the Respondent have a fair reason to dismiss, being conduct or SOSR?

8. TIME LIMITS

- 8.1 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - 8.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 8.1.2 If not, was there conduct extending over a period?
 - 8.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 8.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 8.1.4.1 Why were the complaints not made to the Tribunal in time?

8.1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

THE LAW

Disability

1. Section 6 of the Equality Act 2010 provides;

A person (P) has a disability if-

- a. P has a physical or mental impairment, and*
 - b. the impairment has substantial long-term adverse effect on P's ability to carry out normal day-to-day activities.*
2. Section 212(2) provides that a defect substantial it is more than minor or trivial.
 3. Schedule 1 para 5(1) of the Act requires an impairment to be treated as having a substantial adverse effect on the ability of a person to carry out normal day to day activities if measures as being taken to treat or correct it and but for that, it would be likely to have that effect.
 4. The Tribunal must take into account relevant matters contained in the Equality Act 2010 Guidance and Code of Practice, but any doubt as to their proper construction must give way to the statutory provisions: *Elliott v Dorset County Council* UKEAT/0197/20/LA.

Knowledge Of Disability

5. The legal principles were recently summarised by HHJ Eady QC in *A Ltd v Z* [2020] ICR 1999. What is required is knowledge (actual or constructive) of the facts constituting the disability; knowledge of the diagnosis is not necessary. As to what the respondent could reasonably have been expected and now, the test is one of reasonableness. What is reasonable will depend on all the circumstances of the case. Where the Tribunal finds that the respondent could reasonably have been expected to take further steps to find out if the claimant

had a disability, it must then consider whether as a result, it could then have reasonable have been expected to know of the disability.

Direct Discrimination

6. Section 13 of the Equality Act 2010 ('EqA') provides that: '*A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others*'. Section 23 of the Equality Act 2010 states that '*there must be no material difference between the circumstances relating to each case*'.
7. Section 23 of the Equality Act 2010 requires there to be no material difference between the circumstances of person A and a comparator.

Harassment

8. Section 26(1) Equality Act 2010 provides that: *A person (A) harasses another (B) if—*
 - i. A engages in unwanted conduct related to a relevant protected characteristic, and*
 - ii. the conduct has the purpose or effect of—*
 - iii. violating B's dignity, or*
 - iv. creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*
 - a. . . .*
9. Section 26(4) provides that when deciding whether conduct has the effect referred to in subsection (1)(b) the Tribunal must take into account: the perception of B; the other circumstances of the case; whether it is reasonable for the conduct to have that effect.
10. We had regard to the guidance given by the EAT in *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336 as reviewed by the CA in *Pemberton v Inwood* [2018 EWCA Civ 564 per Underhill LJ at [85-88].

11. When considering whether the conduct created an intimidating, hostile, degrading, humiliating or offensive environment, Tribunals must not cheapen the significance of these words; they are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment: *Grant v HM Land Registry and anor* [2011] EWCA Civ 769.

Victimisation

12. Section 27(1) EqA 2010 provides: ‘A person (A) victimises another person (B) if A subjects B to a detriment because – (a) B does a protected act, or A believes that B has done, or may do, a protected act.’ Subsection (2) defines what a protected act is.

13. An unjustified sense of grievance is insufficient to amount to a detriment: *Shamoon v Chief Constable of the RUC* [2003] ICR 337.

Burden Of Proof – Equality Act

14. Section 136 of the Equality provides “(1) this section applies to the contravention of this Act. (2) if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravene the provisions concerned, the court must hold that the contravention occurred. (3) But subsection (2) does not apply if A shows that A did not contravene the provision.”

15. Guidance on the burden of proof is to be found in the Court of Appeal case of *Igen Ltd v Wong* [2005] ICR 931, as approved by the Supreme Court in *Hewage v Grampian Health Board* [2012] ICR 1054. The first stage requires the claimant to discharge the burden of establishing facts from which an inference of discrimination be drawn, before at the second stage requiring the employer to provide an explanation that excludes the proscribed ground.

16. At the first stage, adducing facts which indicate the possibility of discrimination is not enough to shift the burden: a difference in status and a difference in treatment indicate only the mere possibility of discrimination and are, without more, insufficient to discharge the prima facie burden of proof that rests on the claimant: *Madarassy v Nomura International plc* [2007] ICR 867, CA. The principle is equally applicable to victimisation: *Greater Manchester Police v Bailey* [2017] EWCA Civ 425

Unfair Dismissal

17. An employee has a right not to be unfairly dismissed: section 94 ERA 1996. This includes where 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: s.95(1)(c) ERA 1996.

18. An employee is entitled to terminate the contract only if the employer has committed a repudiatory breach of contract i.e. 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: *Western Excavating (ECC) Ltd v Sharp* 1978 ICR 221, CA.

19. A breach of the implied term of trust and confidence occurs when the employer conducts itself, without reasonable and proper cause, in a manner which is likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee: *Malik v BCCI SA* [1997] ICR 606 HL.

20. Where the employer breaches the implied term of trust and confidence, the breach is inevitably fundamental: *Morrow v Safeway Stores plc* [2002] IRLR 9, EAT.
21. The test is an objective one; it matters not whether the employee's confidence is or is not in fact undermined. Equally, the employer's subjective intention is irrelevant: *Omilaju v Waltham Forest London Borough Council* [2005] ICR 481, CA. reaffirmed in *Leeds Dental Team Ltd v Rose* [\[2014\] IRLR 8](#), EAT.
22. That last straw does not have the of the same character as the earlier, but it must contribute, however slightly, the breach of the implied term of trust and confidence. An entirely innocuous act on the part of the employer cannot be a final straw: *Omilaju* as affirmed by the Court of Appeal in *Kaur v Leeds Teaching Hospitals NHS Trust* [2018] EWCA Civ 978.
23. It may sometimes be appropriate to proceed directly to the second stage of the analysis where the claimant relies upon a hypothetical comparator. In such circumstances, the first question, the 'less favourable treatment' issue cannot be resolved without at the same time deciding the second question i.e. 'the reason why' issue: *Shamoon v Chief Constable of the RUC* [2003] ICR 337.

Duty to Provide Work

24. There is no general duty to provide work for an employee, provided that he or she is paid: illustrated in *Janeczko v Reed Medical Ltd* ET Case: 2401245/05.

Jurisdiction

25. The Tribunal has no jurisdiction to consider and rule upon acts of discrimination not included in the claim form: *Chapman v Simon* [1994] IRLR 124.

Item Reference	Date, or Approximate Timeframe	Alleged Act, or Less Favourable Treatment*	ET1/ET3 express references	Did The Act Occur as described?	Summary of Respondent's Factual Case (see ET3 for more details/legal points)*
1	2019-2020	Chris Beeley frequently referred to women in derogatory terms including as "birds". He kept a bowl of sweets on his desk, described by him as "bird seed" in order to, in his own words "attract the birds, because birds love sweets".	ET1 pa. 40 <i>(no reference in ET3)</i>	✓	It is denied that the provision of department sweets created an intimidating, hostile or humiliating environment. The team is a mix of males and females and providing sweets to the team does not amount to less favourable treatment of the Claimant due to her sex.
2	06/09/2019	When the Respondent changed the Claimant's job title on 6th March 2019, she was given a title with less status than that of her named comparator (or constructed non-disabled comparator) where both has previously had the same job title and the Respondent failed to issue the promised business communication to explain the new job roles.	ET1 pa's. 15 & 18 ET3 pa. 22 (bullet point 3)	✗	Facts as described are denied
3	5 meetings between July 2019-Jan 2020	The series of five meetings with the Claimant by Chris Beeley between July 2019 and January 2020 in which:			
3	Jul-19	Chris Beeley brought up the topic of the Claimant's career progression and promised to assist the Claimant using his promotion and development of Sean Neasham as a comparison. This was to mislead the Claimant because Mr Beeley did the opposite.	ET1 pa.19 ET3 pa's 11, 12, 22 (bp 5)	✓	It is admitted that CB did mentor the Claimant, otherwise the facts as described are denied. The Claimant is put to strict proof that she was misled.
4	Jul-19	Mr Beeley informed the Claimant that he had had discussions in background and if the Claimant was interested, she would be lined up for succession planning within the Directorate for Tony Hindmarch's role (Product Integrity Manager) when he left the business, which he expected would happen within the next "year or two". The Claimant indicated she was interested.	ET1 pa.19 ET3 pa 22 (bp 5, 14)	✗	Facts as described are denied
5	Nov 2019-Jan 2020	Upon learning that the Product Integrity Manager had abruptly left the business (without notice), the Claimant followed up the July conversation with Chris Beeley to formally express her interest in the role. Mr Beeley then would provide multiple confirmations in both text message and in person that led the Claimant to reasonably believe he had successfully advocated for her and she was either being appointed into the Product Integrity Manager role, or would line manage the role as the head of a new department. Between November 2019 - January 2020 the Claimant was misled by Chris Beeley that Steve Parkin, Simon Ely, Michael Hodgson and Rob Jarvis had all agreed to place the Claimant at the head of an "Aftermarket Department", built around her, and she was being developed and promoted.	ET1 pa's 31, 35, 39, 40, 41, 43, 45 ET3 pa 11, 12, 22 (bp 5)	✗	Facts as described are denied
6	February 2020-May 2020	Mr Beeley and the Claimant never discussed a simple transfer to the Engineering department, any reduction in her managerial responsibility, or leaving the Quality department for any reason other than promotion.	ET1 pa. 70 ET3 pa. 22 (bp 14)	✗	New claim. Facts as described are denied.
7	February 2020-May 2020	The Product Integrity Manager role was advertised internally and externally from 6th February 2020, while the Claimant was on sick leave. The Claimant was not alerted to the job advert by the Respondent. The Claimant was prevented from applying for the role that advertised part of her current job and responsibilities, as she did not possess the essential criteria specified in the advert of a degree level qualification in an Engineering discipline. In May 2020 the role of Product Integrity Manager was given to a man (Mark Buxton) who's qualifications /education do not meet the required person specification set out in the advert, Mr Buxton only has a level 3 qualification in Engineering and does not hold a degree. Mr Buxton has a similar level of experience to that of the Claimant, but Mr Buxton is less qualified than the Claimant. Mr Buxton was known to Mr Beeley and Mr Jarvis, having previously worked with and under them in his last company Mamas and Papas.	ET1 pa. 70 <i>(no reference in ET3)</i>	✗	New claim. Facts as described are denied.
8	22/08/2019	Neal Austin accused the Claimant of being "personal" because she complained of Karen Crosby not following business procedures.	ET1 pa.24 <i>(no reference in ET3)</i>	✗	Facts as described are denied.

		Item Reference	Date, or Approximate Timeframe	Alleged Act, or Less Favourable Treatment*	ET1/ET3 express references	Did The Act Occur as described?	Summary of Respondent's Factual Case (see ET3 for more details/legal points)*
Direct Discrimination (Equality Act 2010 s31(2) and s13)	✓	9	2019-2020	During the relevant period members of the Quality team excluded the Claimant from internal and external audits, meetings and discussions relevant to her work. This included making changes to procedures that removed responsibilities from the Claimant, changed process steps she was expected to follow, and altered the job title and description of her subordinate.	ET1 pa s. 17, 21, 22, 23, 27, 28, 29, 44, 46, 47, 53, 54, 83 ET3 pa s 22 (bp 7, 10)	X	Facts as described are denied.
Direct Discrimination due to s13 (Equality Act 2010)	✓	10	2019-2020	Keeping the existence, content, and decisions of those meeting and outcomes secret from the Claimant.	ET1 pa s. 17, 21, 22, 23, 27, 28, 29, 32, 44, 46, 47, 53, 54, 83 No reference in ET3	X	Facts as described are denied.
Harassed by unwanted conduct contrary to s6(1)(a) / s26 of Equality Act 2010	✓	11	05/09/2019 - onwards	Karen Crosby removed the Claimant's access to Oracle on or around 5th September 2019 and failed to restore the same level of access to allow the Claimant to "write" responses into the system (to enable the Claimant to carry out aspects of her job).	ET1 pa. 25, 30 ET3 pa 22 (bp 6)	X	Facts as described are denied.
Disability contrary to s15 (Equality Act 2010)	✓	12	24/10/2019 - onwards	Tracey Elvin failed to investigate the Claimants complaint regarding the removal of the Claimant's Oracle access in November 2019 despite promising the Claimant that she would.	ET1 pa 25, 30 ET3 pa 22 (bp 6)	X	Facts as described are denied.
Disability contrary to s15 (Equality Act 2010)	✓	13	25/09/2019	Tracey Elvin singled-out the Claimant for a "Stakeholder catch-up meeting" and misrepresented the purpose of that meeting first proposed by Tracey on 25th September 2019.	ET1 pa's 26, 30, 61, 62, 70 ET3 pa 22 (bp 8)	X	Facts as described are denied.
Disability contrary to s15 (Equality Act 2010)	✓	14	14/11/2019	The Claimant was subjected to hostility and ostracising by her colleagues in the Quality department after the Claimant refused to sign the "Lab Service Agreement" without first having a discussion to assist her in understanding the implications of the agreement to the Claimants contract of employment. Behaviours included: <ul style="list-style-type: none"> • Being mostly sent to Coventry (ignoring salutations etc.) • Whispering/Silence when entering office. • Discouraged from attending xmas parties • Excluded from Xmas present. • Comments referencing perceived autistic needs, e.g. "It will be nice and quiet for you now" --AA 	ET1 pa's 32, 40 No reference in ET3	X	Facts as described are denied.
Disability contrary to s15 (Equality Act 2010)	✓	15	14/11/2019	The Respondent failed to implement the recommendations of the OH report of 14th November 2019 regarding communication and support for the Claimant within the business;	ET1 pa's 33, 49 (but no reference to failure to implement these recommendations) ET3 pa 15	X	Facts as described are denied
Disability contrary to s15 (Equality Act 2010)	✓	16	18/11/2019	"important update" meeting on the 18th November 2019. Where in the days prior to the meeting Justine Cain informed the Claimant several times that she believed the meeting was to announce our department were at risk of redundancies. When this wasn't announced in the meeting Ms Cain appeared to become visibly red and angry. When the Claimant returned to her desk Ms Cain and Sonya Potts were having a very loud and emotionally agitated conversation next to the Claimant's desk, where Mrs Potts was overheard asking Ms Cain what she was going to do, and then instructing Ms Cain to "go upstairs and speak to Tracey (Elvin) now". They then noticed the Claimant was present and left the office together. This made the Claimant feel intimidated because their behaviour implied prior knowledge or expectation of the purpose of the meeting.	ET1 pa 34 (no reference in ET3)	X	Facts as described are denied
Disability contrary to s15 (Equality Act 2010)	✓	17	25/11/2019 - January 2020	Chris Beeley and Tracey Elvin did not provide help and support requested by the Claimant with Line Management of CM between November 2019 – January 2020. Ms Elvin promised to but did not act, and Mr Beeley repeatedly avoided the subject when it was raised by the Claimant.	ET1 pa's 36, 37, 43 (no reference in ET3)	X	Facts as described are denied

		Item Reference	Date, or Approximate Timeframe	Alleged Act, or Less Favourable Treatment*	ET1/ET3 express references	Did The Act Occur as described?	Summary of Respondent's Factual Case (see ET3 for more details/legal points)*
Direct Discrimination (Equality Act 2010 s13)	✓	18	10/12/2019	Anne Armstrong subjecting the Claimant to witnessing a surprise Christmas gift presentation "from the team" to Chris Beeley of an offensive "Bird tray" for his "bird seed". The Claimant was unaware, but the other guests had been made aware and knew about the gift before hand and appeared to find it both appropriate and amusing.	ET1 pa 40 (version NOT changed from ET1) (no reference in ET3)	X	Facts as described are denied. The Claimant has changed her version, after receipt of ET3.
Direct Discrimination due to Sex (Equality Act 2010 s13)	✓	19	Jan-20	In January 2020 Quality colleagues removed access to part of the Quality drive (QA lab) that the Claimant needed to do her job, and to monitor and access the work carried out by her subordinate CM. It was never restored.	ET1 pa 42 (no reference in ET3)	X	Facts as described are denied
Direct Discrimination (Equality Act 2010 s13)	✓	20	20/01/2020	In a meeting arranged by the Claimant with Justine Cain and Anne Armstrong on the 20th January 2020, Mrs Armstrong revealed that she had excluded the Claimant and her subordinate from a recent audit that related to their work. Mrs Armstrong then requested the Claimant remove her work processes from the new procedure as the Claimant would not be part of the Quality department going forward. This alarmed the Claimant as she had not been offered a new job yet, nor agreed to any move out of the Quality department, and had been told the proposed Aftermarket Department was highly confidential. The Claimant having been explicitly requested by both Chris Beeley and Rob Jervis not to mention or discuss it with anyone else in the business.	ET1 pa 44 ET3 pa 22 (bp 9)	X	Facts as described are denied
Direct Discrimination (Equality Act 2010 s13)	✓	21	23/01/2020	The humiliating events of the 23rd of January 2020, when in response to being asked why Mrs Armstrong kept excluding the Claimant from internal and external audits, meetings and consultation over procedural changes that directly affected the Claimant which due was making work difficult and stressful for the Claimant; Mrs Armstrong slammed her hands on her desk, stated, "I'm not doing this", got up, walked approximately 3 meters towards the office door, then, still within the open office Anne Armstrong shouted at the Claimant that if she "had a problem", the Claimant should "talk to Chris (Beeley)". Justine Cain, who was sat next to the Claimant laughed at Mrs Armstrong's outburst. The Claimant was alarmed and confused by both women's reactions.	ET1 pa 47 ET3 pa 22 (bp 10)	✓	Facts as described are denied. The Respondent avers that the Claimant was the aggressor.
Direct Discrimination (Equality Act 2010 s13)	✓	22	23/01/2020 - 4/02/2020	Chris Beeley and Tracey Elvin ignored the informal grievance email raised by the Claimant on 23rd January 2020, and instead contrived a meeting with the Claimant about the 14th November Occupational Health report.	ET1 pa s 47, 48, 49, 50, 51, 52. ET3 pa 22 (bp 10)	✓	Facts as described are denied
Direct Discrimination (Equality Act 2010 s13)	✓	23	05/02/2020	Email communications sent from Justine Cain and Rob Jervis to the Claimant indicating new processes implemented that day. The effect of these was to demote the Claimant that day with the claimant's managerial responsibilities taken by Justine Cain. These were processes devised and written by Justine Cain. The new process involved Justine Cain and Rob Jervis intercepting and directing the work of the Claimant. This was work the Claimant previously had longstanding individual responsibility and autonomy over. These emails also informed the Claimant that her product investigation work now sat outside the Quality department, in Engineering under Rob Jervis. This was done without the Claimant's involvement, knowledge, or consent. The Claimant found this to be both devastating and humiliating.	ET1 pa s 29, 53, 54, 55 (no reference to February 5th action in ET3)	X	Facts as described are denied
Direct Discrimination (Equality Act 2010 s13)	✓	24	05/02/2020 - 18/06/2020	The attempt to move the Claimant out of the Quality Department without following a fair selection process. Including giving the Claimant's duties and management responsibilities to her comparator Justine Cain rendering the move a demotion.	ET1 pa s 29, 53, 54, 55, 56, 61, 62, 70, 81, 82, 83, 84, 85 (no reference in ET3)	X	Facts as described are denied
Direct Discrimination (Equality Act 2010 s13)	✓	25	26/02/2020	Justin Cain moved essential files the Claimant needed to do her work to a folder in a different part of the Quality drive, offensively codenamed "Porcupine" on 26th February 2020.	ET1 pa 83 ET3 pa 22 (bp 14)	X	Facts as described are denied

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Direct Discrimination (Disability)s3(2) and s13	✓						
Discrimination Arising from Disability contrary to s15	✓						
Direct Discrimination due to s13	✓						
Harassed by unwanted conduct contrary to s6(1)a / s26 of Equality Act 2010	✓						
Victimisation contrary to s27 of Equality Act 2010	✓						
Indirect Discrimination contrary to s19 of Equality Act 2010	✓						
Constructive Dismissal							
Breach of Express Contractual Term (1)							
Breach of Trust and Confidence	✓						
Failure to make Reasonable Adjustments contrary to s20 of Equality Act 2010	✓						
Breach of ACAS Code							
		26	01/03/2020	The Respondent delayed issuing the Claimant's MAP's score and withheld the associated written feedback. The rest of the business got their scores and feedback by 1st March 2020. The Claimant was informed of hers in late April 2020. The scores demonstrated acceptable to good performance by the Claimant in every category throughout 2019 (averaging 3.49 out of 5). Chris Beeley's evaluation comments were promised by Tracey Elvin, but these were never provided to the Claimant. According to the documents provided under Subject Access Request, Mr Beeley's feedback comments have either been destroyed by Mayborn or never existed.	ET1 pa 38 <i>(no reference in ET3)</i>	X	Facts as described are denied
		27	17/03/2020	On 17th March 2020, the Respondent dismissed the Claimants grievance without a proper investigation. They failed to consider all aspects of the grievance, and did not consider evidence provided by the Claimant, nor did they weigh evidence on balance of probabilities.	ET1 pa's 52, 55, 56, 57, 59, 60, 61, 62 ET3 pa's 4.5, 4.6, 22 (bn)	X	Facts as described are denied.
		28	17/03/2020	The 17th March 2020 Grievance outcome letter includes statements the Respondent should have known were untrue, including creating depictions of the Claimant that are defaming and stereotyping . This includes the attempt to explain and justify ostracising the Claimant by making the false assertion that the Claimant herself had required a "quiet silent environment" and wore headphones in order not to engage with the Quality Team due to her perceived disability. The respondent falsely accused the Claimant of using autism as an excuse to mitigate allegations made by Justine Cain in December 2018. The Respondent also falsely accused the Claimant of using Aspergers as an excuse in mitigation in connection with the "Mothercare Complaint".	ET1 pa 62 ET3 pa 4.3, 4.5, 6, 15, 22 (tp 11), 30.	X	Facts as described are denied
		29	17/03/2020	Incorrectly invoking an alleged complaint (the "Mothercare Complaint") in or around October 2019. The Claimant was unaware of any such complaint against her until 17th March 2020 when during the Grievance Hearing Tracey Elvin referred to it as the reason for Mrs Elvin holding a "Stakeholder Catchup" meeting with the Claimant. The Claimant immediately denied all knowledge of the complaint and challenged Tracey Elvin's recollection of events. Mrs Elvin then acknowledged the Claimant had not in fact been informed of any complaints. Mrs Elvin agreed the Claimant was unaware and the issue may have been "resolved by management in background" . Mrs Elvin then failed to correct the record of the "Mothercare Complaint" in the Grievance outcome letter or correct the record during her interview as part of the Claimant's appeal process, or in preparation of the Respondent's ET3.	ET1 pa's 30, 61, 62 ET3 pa's 15, 22 (bp 8).	X	Facts as described are denied
		30	17/03/2020	During the Grievance Hearing on 17th March 2020 Tracey Elvin made 5 attempts to coerce the Claimant into a protected conversation. The Claimant was warned by Mrs Elvin to agree to leave the company or face disciplinary action for sending Mr Beeley a text message. Even after the Claimant had made it clear to Mrs Elvin she was refusing to engage, wanted only to return to her work and job, and became distressed by Mrs Elvin's repeated attempts. Mrs Elvin made further repeated, unsolicited attempts to engage the Claimant into a protected conversation.	ET1 pa 61 ET3 pa 22 (bp 11)	X	Facts as alleged are denied. The statement is disingenuous and factually incorrect.
		31	17/03/2020	On Tuesday 17th March 2020 @17:44pm the Claimant was sent an email and letter from Tracey Elvin issuing a written settlement offer to terminate her employment, the offer expired on Friday 20th March 2020 (three days later). Neither the Claimant, nor her solicitor engaged with settlement negotiations which expired on Friday 20th March 2020 as claimed by the Respondent in their ET3. The Claimant's solicitor only contacted the Respondent on one occasion several days after the Respondent had carried out the threat associated with the Claimant not accepting the settlement offer, namely the disciplinary hearing arranged by the Respondent on the 23rd March 2020.	ET1 pa 63 ET3 pa 22 (bp 11) Additional background in response to ET3.		The email was sent. Sharney Randhawa of Swinburne Maddison, wrote to Tracey Elvin on 27th March 2020, not the 23rd March as R initially incorrectly stated in the draft Scott Schedule

	Item Reference	Date, or Approximate Timeframe	Alleged Act, or Less Favourable Treatment*	ET1/ET3 express references	Did The Act Occur as described?	Summary of Respondent's Factual Case (see ET3 for more details/legal points)*
Breach of ACAS Code	32	17/03/2020	Immediately after, on 17th March 2020, also @ 17:44pm another email from Tracey Elvin invited the Claimant to a disciplinary hearing with Michael Hodgson (Rob Jervis' manager) on Monday 23rd March 2020. The letter accused the Claimant of gross misconduct and warned of possible dismissal. The letter advised the Claimant she would be suspended if not on sick leave, and the outcome could be having her employment terminated. This letter was a threat and coercion to accept the settlement agreement.	ET1 pa's 63, 64 ET3 pa's 4.7	✓	Facts as described are denied. There was genuine disciplinary matter and the process was fully compliant with the ACAS Code of practice.
Equality Act 2010	33	17/03/2020	The Respondent not following their own disciplinary procedure. The confecting of disciplinary allegations against the Claimant, amounting to Gross Misconduct, and summoning the Claimant to a disciplinary hearing on the 23rd March 2020 without providing the time of the Hearing, or providing evidence from an investigation to enable her to prepare a defence. One of the charges had been resolved on the 17th February 2020, and the other two of the three allegations made against the Claimant were acceptable contractual custom and practice activities for many employees of Mayborn including, the Claimant during the majority of her employment. One was also an express term of the Claimant's contract.	ET1 pa's 56, 64 ET3 pa 4.8	✗	Facts as described are denied. In accordance with both company policy and Paragraph 5 of the ACAS Code, no investigation meeting was required.
Adjustments contrary to s20 of Equality Act 2010	34	17/03/2020	Suspending the Claimant from work on 17th March 2020 to the 1st May 2020 was a knee jerk reaction and without justification.	ET1 pa 64 ET3 pa 22 (bp 12)	✗	Facts as described are denied. The Claimant provided sick notes for all periods of absence with the exception of Monday 13 April to Friday 1 May. The Respondent continued to pay Claimant full pay as a gesture of goodwill.
Failure to make Reasonable Adjustments contrary to s20 of Equality Act 2010	35	23/03/2020	The Respondent refusal and failure from March 2020 onwards to combine the grievance and disciplinary matters together, as allowed and suggested in the procedure as all the matters were all related and connected.	ET1 pa's 73, 76 <i>(no reference in ET3)</i>	✗	Facts as described are denied. The Respondent was within its rights to elect to treat the separate issues independently of one another.
Breach of Trust and Confidence	36	23/03/2020	The purpose of the disciplinary allegations and process undertaken against the Claimant was to intimidate, humiliate and harass the Claimant into leaving her employment. The Claimant had to request the time of the hearing as it had been omitted on the invitation. The Claimant was only given notice of the time to attend the disciplinary hearing a few hours before the hearing. At the Disciplinary Hearing the Respondent presented no case whatsoever. The Chair and HR was asked by the Claimant to follow the written procedure and ACAS guidelines by beginning the hearing with putting the case to the Claimant. They declined to do so. The Chair asked the Claimant questions to fill in the gaps for him. These were some pre prepared questions that were very basic, establishing basic facts including asking the Claimant to inform the Chair the date (23rd January 2020) the alleged misconduct had occurred. The Chair did not appear to have any information outside that contained in the invitation letter sent to the Claimant. The Chair of the Hearing did not in present or refer to any evidence during the hearing and adjourned the hearing after the Claimant read a pre prepared statement.	ET1 pa's 65, 68 ET3 pa's 4.7, 4.8, 4.9, 4.10.	✓	The facts as described are denied. The intention of the disciplinary process as described has been misconstrued. The Respondent did not apply a provision, criterion and/or practice to the Claimant.
Breach of Express Contractual term (1)	37	Apr-20	Chris Beeley lied in interview with HR claiming Justine Cain had line management responsibilities for CM, when he knew she did not have any line management of CM.	ET1 pa 70 (Respondent provided the meeting minutes to the Claimant in 1st May 2020 via email) ET3 pa 22 (bp 13)	✗	The Respondent does not know what meetings the Claimant is alleging took place.
Constructive Dismissal	38	Apr-20	Mr Beeley gave a dishonest depiction and criticism of the Claimant as CM's line manager, including claiming the Claimant "didn't really manage her", and "he felt sorry" for CM. The primary reason given by Chris Beeley for removing responsibilities from the claimant and giving them to Justine Cain, and transferring her and the remainder of her duties to Engineering was that the Claimant was a "better fit" in Engineering. Mr Beeley did not elaborate further.	ET1 pa 70. <i>(no reference in ET3)</i>	✗	The facts as described are denied
Indirect Discrimination contrary to s19 of Equality Act 2010						
Victimisation contrary to s27 of Equality Act 2010						
Harassment by unwanted conduct contrary to s6(1)a / s26 of Equality Act 2010						
Direct Discrimination due to Sex contrary to s39(2) and s13 Equality Act 2010						
Discrimination Arising from Disability contrary to s15 Equality Act 2010						
Direct Discrimination (Disability)s39(2) and s13 Equality Act 2010						

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Direct Discrimination (Equality Act 2010 s19(2) and s13)	✓	39	01/05/2020 - June 2020	The Respondent failed to investigate or remedy Tracey Elvin's victimising acts that first came to light on the 17th March 2020, and were first complained of on the 22nd March 2020 to CEO Steve Parkin and Director of HR Louise Rich as instructed. The claims of victimisation were made in subsequent grievance and disciplinary processes, including the grievance submitted by the Claimant on the 11th May 2020 but were ignored and only when the Claimant insisted during the disciplinary appeal hearing did the Respondent agree to look at the victimisation claims if the Claimant agreed to resubmit it separately, which the Claimant did on 22nd May 2020. That investigation failed to consider the evidence or weigh the balance of probabilities.	ET1 pa's 70, 73, 76 ET3 pa's 19	X	The facts as described are denied
Direct Discrimination (Equality Act 2010 s19(2) and s13)	✓	40	01/05/2020	The grievance appeal was unfair as Neal Austin was the same level of management as heard the Grievance, and not an impartial arbitrator.	ET1 pa 24, 61, 62, 70 ET3 pa 22 (bp 12)	X	The facts as described are denied. Mr Austin is a member of the Executive. His hearing the Appeal was just and fair and not in breach of the ACAS Code. New. Need the opportunity to respond if Tribunal allows its inclusion.
Direct Discrimination (Equality Act 2010 s19(2) and s13)	✓	41	01/05/2020	He should have recused himself.	ET1 pa 70	X	New claim: The facts as described are denied.
Direct Discrimination (Equality Act 2010 s19(2) and s13)	✓	42	01/05/2020	1st May 2020, Grievance appeal outcome emailed to Claimant it failed to consider the evidence fairly and impartially, or weigh evidence on balance of probabilities.	ET3 pa's 4, 6, 22 (bp 13) ET1 pa 71		The Claimant did receive a first written warning.
Direct Discrimination (Equality Act 2010 s19(2) and s13)	✓	43	26/05/2020	There was an unreasonable delay in concluding the disciplinary process.	ET3 pa 4, 8	✓	The process was conducted during Covid lockdown and was concluded in a timely fashion, in the circumstances.
Direct Discrimination (Equality Act 2010 s19(2) and s13)	✓	44	03/06/2020	26th May 2020, Disciplinary appeal upholds 12 month written warning.	ET1 pa's 76, 77 ET3 pa 4, 9 ET1 pa 80 ET3 pa 22 (bp's 16)	X	The facts as described are denied.
Direct Discrimination (Equality Act 2010 s19(2) and s13)	✓	45	15/06/2020	From 3rd June 2020 onwards Tracey Elvin insisted on multiple occasions that the Claimant's return to work was conditional on factors not related to health.	ET1 pa's 74, 80, 82, 83. ET3 pa 22 (bp 16)	X	The facts as described are denied.
Direct Discrimination (Equality Act 2010 s19(2) and s13)	✓	46	15/06/2020	Failing to implement Attendance Management policy, holding any sickness reviews, or back to work meetings with the Claimant, or implementing any recommendations from Occupational Health reports to supporting the Claimant attempts to return to work in both May and June 2020. Failure to implement the recommendations of the OH report of 14th May 2020 concerning communication, working practices, and phased return.	ET1 pa 82 ET3 pa 22 (bp's 1, 16)	✓	The facts as described are denied.
Direct Discrimination (Equality Act 2010 s19(2) and s13)	✓	47	16/06/2020	The Respondent denied the Claimant had returned to work and Tracey Elvin requested the Claimant to get a sick note so she would not return to work for another week.	ET1 pa 83 ET3 pa 22 (bp 17)	X	The facts as described are denied and appear to be made maliciously.
Direct Discrimination (Equality Act 2010 s19(2) and s13)	✓	48	16/06/2020	Justine Cain gave Tracey Elvin a false account of the contents of the "Porcupine" folder, Tracey Elvin instructed Ms Cain to delete the folder/files from the Quality drive and move them into her personal drive and then failed to investigate if that was bullying or discrimination by Ms Cain towards the Claimant when given substantial prima facie evidence.	ET1 pa 83 ET3 pa 22 (bp 17)	X	The facts as alleged are denied.
Direct Discrimination (Equality Act 2010 s19(2) and s13)	✓	49	16/06/2020	The Respondent prevented the Claimant returning to work, by Tracey Elvin accusing the Claimant of upsetting CM and of destroying company data by implication; leading to Tracey Elvin to coerce the Claimant into acquiescing into taking a week's paid leave.	ET1 pa 83, 86, 88 ET3 pa 22 (bp 17)	X	The facts as alleged are denied. The Claimant was under investigation for the purposes of 'Some Other Substantial Reason' and was granted paid leave whilst the investigation was undertaken.
Direct Discrimination (Equality Act 2010 s19(2) and s13)	✓	50	18/06/2020	The Respondent prevented the Claimant returning to work when on 16th June 2020 @ 18:26pm after the Claimant had agreed to take a week's leave, the Respondent removed the Claimants access to all computer systems, making it a de facto knee jerk suspension.	ET1 pa 84, 85 ET3 pa 22 (bp 16)	X	The facts as alleged are denied.
Direct Discrimination (Equality Act 2010 s19(2) and s13)	✓			The job description provided to the Claimant on the 18th June 2020 confirmed that the role offered to the Claimant was a demotion. Chris Beeley, Global Head of the Quality Department wrote the job description for the proposed new job that was in the Engineering Department.			

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Direct Discrimination (Disability)s3(2) and s13 Equality Act 2010	✓					
Discrimination Arising from Disability contrary to s15 Equality Act 2010	✓					
Harassed by unwarranted conduct contrary to s40(1)a / s26 of Equality Act 2010	✓					
Victimisation contrary to s27 of Equality Act 2010	✓					
Indirect Discrimination contrary to s19 of Equality Act 2010						
Constructive Dismissal						
Breach of Express Contractual Term (1)	✓					
Breach of Trust and Confidence	✓					
Failure to make Reasonable Adjustments contrary to s20 of Equality Act 2010						
Breach of ACAS Code	✓					
51	19/06/2020	The Respondent prevented the Claimant returning to work when on the 19th June 2020, the Respondent emailed the Claimant informing her she was suspended and subject to investigation. No clear accusations were made or any justification for the suspension was put to the Claimant. Suspending the Claimant from work on 19th June 2020 as a knee-jerk reaction and without justification.	ET1 pa 86, 88 ET3 pa 4.11			The facts as alleged are denied. The letter sent was clear and unambiguous regarding the reason for the investigation and its possible outcomes. Suspension on full pay was a part of a series of generous measures afforded to the Claimant.
52	19/06/2020- 09/07/2020	The Respondent prevented the Claimant returning to work by an unreasonable delay in concluding their investigation. The Claimant was advised the suspension would last about a week and be kept under review. However, the Claimant was not advised of the outcome of the investigation until 9th July 2020 and remained suspended until that date.	ET1 pa 86, 90 ET3 pa 4.11	X		The facts as alleged are denied.
53	09/07/2020	The letter inviting the Claimant to a disciplinary hearing on the 15th July 2020 was against natural justice and the final straw act. The Claimant was informed she could have her employment terminated. The Respondent provided no clear allegation or any evidence from which she could have understood the allegations or prepared a defence. It would have amounted to a show trial and there was a forgone conclusion of dismissal.	ET1 pa 91 ET3 pa 4.11, 6.	X		The facts as alleged are denied. The invitation letter was compliant with the law and ACAS Code

COMMENT BY THE RESPONDENT: "Some of the allegations are phrased materially differently in the ET1. In the interests of pragmatism the Respondent has not sought to rephrase this column of the Scott Schedule but, insofar as there is a material difference, the Respondent will argue that the ET1 takes precedence."

COMMENT FROM THE RESPONDENT: "** I (this column) is not intended to replace the ET3 which remains the primary pleading document."