



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs L Quinn

**Respondent:** Boots Opticians Professional Services Limited

**Heard at:** Manchester (as a CVP hearing)      **On:** 7, 8, 9, 10 June & 16 & 29 July  
2021 (latter 2 days in chambers)

**Before:** Employment Judge Johnson

**Members:** Ms E Cadbury (by CVP)  
Ms M Dowling (by CVP)

## Representation

Claimant: in person

Respondent: Mr T Walker (counsel)

# JUDGMENT

The judgment of the Tribunal is as follows:

1. The claimant's complaint of constructive unfair dismissal is well founded. This means that the claimant was constructively unfairly dismissed.
2. The claimant's complaint that the respondent failed in its duty to make reasonable adjustments contrary to sections 20 and 21 Equality Act is well founded and succeeds. This means that the claimant's complaint is successful.
3. The quantification of the claimant's successful complaints will be determined at a remedy hearing on a date to be confirmed.

# REASONS

## Introduction

1. The claimant was employed by the respondent as an optical consultant at their Macclesfield store from 4 January 2014 until her resignation with effect from 10 April 2020, (having previously given notice on 13 March 2020).
2. She presented a claim form to the Tribunal on 24 April 2020 following a period of early conciliation and brought a complaint of constructive unfair dismissal and disability discrimination. The respondent presented a response resisting the claim and at a case management hearing before Employment Judge Allen on 6 November 2020, the case was listed for a final hearing, issues were identified, and case management orders were made.

## Issues

3. The issues were identified at the preliminary hearing and were included within the hearing bundle. They were agreed at the preliminary hearing before Employment Judge Allen on 6 November 2020, subject to a correction at the final hearing in that the date of the final straw was 10 March 2020 (and not 13 March 2020 as originally described). They were as follows:

### Unfair (constructive) dismissal

- 1.1 Did the respondent fundamentally breach the claimant's contract of employment? The fundamental breaches relied upon are:
  - 1.1.1 A failure to provide a safe working environment; and/or a,
  - 1.1.2 Breach of duty of trust and confidence.
- 1.2 The ways in which the claimant alleges that the duty of trust and confidence were breached were as follows:
  - 1.2.1 The culture of the store, that is the way in which complaints about the store were addressed and responded to and an alleged failure to correctly investigate and address issues;
  - 1.2.2 The lack of confidentiality in dealing with complaints;
  - 1.2.3 The response to such complaints, or lack of appropriate response; and/or,
  - 1.2.4 The working environment in the store.
- 1.3 The last straw relied upon which the claimant relies is the events of 10 March 2020, (not 13 March 2020 as originally described) and the response to her complaints about the events.
- 1.4 Did the matters alleged amount to a fundamental breach of contract?
- 1.5 Did the claimant resign in response to the breach?

1.6 If the claimant was dismissed, was she dismissed for a fair reason, namely some other substantial reason?

Disability Discrimination – alleged failure to make reasonable adjustments – sections 20 and 21 Equality Act 2010

2.1 A PCP is a provision, criterion or practice. Did the respondent have the following PCP's:

- 2.1.1 Requiring employees to work in an unsafe working environment;
- 2.1.2 Requiring employees to work alone and not following occupational health guidance when it was identified that working alone should occur; and/or,
- 2.1.3 Requiring employees to work time in lieu when time off was taken for significant medical appointments.

2.2 Did any such PCP put the claimant at a substantial disadvantage in relation to any relevant matter in comparison with persons who were not disabled at any relevant time?

2.3 If so, did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at any such disadvantage?

2.4 If so, were there steps that could have been taken by the respondent to avoid any such disadvantage? The steps the claimant alleges should have taken are as follows:

- 2.4.1 Not requiring the claimant to work alone, in particular when an occupational health report said that she should not do so;
- 2.4.2 Providing a safe working environment; and/or,
- 2.4.3 Allowing the claimant to take leave for significant medical appointment, without taking additional time to make up for it.

2.5 if so, would it have been reasonable for the respondent to have take those steps at the relevant time\

2.6 Were the claimant's complaints presented within the time limit set out in section 123 of the Equality Act 2010? Dealing with this issue may involve consideration of issues such as: when the act alleged occurred; if it was conduct extending over a period when that conduct concluded; and/or whether the time should be extended on a just and equitable basis?

Remedy

- 4. If the claimant succeeds, in whole or in part, the Tribunal will be concerned with issues of remedy and, in particular, if the claimant is awarded compensation and/or damages, will decide how much should be awarded.

**Evidence Used**

5. The claimant gave oral evidence along with her husband Mark Quinn. Mr Quinn is a retail manager with 15 years' experience and has run a group of three Boots Opticians Franchises since 2017. She also called former colleagues Phil Cuthbert and Toni Doull, who also used to work at the respondent's Macclesfield branch.
6. The respondent relied upon the witness evidence of Sarah Baylay (Practice Manager at Macclesfield), Natalie Ward (Ms Baylay's predecessor) and Benjamin Clark (Area Manager and grievance investigating officer).
7. The Tribunal was provided with a hearing bundle of 1010 pages in length, (which included the witness statements) and written closing submissions from Mrs Quinn and from Mr Walker on behalf of Boots.
8. The Tribunal took account of the claimant's unrepresented status and applied the relevant provisions of the Equal Treatment Bench Book and the overriding objective.

## **Findings of fact**

### Introduction

9. Boots UK Limited is a large company which operates retail stores across the UK. As well as the familiar pharmacy stores, it also provides opticians services through Boots Opticians Professional Services Limited, which can be found within the larger Boots UK pharmacy branches, but can also operate as standalone stores. In Macclesfield, separate pharmacy and opticians' shops operated in different premises in the town centre.
10. The claimant ('Mrs Quinn') was employed by Boots Opticians Professional Services Limited ("Boots"), the Respondent, as an optical consultant in their Macclesfield branch. She had worked there since 4 January 2014. Her duties included taking prescriptions and helping customers choose glasses and lenses, doing 'peripheral vision and field' tests, 'pressure' tests and administrative work. It is understood that she worked 26 hours per week.
11. Boots being a large company had access to Human Resources (HR), which they called 'People Point' for employee relations advice and access to policies and procedures, including an Absence Policy.
12. Within the Macclesfield store, the staff were managed by a Practice Manager, who was Natalie Ward until August 2019, when she moved and was replaced by Sarah Baylay. An Area Manager would be responsible for managing a number of stores in a particular area and insofar as Macclesfield was concerned, Johnny Tighe initially held this position, before being replaced by John McGuinness, with Benjamin Clark taking over from September 2020.
13. The Macclesfield premises were located in a street of neighbouring shops. The drains and sewerage pipes connected to these businesses were described as 'Victorian', known to be troublesome and had a

history of failure, which understandably could affect the environments within the affected shops. Ms Baylay confirmed in her evidence that she could recall at least a dozen separate sewage leaks in store, during the 10 years that she had worked in Macclesfield.

### The claimant's disability

14. Mrs Quinn had for a number of years been affected by Multiple Sclerosis ('MS'), a neurological condition and a lifelong chronic illness. She experiences flare-ups from time to time. She helpfully explained that MS involved the immune system mistakenly attacking the brain and nerves. Disease modifying drugs can help alleviate some of the symptoms but affect the immune system leaving her more vulnerable to infection.
15. Boots accept that for the relevant time in these proceedings, Mrs Quinn was disabled within the meaning of section 6(1) of the Equality Act 2010 because of her MS.
16. Typical impairments that could be experienced included spasms in limbs, brain fog caused by lesions and optic neuritis. The latter condition had caused some permanent damage and Mrs Quinn described herself as being partially blind in her left eye.

### Absences at work

17. Mrs Quinn experienced a number of absences related to her MS following diagnosis, but for the purposes of these findings of fact, it is not necessary to consider them all in detail. The Tribunal found particularly helpful the tables in paragraph 35 of the Boots closing submission which set out Mrs Quinn's sickness absences from 2015, drawing on the return-to-work interviews enclosed in the bundle. These tables indicated when informal reviews were/were not actioned under the Boots Absence policy. The Tribunal noted that Mrs Quinn did not progress beyond the 'First Informal Review' stage of the Absence Policy during her employment.
18. Mrs Quinn clearly did not want MS to prevent from her working and maintained as good an attendance as was possible, perhaps on occasion, to her own detriment, returning to work before she was fully recovered.
19. The Tribunal noted that in 2017, she suffered a significant MS flare up. She was absent from work from 21 July to 16 September 2017. She was subject to a return to work interview with her line manager Joanne Larby. In a detailed record of the interview, Ms Larby identified the present medical position experienced by Mrs Quinn and agreed a rehabilitation plan with her, including a phased return to work, beginning with reduced hours and subject to regular reviews. The return to work plan was confirmed in a letter which Ms Larby sent to Mrs Quinn on 18 September 2017.
20. She then had a number of short absences during the remainder of 2017 and 2018, which were related to her MS. Following an absence in July

2018, Ms Larby recommended a referral to Occupational Health ('OH'), but Mrs Quinn was described as being 'hesitant' and declined a referral at that time. The Tribunal accepted Mrs Quinn's evidence that she was anxious that an OH referral would be the beginning of a process which would result in her being dismissed on capability grounds. It is unfortunate that she felt this anxiety and while this may have been the case, the Tribunal does not find that an OH referral would have resulted in this outcome.

21. On 11 September 2018, Mrs Quinn suffered a further flare up and had a fall at work. Her line manager Stephanie Steel completed the return-to-work interview and reminded Mrs Quinn that 'waiting days' would apply as a result of her absences. The Tribunal understood this to be an arrangement under the Boots contractual sick pay scheme where an employee would not be paid for the first 3 days of any sickness absence once there had been 3 occasions of absence in a rolling 24-month period. Mrs Quinn appears to have been subject to this arrangement at various times following the return-to-work interview on 11 March 2017.
22. She was also reminded by Ms Steele that in accordance with Boots' absence policy, she was subject to a 6-month review period starting from 13 July 2018, which was the date of the previous sickness absence. This would therefore conclude on 13 January 2018. Any further absences during this review period could result in a further escalation under the absence policy.
23. The Tribunal was taken to the Boots' absence management policy, and we noted that managers had discretion when to start the absence review process taking into account the number, length and frequency of any absences. Mrs Quinn had a chronic condition which amounted to a disability, and it was clear that she had considerable anxiety about her condition and the impact that this might have on her ability to remain in work with Boots. She tried to ensure that she maintained a good level of attendance at work. Inevitably, a condition such as MS would result in relapses which would require short periods of absence. Boots asserted that appropriate management discretion was applied to Mrs Quinn as a disabled employee, such as not progressing her sickness management beyond the first informal review stage. However, what was not clear to the Tribunal, was how and indeed if, Boots provided reassurance to Mrs Quinn so that her anxieties about remaining in work were alleviated.
24. The Tribunal also heard evidence about how 'lieu-time' operated in Mrs Quinn's case. When she started her employment in 2014 Mrs Quinn was told that she would need to use holiday allowance or work time-in-lieu to accrue time off to attend medical appointments. It was only in 2017 that she was told such appointments could be covered by unpaid leave if her employer received sufficient advance notice. She then ensured that any consultant letters and appointments were given to management as soon as she received them so that they had a record of the progress of her condition and ensure that she had given sufficient notice to attend planned medical appointments. Mrs Quinn also maintained that she never accrued lieu time to cover any impending

sickness absences. Ms Baylay confirmed that staff must use holiday, lieu time or unpaid leave if they were unable to schedule medical appointments at either the beginning or end of the day. She also suggested that Mrs Quinn was allowed to use lieu time to cover short periods of sickness absence, although longer periods had to be recorded as sickness absence. The Tribunal was not provided with any evidence to show how this flexibility by management in relation to lieu time benefitted Mrs Quinn in the management of her sickness absence.

25. Mrs Quinn did accept in September 2018 that she should be referred to OH and a report was produced by 'Colleague Health' following an assessment on 7 November 2018. She was considered fit to continue in work and OH recommended a number of adjustments, noting that someone with MS may have a higher level of sickness absence than someone without that condition. It was recommended that a supportive approach be adopted by management in terms of her attending medical appointments and an effective return to work following absences and that a risk assessment should be considered. No risk assessment document was produced by either party at the hearing.
26. The report also recommended that Mrs Quinn '*...would benefit from being accompanied when she is going off site to training days and other outside the store work related engagements. No lone work is advised in store. These are advised to ensure that Mrs Quinn has the support of a colleague close by should this be required.*' The Tribunal accepts that following the receipt of this report by management, she was not required to work off site unaccompanied or be required to work alone in the store if she was not feeling well enough to work on the shop floor. A particular issue identified by Mrs Quinn, however, was that she was expected to work alone upstairs when she was doing administrative work. One of the tasks when doing this work, involved using a kick stool to access files at height. Boots argued that she was not truly working alone, because other staff would be regularly coming up and down the stairs and in addition, Mrs Quinn would have access to a phone. Mrs Quinn's argument was that she was effectively working alone most of the time while working upstairs and that a phone would be of little use if she had a fall. In the absence of a risk assessment and taking into account the OH recommendation, the Tribunal finds it surprising that there was no consideration of the potential risks that might be faced by Mrs Quinn when working upstairs and the adjustments that might be reasonable to manage those risks. This was particularly important given that management were aware that Mrs Quinn could be unsteady on her feet. While Boots never compelled Mrs Quinn to use the kick stool, no alternatives were offered and Mrs Quinn would have wanted to complete the work as best she could with the available equipment and facilities.
27. The question of working upstairs was something which continued to trouble Mrs Quinn. At her return-to-work interview on 11 November 2019, Jo Larby, Assistant Manager noted that '*...Laura (Mrs Quinn) still unsteady on legs. Is able to do admin while sitting but not to be moving around too much – No lifting*'. Mrs Quinn explained to the Tribunal that

she refused to sign the return-to-work form as she felt that management were not addressing the '*no lone working*' recommendation made by OH. The Tribunal finds that management took a very cursory approach to this particular recommendation. Given the context behind the OH report and Mrs Quinn's impairments, the Tribunal finds it surprising that understandable concerns felt by Mrs Quinn were not investigated further, in order to provide her with reassurance.

28. Further absences were recorded as arising on 14 January 2019 (sickness), 16 to 18 March 2019 (MS flare up), 14 to 15 June 2019 and 28 to 29 June 2019 (MS flare up), 30 September to 4 October 2019 (MS flareup), 2 to 9 November 2019 (MS flare up), 16 to 17 December 2019 (MS flare up) and 11 to 14 February 2020 (MS flare up). During 2019, Mrs Quinn was being reviewed by her treating consultant and she was prescribed a new form of medication called Ocrevus. The Tribunal understood that this involved attending hospital for a first infusion of Ocrevus and a repeat two weeks later. There would then be further infusions every 6 months and while this treatment was not risk free, it was thought to be highly effective in reducing the effects of MS.
29. Mrs Quinn agreed to have her first two infusions in June 2019 and had agreed with management that she would attend these appointments on non-working days. She attempted to avoid appointments taking place when she should have been working, but was unable to come into work on 14 to 15 and 28 to 29 June 2019 and 16 to 17 December 2019 (which were the days following the appointments), because of side effects arising from the infusions. However, she asserted that she had agreed with management that these 'recovery' absences would be taken as unpaid leave. Despite this, management clearly recorded these days as sickness absence. Ms Ward who was Practice Manager at the time of the June infusions did not have a reliable recollection of what occurred at that time. Ms Baylay (Practice Manager at the time of the December infusion) could not recall granting unpaid leave. Mrs Quinn gave clear and convincing evidence concerning this particular matter and her recollection appeared to be good. Moreover, the omission of return to work interview forms within the hearing bundle for the 3 dates in question, (when this form was available for all of the other recorded absences), suggested to the Tribunal that on balance an agreement was reached that the June 2019 and December 2019 absences would be regarded as unpaid leave rather than sickness absence.
30. The implication of this management error, was that by the time of the final absence in February 2020, Ms Baylay felt that a trigger point had been reached where the number of instances of sickness absence would require Mrs Quinn to be subject to the stage 1 informal review process again. This understandably caused Mrs Quinn considerable concern, because she had worked hard in planning her absences relating to treatment in order that this situation would not arise. The Tribunal had difficulty reconciling the approach of Ms Baylay at the return-to-work meeting on 25 February 2020 with the requirements of the Boots' Absence Review Process for short term absences. The



latter refers to three absences in a 12-month period being a possible trigger for a first formal review. Ms Baylay appeared to base her decision on Mrs Quinn's alleged 12 absences in a 24-month period. If the 12-month period had been used, and the absences properly recorded (i.e. the unpaid leave absences being excluded), it appears to the Tribunal that Mrs Quinn's absences in a 12 month period would amount to four, all of which are related to her MS condition. In these circumstances, it is questionable whether a first informal review would have been appropriate. Ms Baylay conceded that on the basis of a 12-month absence pattern she may not have implemented a first informal review but at the time that action felt right and she had consulted with HR.

31. The Tribunal heard evidence from both Ms Ward and Ms Baylay that they had no previous experience of dealing with employees who had disabilities. Although Ms Baylay felt that management had been lenient towards Mrs Quinn in how they applied the Boots absence policy, the Tribunal did not hear any evidence which convincingly demonstrated that Mrs Quinn was informed of how and when adjustments would be made to the application of sickness absence management processes. For Mrs Quinn, any sanction caused her significant concern and led her to think that Boots was 'trying to manage her out'. While Ms Baylay was clear that she did not envisage Mrs Quinn's job becoming at risk due to capability concerns, and felt than any formal review of Mrs Quinn's sickness absence would remedy any deficiency in recording/managing her sickness absence, there was a failure by management to convey these beliefs to Mrs Quinn to provide her with much needed reassurance.
32. The management of Mrs Quinn's long standing and chronic condition appeared to have been dealt with on an ad hoc and piecemeal basis. Too much emphasis appeared to have been placed on Mrs Quinn asking for help rather than a proactive management approach to addressing the workplace risks which arose for Mrs Quinn. This is not to say that disabled employees should be exempt from sickness absence management, but a more nuanced and empathetic approach would be appropriate in these circumstances to provide reassurance to understandably anxious disabled employees such as Mrs Quinn. The Tribunal finds that a more structured and planned approach to supporting employees with chronic conditions such as MS would have provided better support and clarity to Mrs Quinn and line managers would have benefited from better training from Boots in relation to absence and disability.

#### Drains and sewers

33. There was no dispute between the parties, that Boots Macclesfield premises had a problem arising from the drains and sewers around the building.
34. The respondent asserted that because they were a tenant and the problem arose within the environs of a number of neighbouring shops, this was primarily a matter for the landlord of the buildings and that Boots did what they could to deal with the problem in their premises.

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Ms Baylay summarised the problem as arising from Victorian era clay pipes which tended to crack, get blocked and burst over time. Mrs Quinn felt that Boots took far too long to deal with the problems when they arose and latterly was particularly concerned because her infusions suppressed her immune system. In any event, a number of instances arose and in particular during 2019, which affected the environment within the practice in terms of water damage including soaking carpets, availability of toilet facilities and foul smells.

35. The hearing bundle included a Maintenance & IT Log Sheet, which was completed by managers when problems with the practice building and IT arose. Floods, leaks and related matters were reported on the following dates and whether the manager felt it was a health and safety matter, which would reduce the call out time to 4 hours instead of a much longer period:

- a) 25 November 2017 'flood in prescreen';
- b) 7 January 2019 'smell and leak at bottom of stairs';
- c) 14 January 2019 'smelly drains...complaints';
- d) 17 January 2019 'access to manhole under stairs';
- e) 16 April 2019 'drain in teach ares blocked, smell in electric cupboard';
- f) 1 May 2019 'after a visit on 30.5.19 [sic] not fixed – blocked again';
- g) 25 May 2019 'water coming through ceiling';
- h) 11 June 2019 'fly infestation';
- i) 3 October 2019 'mens toilet not flushing and smell in lab';
- j) 4 October 2019 'cleaning of floor – deep clean';
- k) 8 November 2019 'leaks everywhere – wall + frame bar';
- l) 21 November 2019 'smell instore. Log to see if drain blocking again';
- m) 9 January 2020 'deep clean'.
- n) 13 March 2020 'leak bottom of stairs and prescreen'
- o) 14 March 20020 'deep clean'.

It was clear to the Tribunal that 2019 was a particularly troublesome year for the Macclesfield practice in terms of the drains and sewers and this continued into 2020. Mrs Quinn felt that the recording of the various incidents by Boots was inadequate and incomplete and tended to understate the severity of many of the incidents. The Tribunal considered documents in the bundle, where Mrs Quinn set out her assessment of the discrepancies between what was recorded in the maintenance and IT logs and her recollection of the specific incidents. She supported this information with copies of contemporaneous text messages between her and her husband Mark Quinn and also with a number of work colleagues.

36. Boots submitted that following her resignation, Mrs Quinn had looked at all of the drain problems in the worst possible light and that her contentions need to be treated with a degree of caution. While the Tribunal recognised Boots' concerns, it noted that Mrs Quinn gave a description of the impact of these incidents upon staff and customers at the practice. In October 2019, it was necessary for staff to use the toilet at the Boots pharmacy in Macclesfield, although in practice they would use the nearby M&S store. Indeed, Ms Baylay wrote to Boots' property team confirming the unavailability of toilet facilities in October 2019 and the pressure this placed upon the practice, particularly with

delay caused to appointments by staff having to leave for 10 minutes or more to access alternative toilet facilities. Ms Baylay confirmed that between 4 to 17 October 2019 staff were unable to use the toilets in the Macclesfield store. The works to repair the pipe at the heart of the October 'flooding' incident were authorised on 27 November 2019 but did not start until 7 January 2020. The Tribunal finds that a problem of this nature in a workplace for such a lengthy period of time, poses a significant health and hygiene problem for those working in the premises.

37. Mrs Quinn said that the fly infestation which was reported in June 2019, actually began to appear in May. She accepted that the flies were fruit flies of some 2 to 3mm in length, but disputed that this was a common occurrence at this time of year in the practice. In a text message to her husband on 23 May 2019 she said that so many flies had come out from under the roof tiles when they were removed to deal with a bowing pipe. Ms Baylay in her statement recalled that there were flies in the store in June 2019. *"Maintenance came out and found that flies were living behind the sink next to the manhole under the stairs"*. She said that maintenance advised the use of fly spray and management took this action to resolve the matter. The Tribunal does not accept that this problem was a mere seasonal occurrence of a minor nature. It was not a situation where a few flies were entering the store and being a nuisance. It was actually a situation where insects were nesting and breeding within the premises and causing considerable concern. In addition to Mrs Quinn, Ms Doull and Mr Cuthbert gave credible evidence concerning this problem.
38. Mrs Quinn said that *'the water coming through the ceiling'* incident in May 2019 was bad and the leak which took place on 4 October 2019 was particularly bad. She explained that when maintenance arrived to deal with a problem with the men's toilet, in October 2019, a soil pipe *'came apart'*. This resulted in water coming into the reception area and several staff attempted to mop it up, including Mrs Quinn. While there did not appear to be any requirement placed upon her to assist with this task, as a member of the team she naturally wanted to help her colleagues. Ms Baylay eventually sent her home because her trousers, shoes and socks were soaked with sewage water. The Tribunal recognises that this incident would have taken everyone by surprise and while Ms Baylay would have notified senior management at Boots, diligent staff in the premises would have tried to deal with the problem as best they could. It is unfortunate that line management did not notice Mrs Quinn helping with the cleaning sooner and immediately sent her home.
39. During January 2020, significant work was carried out by Boots to excavate a trench and to fix the drains, with the floor being replaced at the end of the month. During early March, Mrs Quinn noticed that there was a build-up of smells from the sewage system and she was therefore not surprised when there was another flood on the 13 March 2020, although she acknowledged that for the short period that followed before her resignation on the morning of 13 March 2020, no further incidents arose relating to the drains and sewers.

Covid 19 and concerns regarding the imminent pandemic in March 2020

40. In March 2020, it was becoming increasingly clear that the Covid 19 pandemic was a growing problem throughout the world. The UK experienced its first Covid 19 deaths at the end of February 2020 and the World Health Organisation declared a pandemic on 11 March 2020.
41. Mrs Quinn had an MS flare up in February 2020 and was absent from work. On 9 March 2020, she requested a meeting with Ms Baylay concerning the existing sewage problems in the practice and to discuss the potential impact of Covid 19 reaching the UK. Ms Baylay did not provide any evidence to the contrary and there was no record of the meeting within the hearing bundle. However, the Tribunal see no reason to disbelieve Mrs Quinn and accept that this meeting would have taken place, especially given the timing of the meeting and Mrs Quinn's particular vulnerability arising from her disability. Mrs Quinn gave convincing evidence when she accepted that initially she did not take Covid 19 too seriously, but it began to occur to her that as she felt Boots *'hadn't followed health and safety properly with regards to sewage, so why would they follow it for Covid?'* Following this meeting with Ms Baylay, Mrs Quinn said that she *'felt reassured'*.
42. The next day on 10 March 2020, a customer arrived at the practice and was visibly displaying flu-like symptoms. He mentioned to Mr Cuthbert at reception that he had just returned from Malta. Mr Cuthbert notified Ms Baylay and she checked the government website, which she said at that time, did not advise against travel to and from Malta. She therefore felt that there was no reason why the customer could not be seen by staff. The Tribunal acknowledges that Ms Baylay was not made aware of the customer's viral symptoms at the time when Mr Cuthbert called. Mrs Quinn however, was not aware of this misunderstanding and felt that this decision was made because the customer had a history of complaining and it was felt best to see him, rather than risk another complaint if he was sent away.

Resignation

43. It was at this point that Mrs Quinn said she *'felt very let down'*. It appeared to be a combination of her frustrations regarding the way in which the drains and sewer issues had been addressed as she did not feel the problem had been taken seriously by management and she said that the sewers were starting to smell again. She was also frustrated by the imposition of the first stage informal review, despite her careful attempts to manage her absences when she received her infusions and she said that *'I felt they were trying to manage me out'*. Finally, she lost confidence in Boots primarily because of the decision to allow the customer with flu symptoms to have an appointment on 10 March 2020, because it illustrated to her that she could not have confidence in Boots to keep the staff safe during the pandemic.
44. Mrs Quinn gave evidence that she felt that she was not taken seriously and was left feeling very stupid and was made to feel petty for raising issues at work. She was particularly critical of Ms Ward who had ceased to be a manager in the Macclesfield practice since August

2019. Mrs Quinn gave evidence that Ms Ward had made inappropriate comments in relation to the fly infestation and the sewage issues when staff complained. While Ms Ward denied that she had been dismissive of complaints, the allegation was supported by Ms Doull and Mr Cuthbert in their evidence and the Tribunal accepts that Ms Ward failed to be empathetic to the understandable concerns that were being raised.

45. It seemed that Mrs Quinn was willing to continue in work until she discovered the failure to record her absences as unpaid leave with the consequence of triggering an informal review. This was quickly followed by concerns about the return of the foul smell in the practice, with the inevitable anxieties that would create and then Ms Baylay's unwillingness to refuse the customer who had returned from Malta with symptoms.
46. At this point in time, it was not clear that there would be a total lockdown in the UK. However, Mrs Quinn saw herself facing further action relating to absences, further problems with the sewers and drains and being faced with numerous customers with Covid-like symptoms who would be allowed to attend the practice. It was therefore not surprising that from 10 March 2020, Mrs Quinn reflected upon her position with Boots.
47. Although the Tribunal accepts that Mrs Baylay subsequently became very tough in enforcing access to the premises to customers who displayed Covid-like symptoms, Mrs Quinn would not have been aware of this at the time she resigned.
48. Mrs Quinn prepared a letter of resignation on 12 March 2020. It was a simple letter which said the following:

*'I regret to inform you that I wish to terminate my employment with Boots Opticians. I am giving four weeks' notice. My last working day will be Friday 10<sup>th</sup> April.*

*I am grateful for the opportunity to work for Boots Opticians but feel that now is the right time for a change in my working career'.*

Mrs Quinn made no reference to the issues which she said had been troubling her and which led to her resignation. She handed the letter to the Assistant Manager Jodie Attward when she arrived at work on 13 March 2020. At 11am that morning, there was a further flood in the practice and Mrs Quinn was sent home later than morning.

49. Ms Bayley subsequently messaged Mrs Quinn using the staff WhatsApp at 12:19 and said she was *'so gutted that you've handed your notice in'* and went on to say *'I'm sorry for any part I play in your decision to leave and if there's anything I can do to change your mind please let me know x'*. She also asked if Mrs Quinn would reconsider her decision to resign.

#### Grievance (18 March 2020)

50. Mrs Quinn did not reconsider her resignation and made a complaint on

18 March 2020, which was sent to senior managers in Boots and which they decided should be treated as a formal grievance.

51. Mr Clark was appointed as an investigating officer and determined that the grounds of complaint related to:
  - a) 'Boots failed to comply with basic health and safety standards and government advice in relation to Covid 19';
  - b) 'Numerous drainage issues have not been properly handled'; and,
  - c) You [Mrs Quinn] feel that adequate adjustments have not been made in relation to your MS so as to enable you to continue working which has resulted in you feeling discriminated against and you resigning on 13 March 2020.'
52. Mr Clark met with a number of Mrs Quinn's colleagues including Ms Ward, Ms Baylay, Christine Wallace, Jane Woodward and Sarah Dove. He also interviewed Mrs Quinn, but not Mr Cuthbert or Ms Doull despite Mrs Quinn requesting that he speak with them. Due to Covid, Mr Clark was unable to conduct the interviews until late 2020 (and interviewed Mrs Quinn on 17 September 2020). Mr Cuthbert and Ms Doull left their employment with Boots in November and October 2020 respectively
53. Mr Clark produced a grievance outcome letter which he sent to Mrs Quinn on 29 October 2020. He summarised the reasons for the grievance and then dealt with his consideration of each one in more detail.
54. His conclusions were that management had followed government guidance relating to Covid that existed at the relevant time. He also referred to more general health and safety concerns and the allegation that complaints would be '*belittled*', but went on to say that following his interviews, he had found no evidence to support this contention.
55. In relation to the drainage issues, he acknowledged that lengthy timescales in dealing with the problem existed, but attributed the primary cause of the problem to be heavy rainfall in the local area and decaying drainage infrastructure. The Tribunal felt that Mr Clark simply explained what had happened and what management did at the time without acknowledging implications for employees and in particular Mrs Quinn's health as a disabled employee.
56. Mr Clark finally dealt with the question of adjustments to support Mrs Quinn and concluded evidence of support being given and a suggestion that she had failed to inform managers of her difficulties. This was even though she had been referred to OH and recommendations had been made. He appeared to adopt a very narrow interpretation of the OH recommendations and misunderstood Mrs Quinn's concerns about working alone upstairs and suggested that she wanted to have a 'chaperone' provided, rather than looking at adjustments in a more general and perhaps imaginative way. His only recommendation was that return-to-work interviews should take place in a timelier manner.
57. His letter summarised his findings which was not to uphold the

grievance in its entirety and Mrs Quinn was offered a right of appeal. She decided not to exercise that right and in her evidence before the Tribunal, she demonstrated a clear belief that she could **have** no confidence that an appeal would be worth pursuing. Additionally, she had already commenced Tribunal proceedings and decided to focus upon this process.

58. The Tribunal feels that the grievance process did not engage with the issues, (or appreciate the seriousness of those issues), which had been raised by Mrs Quinn. It is acknowledged that grievances conducted post termination can be more difficult to resolve in a satisfactory way and this would have especially been the case taking into account the restrictions arising from Covid. Nonetheless, Mr Clark's handling of the process appeared to be perfunctory and did not empathise with the understandable concerns which had been raised by Mrs Quinn and which she attributed to her decision to resign.

#### Alleged lack of confidentiality

59. Mrs Quinn asserted that complaints were not dealt with in a confidential way and she referred to conversations that she had with line managers which she said were later repeated to colleagues.
60. The Tribunal heard little evidence concerning this particular matter, apart from a conversation which Mrs Baylay had with Ms Doull concerning whether or not Mrs Quinn would return to work following her decision to give notice of resignation. Ms Doull said that Mrs Baylay told her that it was unlikely, especially as she had since made a complaint to management. The Tribunal accepted that this conversation took place, but that Mrs Baylay subsequently apologised to Mrs Quinn about sharing this information with Ms Doull.
61. Apart from this incident, the Tribunal heard no other evidence of specific examples of breaches of confidentiality by management. Mr Cuthbert and Ms Doull suggested that this formed part of the general culture in the Macclesfield practice and in particular everyone seemed to know about the health status their colleagues. While the Tribunal accepts that staff may have become aware of colleague health issues, whether in relation to absences or more generally, we do not accept that this arose from a general lack of confidentiality on the part of management.

## **The Law**

### Constructive Unfair Dismissal

62. Section 95(1)(c) of the Employment Rights Act 1996 provides that an employee is dismissed by his employer if 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.

63. In Western Excavating (ECC) Ltd v Sharp 1978 ICR 221 it was held that in order to claim constructive dismissal an employee must establish:

- (i) that there was a fundamental breach of contract on the part of the employer or a course of conduct on the employer's part that cumulatively amounted to a fundamental breach entitling the employee to resign, (whether or not one of the events in the course of conduct was serious enough in itself to amount to a repudiatory breach).
- (ii) that the breach caused the employee to resign – or the last in a series of events which was the last straw.
- (iii) that the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

64. In Croft v Consignia plc [2002] IRLR 851, the Employment Appeal Tribunal held that the implied term of trust and confidence is only breached by acts and omissions which seriously damage or destroy the necessary trust and confidence. Both sides are expected to absorb lesser blows. The gravity of a suggested breach of the implied term is very much left to the assessment of the Tribunal as the industrial jury.

65. It is open for an employer to argue that, despite a constructive dismissal being established by the employee, that the dismissal was nevertheless fair. The employer will have to show a potentially fair reason for the dismissal and that will be the reason why the employer breached the employee's contract of employment; see Berriman v Delabole Slate Ltd 1985 ICR 546 CA. The employer will also have to show that it acted reasonably. If an employer does not attempt to show a potentially fair reason in a constructive dismissal case, a Tribunal is under no obligation to investigate the reason for the dismissal or its reasonableness.

66. Mr Walker referred in his final submissions to the case of Lewis v Motorworld Garages Ltd [1986] ICR 157 (CA) and the decision of the Court of Appeal that a course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive unfair dismissal following a 'last straw' incident even though the last straw does not amount to a breach of contract.

67. He further referred to the case of Courtaulds Northern Textiles Ltd v Andrew [1979] IRLR 84 (EAT) in relation to the common ground between the parties that the respondent owed the claimant a duty not act in a manner calculated or likely to destroy the relationship of trust that exists between employer and employee.

68. In relation to the question of whether there is a fundamental breach concerning the provision of a safe working environment, Mr Walker reminded the Tribunal of the case of Dutton and Clark Ltd v Daly [1985] ICR 780 (EAT) and in the question of whether a reasonable employer would have allowed the relevant conditions to exist in the workplace.



Discrimination arising from a failure to make reasonable adjustments

69. Sections 20, 21 and 39(5) read with Schedule 8 of the Equality Act 2010 provide, amongst other things, that when an employer applies a provision, criterion or practice (“PCP”) which puts a disabled employee at a substantial disadvantage in relation to a relevant matter in comparison to persons who are not disabled, the employer is under a duty to take such steps as it is reasonable to have to take to avoid the disadvantage. Paragraph 20 of Schedule 8 provides that an employer is not expected to make reasonable adjustments if he does not know, and could not reasonably be expected to know that the employee has a disability and is likely to be placed at the disadvantage.

70. In the case of the ***Environment Agency v Rowan* [2008] IRLR 20**, the Employment Appeal Tribunal held that in a claim of failure to make reasonable adjustments the Tribunal must identify:-

- (a) the provision, criterion or practice applied by the employer;
- (b) the identity of non-disabled comparators where appropriate; and
- (c) the nature and extent of the substantial disadvantage suffered by the Claimant.

**Discussions**

Constructive unfair dismissal

*Was there a fundamental breach of the claimant’s contract of employment?*

71. Mrs Quinn has asserted that there was a fundamental breach because the respondent failed to provide a safe working environment and/or that there was a breach of the duty of trust and confidence by the respondent. She argues that this breach arose from the way in which complaints were investigated, a lack of confidentiality in dealing with these complaints, a lack of an appropriate (or any) response and the general working environment in the store.

72. The Tribunal accepts that Boots failed to provide Mrs Quinn with a safe working environment within its Macclesfield premises. This was the case from 2019 especially, when the ongoing problem with the drains was most serious and while she was undergoing a new drug treatment involving infusions which left her immune system compromised. She had shared the full implications of this treatment with management before it took place and had tried to make arrangements for hospital appointments and recovery absences that ameliorated the impact upon her availability for work.

73. Even considering Mrs Quinn’s specific health concerns, the Tribunal finds that Boots failed to provide a safe working environment in its Macclesfield premises regardless of her disability. It simply cannot be acceptable to allow a workplace to remain open for any length of time without there being accessible and functioning toilet facilities on site (as, was the case at certain times during this period) and the ongoing

risk of sewage/water leaks, bad smells and possible fly infestations. All of this experience understandably caused considerable anxiety for Mrs Quinn and her colleagues, even when the drainage issue had been dealt with, albeit temporarily. It is surprising that there was no evidence of Boots seeking alternative temporary premises in order that the problems with the sewers could be resolved so that staff could confidently feel safe in their workplace. It is all the more surprising given the health-based nature of Boots business and the eye examinations taking at the premises, with a requirement for staff to maintain good levels of hygiene and perceptions of hygiene amongst patients.

74. In terms of the breach of the duty of trust and confidence, the Tribunal accepts that the respondent failed to give Mrs Quinn the necessary reassurance that her health would be protected in the workplace. The 'business as usual' manner in which Boots responded to the drainage issues was evidence of that. It is therefore not surprising that although there was some confusion regarding the way in which the patient who had returned from Malta was dealt with by Mrs Baylay, it added to Mrs Quinn's concerns regarding the management of health and safety. Moreover, there was the ongoing smell within the premises during March which led Mrs Quinn to believe that a further leak from the drains was likely. It is therefore understandable that Mrs Quinn felt continually anxious about the health and safety in the workplace.
75. In terms of the working environment, the Tribunal accepts that as an unrepresented party, Mrs Quinn was not specific concerning the matters to be considered within this issue. However, the Tribunal accepts that the management of her sickness absence was something which could fall within this issue and was subject to considerable scrutiny by the respondent in terms of witness evidence, documentation and submissions. Accordingly, it is within the overriding objective to include this matter within the issues and the respondent is not prejudiced by this decision.
76. Mrs Quinn gave convincing evidence that she kept her managers informed of her infusion treatment and the recovery absences that would be needed following each appointment. She diligently made sure that her appointments took place on her non-working days and then agreed with management that the recovery absences would take place using unpaid leave. The Tribunal accepted that this was agreed, and it is understandable that Mrs Quinn was upset when she realised that management had recorded as sickness absence and then insisted upon triggering the informal review. The consequence of this review was of course that she was under pressure to attend work and the review came about not because of her sickness absence, but because of a failure to record her absences as agreed and in a way which Mrs Quinn hoped would assist both her and Boots.
77. The Tribunal appreciates that Mrs Quinn's line managers valued her as an employee and at no stage were seeking to take her through a capability process which would result in her dismissal. But while this was the case, they failed to properly empathise and appreciate that a colleague with MS would feel particularly anxious and vulnerable and

require reassurance as to her continued employment. It was no doubt a busy and hectic time for management at these particular premises, but as a consequence they failed to properly manage Mrs Quinn's absences despite agreement and ensure that she could have continued trust and confidence in their ability to manage her.

78. In terms of the lack of confidentiality, the Tribunal does not accept that a management culture existed which failed to respect confidentiality, and which could amount to a breach of trust and confidence. As was explained within the Findings of Fact above, there was simply insufficient evidence to support this allegation.

*Was the last straw relied upon, the events of 10 March 2020?*

79. Mrs Quinn was very clear in her evidence that she was already unhappy with her discovery that managers had not properly recorded her absences and as a result she was being subject to a further informal review. Additionally, the increasing smell within the Macclesfield premises was adding to her anxiety (rightly as it turned out), that a further problem with the drains was about to arise suggesting a failure by management to deal with this problem.

80. However, the events on 10 March 2020 involving the customer who had just returned from Malta, represented the trigger which prompted Mrs Quinn to consider her position and to resign.

81. It is fair to say that Mrs Balyay was unaware of the viral symptoms when she told Mr Cuthbert that this customer could attend his appointment, but Mrs Quinn understandably believed that Mrs Baylay had been informed of these symptoms, when making her decision. On this basis, it was reasonable for her to conclude that she could not have confidence in management in relation to their duty to keep the workplace safe with an imminent Covid pandemic about to reach the UK.

82. For these reasons, the Tribunal accepts that this was the final straw which gave rise to the decision to resign.

*Did the matters amount to a fundamental breach of contract?*

83. When taken as a whole, the Tribunal accepts that the matters described above amounted to a fundamental breach of contract. They had an attritional impact over time and while some of the events might have been out of the immediate line managers' control, Boots failed to resolve the problem and provide necessary and sufficient reassurance to enable Mrs Quinn to feel safe and properly managed within the workplace.

84. The Tribunal has considered the approach which would have been taken by a reasonable employer in circumstances not dissimilar to those experienced by Mrs Quinn. However, it is left with the conclusion that in similar circumstances, no reasonable employer would have

allowed an employee with Mrs Quinn's vulnerability to remain in work or to manage her in the way which she was managed in relation to her absences for infusion treatment.

*Did the claimant resign in response to the breach?*

85. Mrs Quinn finished work on 10 March 2020 and considered her position before her next working day, which was 13 March 2020. She completed her letter of resignation and dated it 12 March 2020, and handed the letter to Ms Attward on 13 March 2020.

86. Although the resignation letter was polite in its tone and did not allude to the issues which provoked her decision, the Tribunal accepts that the resignation was in response to the breach in question. The decision was made shortly after the final straw had taken place and the complaint which she subsequently sent to management on 18 March 2020 gave a clear indication of what was in her mind when she resigned. She did not delay before reaching the decision and did not affirm the contract.

87. But for the events which led to her resignation, the Tribunal believes that Mrs Quinn would probably have remained in work as she appeared to enjoy her job, liked her colleagues, and was well thought of by them. While she ultimately found alternative work at her husband's practice, the Tribunal does not find that this was a significant motivation behind the decision to resign.

*If the claimant was dismissed, was she dismissed for a fair reason, namely some other substantial reason?*

88. Finally, there was no evidence to suggest that the respondent intended to dismiss Mrs Quinn and but for her resignation, she would have remained in employment. Consequently, the Tribunal does not accept that she would have been dismissed by the respondent when her employment ended.

*Failure to make reasonable adjustments*

*Provision Criterion or Practice (PCPs)?*

89. The Tribunal has already found that Boots failed to provide a safe working environment at its Macclesfield practice and in relation to its consideration of the PCPs, it has been asked to consider amongst other things, whether employees were required to work in an unsafe working environment.

90. The Tribunal accepts that the Macclesfield practice did not suffer from drainage problems, fly infestation or non-working toilets all of the time. However, this was a continuous problem, particularly during 2019 and 2020 and it is noted that a decision was not reached by Boots to close that premises and seek a temporary and alternative practice location while the matter was being resolved. There was a general recognition that the issues arose from historic and ageing drains in the town centre and in the grievance, Mr Clark even went as far as to attribute the

problem to way in which rainfall descended from the surrounding hills.

91. For these reasons, Boots should have appreciated the significance of the issue and the likelihood that no permanent solution could be found. There was no evidence provided to suggest that they had sought the support of the local authority in terms of alternative premises and in the absence of any temporary closure of these premises, the Tribunal can only conclude that Boots required its employees to work in an unsafe working environment when the problems arose relating to the sewers, toilets and fly infestation. Boots suggested that this was not a significant problem and often, leaks simply involved water rather than sewage. The Tribunal finds that while Mrs Quinn was accused of exaggerating the problems, the real issue was the way in which Boots did not take these problems seriously from the staff and customer perspective. Simply expecting staff to use nearby facilities in other shops was not a sufficient step to take as they still had to work in the affected premises.
92. The claimant also mentioned that she was expected to use the kick stool when accessing files when working on administration on the first floor. While staff would have been expected to use this equipment to access hard to reach files, there was no suggestion that the kick stool in itself resulted in an unsafe working environment, supporting this alleged PCP.
93. The alleged PCP concerning employees working alone has been drafted in a somewhat confusing way. The Tribunal have considered whether a PCP existed whereby employees at the Macclesfield practice were expected to work alone. However, it should be noted that any OH guidance made in respect of individual staff and lone working, would be something that would be considered under adjustments and would not amount to a PCP.
94. It is understood that staff based at the Macclesfield premises would usually be based there and would not be expected to travel or work alone away from those premises. The Tribunal accepted that no member of staff would be expected to work alone in the premises apart from the managers who held keys for opening and closing each day and giving access to contractors. This was not something which would normally be required of non-managerial staff.
95. Accordingly, the relevant question in this case, was whether employees would be expected to work alone in a part of the premises and in particular, when working on the first floor when doing administration work. The Tribunal accepts that a staff member doing administration work on the first floor would not be required to be accompanied. This is not surprising given that the office in question would be in the same building as the shop part of the premises and away from the customer facing side of the business. Moreover, it was accepted that anyone working upstairs, would not be truly alone as other staff would come up and down stairs on a regular basis. The Tribunal accepts that Mrs Quinn was concerned about working upstairs by herself and we have already noted that this matter did not appear to have been the subject of a risk assessment. However, this is not the question that the

Tribunal has been asked to consider in relation to this alleged PCP. Accordingly, it must conclude that employees were therefore not required to work alone, in the sense that is conventionally understood.

96. The claimant asserted that employees work time in lieu when time was taken for significant medical appointments amounted to a PCP. The Tribunal accepted that Boots agreed with Mrs Quinn when she commenced her employment, that she could work additional hours to be taken as 'lieu time' when she was attending medical appointments. The Tribunal accepts that this facility was available to all employees and heard evidence to this effect. Lieu time was a useful device whereby employees could take time off without using annual leave, or sickness absence to cover medical appointments. No evidence was heard which suggested to the Tribunal that the taking of lieu time in this way, amounted to an actual requirement. As such, we do not accept that this amounted to a PCP.

Substantial adverse impact on claimant?

97. In relation to the surviving PCP of requiring employees to work in an unsafe working environment, the Tribunal finds that this PCP put Mrs Quinn at a substantial disadvantage when compared with colleagues who were not disabled at the relevant time. This is because of her suppressed immunity arising from the treatment she was receiving for MS and in particular the infusions which began in June 2019, which was during the same time as when the problems with the drains were at their most severe.
98. Boots were well aware of Mrs Quinn's disability and were kept up to date and informed with the treatments that she was receiving, their impact upon availability for work and how she could reduce their impact upon that availability.

Reasonable adjustments

99. In terms of reasonable adjustments, the only relevant adjustment remaining relates to the provision of a safe working environment. This was a very general adjustment in terms of what Mrs Quinn says should have been provided. However, the Tribunal recognises that she has been unrepresented in these proceedings and moreover, the duty to make adjustments fell upon Boots rather than her.
100. Boots were well aware of Mrs Quinn's health issues relating to her suppressed immunity when the problems with the drains in the Macclesfield premises were at their most acute and should have been continuously vigilant as to the risks that she faced when attending work with these problems. We did not hear any evidence about the extent to which the first-floor office was affected by the drainage issues, but in any event, Mrs Quinn could only access this part of the building through the main entrance.
101. The Tribunal has made it very clear about its views concerning the way in which the Macclesfield premises were allowed to continue opening when the drainage problems were at their most serious and

especially when toilet facilities were not available. However, in the case of Mrs Quinn with her particular vulnerabilities, even if it was not possible to move to alternative premises, they should have at least considered alternative measures, such as suspending her on full pay when the problems arose.

102. The Tribunal finds that the failure to obtain a risk assessment following the OH report in 2018 and to obtain further OH reports in 2019 or 2020, meant that management did not have available the necessary guidance and support to assist them in making suitable adjustments.
103. Additionally, even without this evidence, they were on 'red alert' as to Mrs Quinn's vulnerabilities from June 2019 and her managers should have been vigilant and ensured that she was not allowed to participate in any cleaning or work proximate to leaks when they took place in the premises. If necessary, she should have been sent home immediately and it was not enough to allow her to assist and then send her home only when her trousers became wet.
104. It is acknowledged that Mrs Quinn was feeling vulnerable with regard to her MS and its progression, but management could have worked with her in an empathetic way which would have reduced her fears that these adjustments if imposed, might ultimately lead to her dismissal.

#### Time limits?

105. The Tribunal did consider the question of whether or not the complaint of disability discrimination arising from the failure to make reasonable adjustments was presented in time in accordance with section 123 Equality Act 2010.
106. For the purposes of this complaint, the Tribunal accepts that the failure of Boots to comply with the duty to make reasonable adjustments arose from June 2019 when they were fully aware of Mrs Quinn's imminent infusions and the impact that it had upon her immunity. This duty continued from this date and until the date of her resignation on 13 March 2010 due to the ongoing treatment regime and the problems continuing at the workplace as discussed above. Under these circumstances, this failure continued over a period of time ending on the date of resignation in accordance with section 123(3)(a) Equality Act 2010.

#### **Conclusions**

#### Judgment

107. The claimant's complaint of constructive unfair dismissal is successful.
108. The claimant's complaint that there was a failure by the respondent to make reasonable adjustments in relation to the PCP that employees were required to work in an unsafe workplace is successful.
109. It will now be necessary for the case to be listed for a remedy hearing

to determine the quantification of the claimant's successful complaints.

Case management orders

110. The Tribunal will provide Notice of a Remedy hearing on a date to be confirmed and with a hearing length of 1 day.
  
111. The parties are ordered to provide a list of proposed case management orders (agreed if possible), to the Tribunal for consideration by Employment Judge Johnson within 21 days of the date that this judgment is sent to the parties. This will ensure that the case will be ready to be heard at the remedy hearing.

Employment Judge Johnson

Date 10 August 2021

JUDGMENT SENT TO THE PARTIES ON

20 August 2021

FOR THE TRIBUNAL OFFICE

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