EMPLOYMENT TRIBUNALS

Claimant: Andrea Brady

Respondents: 1. Jepsons Limited
2. Andrew Chell

HELD AT: Manchester **ON:** 19, 20, 21 October 2016
16 November 2016
(In chambers)

BEFORE: Employment Judge Feeney
Mrs L Garcia
Mr C S Williams

REPRESENTATION:

Claimant: Mr B Williams (Counsel)
Respondents: (1) No Appearance
(2) Mr Andrew Chell in person

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. the claimant's claims of unfair dismissal, wrongful dismissal, and failure to provide a written statement of particulars of employment against the first respondent succeed.

2. the claimants claims of sexual harassment; victimisation on the grounds of sex, refusal of time off for dependents and direct and indirect associative disability discrimination against the first and second respondent fail and are dismissed

REASONS

1. The claimants brings claims of unfair constructive dismissal, breach of contract, failure to provide a written statement of particulars of employment, harassment on the grounds of sex, victimisation on the grounds of sex, refusal of

time off to care for her daughter and direct and indirect associative disability discrimination following her dismissal from the respondent's employment on 7th December 2015.

2. The first respondent is now in liquidation and the second respondent has appeared as a witness in respect of the first respondent's case but also in respect of being personally liable for the discrimination claims.

Claimant's submissions

3. The claimant submits that following the second respondent being aware that she had seen intimate photographs which he had saved onto the work computer that he then sought to marginalise her and reduce her terms and conditions so that she would leave, that he refused to allow her to have time off to care for her daughter in an emergency and deliberately changed her hours of work to make it difficult to care for her daughter who had a disability.

Respondent's Submissions

Second only

4. The second respondent states that he always had a good relationship with the claimant although she was difficult from time to time, that he had genuine reasons for calling the claimant to a disciplinary hearing but did so without advice at first and acknowledges that, that he has not discriminated against the claimant and indeed until this hearing did not believe that she could have seen these intimate photographs which he admits exist but he did not believe were accessible. He denies that in any event that that would be sexual harassment. He did not know the claimant's daughter was disabled but he believed she was vulnerable to grooming and denies that he has discriminated against the claimant on the basis that she has a disabled dependent.

5. **Issues in this case**

(A) Unfair Constructive Dismissal

Was the first respondent in fundamental breach of contract in the way it dealt with the alleged disciplinary matters against the claimant, if so was the claimant entitled to resign?

(B) Wrongful Dismissal

Was the claimant guilty of gross misconduct, if not, does her wrongful dismissal claim succeed?

(C) Failure to provide written statement of particulars

Did the respondent fail to provide the claimant with a written statement of particulars of employment?

(D) Sex Discrimination (Harassment)

Did the respondent harass the claimant on grounds of sex when he stored intimate photographs on the work computer.

(E) Sex Discrimination (Victimisation)

In respect of victimisation on the grounds of sex has the claimant committed a protected act and if so, did she suffer detriment as a result of that protected act?

(F) Time off for Dependents

Did the respondent refuse to allow the claimant time off to care fro her daughter in an emergency contrary to section 57A Employment Rights Act 1996

(G) Associative Disability Discrimination

Did the respondent discriminate against the claimant on the grounds of her association with her disabled daughter in requiring her to work 7.30 to 5pm?

Witnesses and Bundle

6. The Tribunal heard from the claimant herself and for the respondent Mr Andrew Chell and Mr T Fielding, employee. There was an agreed bundle. We allowed the second respondent to add correspondence relating to the "fraud" issue to the bundle.

The Tribunal's findings of fact are as follows.

7. The first respondent is a flooring company of which the second respondent became the owner and Managing Director. The claimant was employed by him from the 18th July 2011. She was offered a job by the second respondent after he became aware she was having difficulties in her previous employment due to sexual harassment.

8. The claimant's initial roles were having control of the first respondent's account with Barrett Homes undertaking the supervising of installation of flooring, preparing quotes, invoicing, handling telephone enquiries from the customers. Her original hours were 8.30 to 4.30 pm Monday to Friday and her salary was £17,500. These terms and conditions were set out in an offer letter sent to the claimant at the time. In October 2011 the claimant's salary was increased to £18,500 and there was a letter setting this out, further a bonus of £250 per quarter was introduced if targets were met.

9. The second respondent stated that the claimant was issued with a written contract on 1st October 2014 which she signed. The claimant agreed she did receive

a statement of terms and conditions on 1st October 2014 but that this related to her account manager job. We agree this was the case.

10. On or around December 2014 the claimant was appointed Temporary Branch Manager, her remuneration was £21,000. She received an annual bonus of £5,000 and this was in relation to the prospect which was being discussed from September 2014 that the claimant would run an associated company More4 Floors. This was to be a new venture providing floor coverings to sub-contracting installers and to some national builders such as David Wilson Homes, Barrett and Jones.

11. A specific trade counter was physically built within the first respondents building and it was agreed that the claimant would carry on with the Barrett Homes for a while and help set up More4 Floors with a view to taking over More4 Floors at a point in the future. Hence the increase in her salary because she was taking on additional work. In December her salary increased to £25,000. The claimant denied that her salary (which she said was £26,000) was increased because she was undertaking work for Barretts and More4 Floors.

12. In January 2015 there was a soft launch for More4Floors and the 2nd respondent alleged that he had had to speak to the claimant about her spreading rumours at this event regarding (for want of a better word) his 'lovelife'. The claimant denied such a meeting had taken place but we prefer the respondent's evidence as the later interviews with Alison Driver, an independent HR advisor, refer to this and the claimant at the tribunal referred to the second respondent having relationship with two other female workers.

13. The claimant also claimed that the second respondent agreed she would receive a car allowance of £400 each month. This was because in September 2014 the second respondent said that had she had not taken out the lease of a vehicle he would have provided her with a car six months after More4 Floors had been established as she was committed to that car lease he agreed the car allowance of £400 a month. She also stated that he provided her with a company mobile phone. We find the car allowance too vague to be a reliable indication of a contractual term but we accept the claimant was provided with a mobile phone.

14. She denied it was ever suggested that her role at More4 Floors would ever be temporary however she did agree that the second respondent informed her she could have her old job back of Account Manager if the venture was not successful. This role was filled in July 2015 but the second respondent stated that it was still open for the claimant to go back.

15. The claimant said that there was no discussion of any financial targets in relation to More4Floors. We accept this as there was some email traffic about More4floors but nothing of this nature was referred to.

16. The claimant and the second respondent in effect covered the work and her working hours were 8.30 to 4.30 but says that when she became Branch Manager her hours changed to 8 to 4 because there were calls before 8.30 and the second respondent opened the trade counter at 7.30 following which she arrived at 8 to take over as obviously The second respondent was still working in the first respondents

main business. She said that when she finished at 4 o'clock the second respondent would cover her role until 5 o'clock and they worked alternative Saturdays at the weekends.

17. In May 2015 the claimant said she asked to work 7.30 to 3.30 so she could leave work to meet her daughter from school, her daughter was having mental health difficulties and she wished to make sure that she could pick her up from school. The second respondent agreed but in evidence stated this was a temporary arrangement but that was not the claimant understands. We accept the claimant's evidence on this point.

18. On Monday 27th July 2015 the claimant returned to work following a period of annual leave and at the end of that week ,31st July, the second respondent started a period of annual leave lasting for one month. The claimant said the week that they overlapped she was extremely busy and although she did see a new icon on her new desktop computer with the name "Andy's phone backup" she did not think about it at that stage. However a couple of days before the second respondent went away on holiday she opened the file and she noticed a series of images in tile format. The claimant agreed in response to questions from the panel at the hearing that she would not initially be able to see what was on these tiles but she would need to open them and scroll down. She said that she did this even though it was labelled Andy's phone and discovered images of another employee of the first respondent a Sisi Rodriguez. There were a number of images of an intimate nature with both parties naked and involved in intimate activity. The claimant said she was horrified and embarrassed and that she was not aware that the second respondent and Ms Rodriguez were involved in any sort of relationship. She found the images offensive. She agreed there were also many photographs of the claimants garden and house renovations.

19. The claimant states that she took advice from Pamela Swan the first respondent's Account Manager who advised her to watch her back and to copy the images so she obtained a memory stick from home and the following day took a copy of them. We did not hear from Pamela Swan ,we find it disingenuous of the claimant to suggest this was the reason for copying the files. There was no reason at this stage to do so, she was still on amicable terms with the second respondent

20. At this point of time the second respondent would still have been in work. The claimant asserted that she realised that the second respondent, might victimise her once he realised she had seen these photographs. When asked why she thought this she said because this had happened with two other female members of staff who he had personal relationships with and when they deteriorated their employment came to an end however when we discussed these two members of staff at the Tribunal with the second respondent he stated he was quite friendly with these two ladies but there was no relationship going on and part of the reason for the closeness was because one of them was having difficulties conceiving and that there was no issues at all with their employment. We accept his evidence in relation to this as the claimant was merely speculating.

21. As referred to above the second respondent went on leave at the end of July but came in on 26th August to process the payroll. He was then off until 31st August.

The claimant went on annual leave again on 11th September returning to work on 29th September and stated that she noticed then the images had been removed from her desktop. She said she did not see the second respondent all week, he did not come in to the office to work from her desk at 3.30 pm as normal, nor did he do a handover or ask her whether she had a nice holiday. The claimant believed this was the first sign that the respondents attitude to her was changing.

22. The second respondent's evidence was that he was worried about losing data off his mobile phone and believed he had downloaded the contents of his personal mobile phone on to the secure part of the respondent's company's main computer which was password protected and it would not be possible for the claimant to access this folder. This begged the question which the second respondent did not seem to have asked himself as to why the claimant would be saying later on that she had these photos on a memory stick if that was not the case and he certainly knew this by the time he drafted his witness statement. He had no plausible explanation for this save his own deep rooted belief that he had saved these photographs in a password protected part of the computer. His only explanation was that the claimant had taken time to "break in to this part of the computer" and that she may have known his password from observing him. He agreed that there were 280 photographs, most of which were innocuous regarding his garden renovation and house renovations but some were private in relation to a company employee who was at the time and is now his partner Ms Rodriguez.

23. The second respondent says he was just extremely busy when the claimant came back to work. In fact he was dealing with fraud by another member of the firm, which involved extensive liaison with accountants and lawyers and also was having a detrimental effect on the companies finances. He was extremely worried that the company would become insolvent as indeed later proved to be the case. He did not mention any of this in his witness statement or in any of the correspondence from his solicitor however we did find the second respondent a credible witness on this point and we accept that this matter was concerning him at the time. He did produce during the course of the Tribunal some correspondence which supported his evidence.

24. He says that he was unaware that the claimant had perceived any difficulties as she was sending him friendly emails on 19th August and on 19th September. There were emails on 17th August from the second respondent to the claimant with a list of things that needed to be done in respect of More 4 Floor that was perfectly normal and friendly, there was an email back from the claimant which was ended with two kisses on 19th August.

25. On 29th September the second respondent had emailed the claimant saying "I'm not ignoring you I will be over mid morning just have a couple of things to do this morning take stock of some of the changes and then we can talk about what you need for More 4 when I come over". The claimant replied "Coolio no worries (hope you not missed me too much) I have sent Sisi (Ms Rodriguez) a thank you message, she is fab sorting out my filing cabinets I should go away more ha!! xx".

26. The fact that the second respondent used the words 'not ignoring you' suggests to us that he was not deliberately isolating the claimant as otherwise he

would not have used that phrase. He also sent the email on the claimant's first day back in work, again this was inconsistent with him seeking to isolate her.

27. The claimant also said that on 5th October the second respondent had said to her that things hadn't been working out, and that he needed to be out of the office to generate more business, the claimant said he was passive aggressive towards her i.e. very calm, what he was suggesting was that her hours needed to change from 7.30 to 3.30 Monday to Friday and alternative Saturdays to 7.30 to 5 pm Monday to Friday and 8 am to midday every Saturday. The respondent denies this however in the light of the emails of 9th and 13th October referred to below we find this was correct.

28. The claimant also related an incident on 8th October where she received a phone call from her daughter's school stating that the school bus had been involved in a road traffic accident and her daughter needed to be admitted to hospital with a suspected broken arm, she states that when she explained the situation to the second respondent he said that she couldn't leave because there was no cover and the claimant says she was forced to make alternative arrangements which she managed to do. The second respondent stated that all he knew about it was that the alternative arrangements had been made. The claimant agreed that she had then sent a very positive text message to the second respondent about some new business she thought she had secured, she said she did this to try and be positive and to hope that his attitude to her would improve. We preferred the second respondent's evidence as it is unlikely the claimant would send an email of this nature if the second respondent was being difficult with her.

29. On 9th October the claimant sent an email to the second respondent setting out two professional appointments she had regarding her daughter, this said "tomorrow you should know about (unreadable) October at 4 o'clock Child and Adolescent Mental Health Services (CAMHS) at Birch Hill Hospital, 21st October at 4 o'clock Social Worker Crisis Team Child Protection Officer and Head of Year Seven at Siddall Moore School. If you would like the numbers so you can confirm the above appointments so I can provide them for you if you require me to stay this evening or other evenings to make up the time that also is not a problem". This is evidence that the claimant's hours had changed back to 4pm by this time as she would not have needed to advise the second respondent or provided cover if she was still leaving at 3.30 pm. That message was at 13.05.

30. The second respondent replied at 13.58 copied to Mr Hunt "no problem Andrea I will make sure you have cover can you schedule a meeting with me and Dave in your diary for next Monday at 11, we will need your strategy plan for growth within More 4 Floor for the next financial years broke up by quarters, I will be in tomorrow and will send you a copy of More 4 Floors expected turn over chart by the month". The claimant then replied to the effect that she was upset that her personal information regarding her daughter had been copied to Dave Hunt and she went on to say "not sure why you are picking a fight with me and what it is I have done to upset you so much and why you feel you need to involve Dave at all. I would like you to come over for a chat if that is not too much to ask".

31. The second respondent replied almost immediately "I can't now I need to run I am already late Dave is the General Manager of Jepsons who actually own More 4 so technically although he is not running More 4 he is over you. I know it was personal stuff but More 4 needs covering and as we discussed any cover if it can't be me it will have to be somebody from Jepsons so it ultimately affects Dave. I also know Dave will or would never discuss personal stuff with anyone but myself. I am sorry if you think I am picking a fight this is definitely not my intention the information I requested is as per our conversation earlier this week where I said go away and come back to me on Monday with a plan to launch More4"

32. The respondent said if there was a perceived change in his attitude it was because he was dealing with an extremely serious potential fraud issue at that time which is referred to above.

33. On 9th October the claimant said and the second respondent agreed that this had been discussed that she had lost him £15,000 worth of business because she had left early. Further that he said that she would have to pay for cover herself if she wanted to leave early. As seen earlier the second respondent wanted the claimant to attend a meeting on 12th October with himself and Dave Hunt, this meeting never occurred because the claimant was expecting the second respondent to call her into the meeting and the second respondent was expecting her simply to turn up. She believed the meeting would be held in her office and when he did not turn up she just presumed he had changed his mind.

34. On 13th October the second respondent sent the claimant a further email stating as follows

> "Andrea" firstly I was surprised you didn't turn up to the meeting yesterday that was requested previously I have assumed something came up in More 4 Floors? However enclosed is your letter confirming the pay structure for managing More 4 Floor, I have also included a copy of an Excel sheet that will assist in how I calculated your bonus and turnover projections. You will notice that I have left the bonuses uncapped, I have also guaranteed some future payments to yourself with regards to any cover required as discussed this will be charged to More 4 Floors at an acceptable rate but ultimately it will be you as Branch Manager to fully manage and it goes without saying as the turnover ramps up at some point More 4 Floors will have to have more staff. At present the only outgoings staff wages wise are yours and a couple of hours of week for a warehouse man again this will rise as just stated.
>
> I also sent hard copies out to home and I would suggest another meeting to discuss previous items arranged for yesterday be done again this Friday the 16th at 3 o'clock. I will say at this point then when I arrange a meeting wherever it may be you endeavour to turn up, no one else expects me to chase them up and make sure they attend. With regards to the turnover log sheet I need this filled in by weeks and an unlocked version will be placed for you inside More 4 Floors company documents, this is used by you only using the bottom section i.e. months and when entering the turnover against cash/BACS etc. It will automatically adjust the top section. Please do not use

the top section or it will throw the main calculations out. I have tried to make it as user friendly as I can".

35. This letter certainly does show a slightly more prickly attitude towards the claimant by the second respondent. It also shows that cover and hours were an issue. The second respondent enclosed with this a letter setting out the terms on which he was suggesting the More 4 Floor Branch Manager's position would be appointed.

36. This letter stated that "the opening hours were 7.30 to 5.30 Monday to Friday and Saturdays 8 o'clock to 12 o'clock with an hour for lunch. She had 28 days holiday, bank holidays paid as standard, remuneration of £21,000 per calendar year paid on 20th of each month, a bonus payment of £4,000 on reaching this year's target of £450,000 paid pro-rata monthly basis and against reaching that months target however if it is not achieved it can be accrued in subsequent months following. A second bonus claim to include 2.5% commission on turnover over this year's target of £450,000. 0.5% commission only paid on any turnover/client achieved by a third party excluding myself. Note achievable commission/bonus are only paid if the company overall margin remains equal or above 24%. Car allowance payment to be paid after achieving this year's target." The second respondent projected therefore that on a turnover of £450,000 her total earnings would be £25,000, if the turnover was £750,000 her earnings would be £32,500 plus a car allowance of £400. He believed that the potential total income achievable was £37,300. He stated that he had also agreed More 4 Floor would guarantee to pay her bonus pro-rata per month until the end of December 2015 which equated to £333.33 per calendar month and add to the already agreed paid bonus in July – September this year.

37. The claimant was extremely shocked by this in particular she believed and we accepted her evidence that these targets were completely unachievable. On 13th October she sent an email back to the second respondent stating "the hours on the door are 7.30 to 5.00 on starting this venture it was agreed that the hours originally would be shared and so would the weekend work, it looks like now I am on my own, my basic salary at present is £25k, does this mean I have been asked to work all the hours for a deduction of £4,000 off my yearly salary". The second respondent replied "my error if I got the hours wrong no you are not being asked to take a £4k cut for more hours I said from the beginning I have no problem paying you what you wanted but there is a but, it has to be justified based on performance. Firstly I have placed the basic at £21,000 plus guaranteed bonus until the venture gets going, you have been paid this since July, the turnover in July to September was £60,000 K, this needs to ramp up for that salary, I have further guaranteed this until January which gives you a total of six months guaranteed, as for the help yes I will still help but at the moment my efforts are better driving the ranges into builders where ultimately we all gain including yourself but again like every job within the company each person gets paid according to how much effort they put in. It is up to you how much time you spend but any cover will be charged to More 4 Floors and this will ultimately at the start affect the margin".

38. The claimant replied "you have gone back on everything we agreed before I took this position, the work I did on all the Amtico and Laminate was supposed to be factored in on the first year and deducted from Jepsons. I am very confused with all

the changes you are now implementing, I feel confused as to all the changes and isolation that I am being subjected to". The claimant then says the second respondent and Mr Hunt burst into her office at 4.30 on the same day saying "lets get this bottomed out" following this the second respondent made a number of accusations against her. When this was investigated later on using the HR Consultant Alison Driver interviews were carried out with Dave Hunt and Andrew Chell where they say that the claimant was extremely aggressive and difficult in the meeting however the claimant stated that the second respondent was making random unsubstantiated allegations against her and again saying about how she cost the respondent £10,000 in errors related to Amtico.

39. The second respondent said that he did enter her office that day in order to try and sort out the terms and conditions of employment, given the claimant's email, he denied he was aggressive or made accusations, he said the claimant declared she wanted a salary of £35,000 and the car allowance payment and he tried to explain it wasn't possible due to the turnover of the More 4 Floors, that she repeatedly shouted at him and Dave Hunt, used abusive language, threats of violence and conducted herself wholly inappropriately which is why the second respondent then suspended the claimant. He said that she said that he was a "fucking liar and untrustworthy and that "she doesn't fuckin trust" either of us and that we both "talk bollocks". Although we did not hear from Dave Hunt we did have Alison Driver's interview with him of 27th October.

40. In this he confirmed there had been a meeting in January 2015 with the second respondent and Andrea Brady about rumours about The second respondent's private life, the second respondent would later allege that he had cause to speak to the claimant before about "gossiping" and this seems to corroborate that position as otherwise Mr Hunt would not have known about that meeting, he said it concerned comments circulated throughout the company regarding Andy's private life, Andy confronted Andrea about remarks made and rumours, it was frank but a calm discussion, and advised her that she should never discuss Andy's or anyone else's private life and keep her thoughts to herself and a line was drawn under that.

41. He was then asked about the meeting on 13th October, he said "prior Andy had said he had received an email from Andrea which he needed to speak to her about, he wanted someone present, the meeting started with sales figures but quickly escalated to much more than that, she had been given a set figures forecast to which she objected, she quickly became aggressive it was like flicking a switch, that part of the conversation stopped and moved on to salary and potential earnings it was as if she failed to see that and came across confrontational, she couldn't see the wood for the trees, lost focus and didn't want to listen, she was very agitated Andy said we would come back to it and brought up the Barrett account she used to manage, errors had been made which were mentioned by Andy regarding Amtico and the losses of approximately £10,000 over a period of time. Andrea responded with a number of F words, she has always been vocal like that, the conversations switched to other areas which she denied, I was asked to name three such areas this was the only time I had spoke in the meeting. I mentioned Amtico, unauthorised leave etc, there was a lot of swearing, Andy stopped the meeting and told Andrea she was suspended, to leave her keys and go home. Andy left the room".

42. Mr Hunt then said he carried on speaking to the claimant “she was irate, I tried to calm the situation, I mentioned that I hadn’t seen it coming the meeting should have been about earning potential, she was still swearing “Andy owes me a fucking big apology or it will cost him a load of money”. She said she would bring Scott to the meeting her partner, I said she couldn’t bring Scott she said she could “fucking bring who she wanted and I am bringing him”. She then replied Andy had given me all the information we discussed and that “to be honest with you Dave I don’t trust a fucking word you say and I don’t trust him either”. She collected her personal belongings, gave me the key and walked out. Prior to that when Andy left she said Andy was bullying her and that she would not be bullied. She said that Andy walked in and overheard, he said “choose your words carefully”, collected his phones and left.

43. Mr Hunt stated that he thought that the second respondent was calm and professional throughout the meeting, he believed the meeting would have been a professional meeting but for the claimant.

44. The interview with the second respondent highlighted that he had had problems with her before with her bad language and speaking ill of others and making unfounded judgments. He said he had spoken to her three or four times about that, he mentioned that the More 4 Floors launch and then the subsequent meeting which Dave Hunt attended, he believed he had given her a verbal warning and made notes on the file however this have never been produced. He stated that Andrea has been a “Jekyl and Hyde to members of staff” and that he had moved her to a second office because of her attitude. He described the meeting as “ Andrea started to object to the change in salary although higher than current, she also objected to the hours although it was stated the more you do the more is paid. The full package on offer would have been £30,000 to £40,000, Andrea objected she didn’t believe that anything I said would be implemented and called me a fucking liar and that I was untrustworthy, I made notes that day after the meeting before going home.” The second respondent refers to the notes in the meeting according to the minutes but no longer has those notes. He agreed there was discussion about some errors she had made and that there were complications in her private life which may have been affecting her work, he said “she got agitated and abusive stating she doesn’t fucking trust Dave or myself and regarding other staff members they all talk bollocks. “ The second respondent believed that was a reference to the meeting prior when she was advised her behaviour was not acceptable. He agreed that he had returned to collect his mobile phone after suspending her, she had said to him she would not be bullied to which he had said choose your words very carefully. Mr Hunt had reported back to him afterwards that she was still abusive, expressed distrust in management staff, re-iterated she wouldn’t be bullied and that she would be back with her partner Scott to sort things out.

45. We prefer the second respondent's version of events given the corroboration in the witness statement taken contemporaneously by Alison Driver and the fact that in the circumstances it is inherently plausible the claimant would be angry as the second respondent was now attempting to foist new terms and conditions on her which had not been raised before.

46. On 14th October the second respondent wrote to the claimant and stated that she was invited to a disciplinary hearing on 19th October to discuss her attitude, abusive remarks about other members of staff, her use of abusive language to senior members of staff, mis-use of company phones or unauthorised absence. The letter said the disciplinary would be conducted by the second respondent with Mr Hunt as a witness.

47. On 16th October the claimant replied saying that she was not well enough to address the issues and didn't believe the meeting should go ahead without her. She said she wanted to discuss the issues although she had concerns about his reasons for the meeting and she would keep him informed about her health. He subsequently wrote to her saying he had taken advice and wanted to confirm the current position and referred to all the usual matters that are referred to when someone is suspended pointing out there was no presumption of guilt and she continued to be paid and advising her an independent HR Consultant Alison Driver had been appointed to investigate the allegations against the claimant.

48. On 11th November 2015 the claimant's solicitor wrote to the respondent saying that the claimant had been suspended for four weeks and nothing had progressed.

49. Following this on 12th November the respondents sent a letter to the claimant arranging a disciplinary investigation meeting for 23rd November to be undertaken by Alison Driver (an independent HR advisor). The allegations were:-

(1) An unsatisfactory unacceptable and un co-operative attitude;

(2) Failure to maintain acceptable level of politeness and respect to others;

(3) Using excessive abusive language and made excessive abusive remarks about members of staff including senior members of staff and

(4) Aggressive and threatening behaviour and threats of violence towards senior members of staff

50. On 18th November the claimant's solicitor advised the respondent she would not be attending that meeting and would be issuing a grievance which she did on 19th November. In this she stated that during the period that the second respondent was on holiday in August she noticed "a new file on her desktop which contained a series of sexually explicit photographs of yourself and an individual employed by Jepsons Sisi Costa Rodrigues, I was shocked and distressed when I saw these images on my desktop". She then went on to say "as you are aware my daughter suffers from mental health issues, it was initially agreed I would work 8 till 4 but this was changed to 7.30 am to 3.30 am Monday to Friday on a permanent basis in order to assist with care arrangements relating to my daughter. The hours of flexibility have been agreed with you specifically and this was never a problem for you in the past however this position changed following your return from annual leave. Following a period of annual leave the claimant then said that on 5th October the second respondent approached her and said things aren't working and informed her of a decision to change her contractual hours to 7.30 to 5.00 and 8 till midday every

Saturday as opposed to alternate Saturdays and that if she did not cover the hours she would have to pay personally for someone to cover the hours for her. She went on to say "this was a unilateral change in my agreed contracted hours and I considered this to be discriminatory given my daughter's mental health issues as she would be classed as disabled under the Equality Act 2010". She said she agreed under duress but pointed out two engagements which required her to finish at 4.30. She also cited the incident on 8th October when she said the second respondent refused to let her leave following the bus accident her daughter was involved in. She said on 9th October the second respondent again said that if she wanted cover at work she would have to pay for it. The same day without warning she said that the second respondent sent her an email requesting information including a strategy plan for growth for More 4 Floors to reproduce from a meeting on 12th October.

51. The claimant went on to say "On 13th October the second respondent sent her an email informing her that her salary was in effect reduced from £25,000 to £21,000 and set unrealistic targets such that the potential to earn any more was not possible". She was also asked to fill in a log sheet which had not previously been operated. She then referred to the meeting at 4.30 pm that day where he and Dave Hunt entered her office and engaged in what can only be described as aggressive and intimidating behaviour launching into a tirade of accusations stating that she had brought the company into disrepute and had discussed personal business with other members of staff, she was then suspended. She refers to the letter of 14th October and stated that she had not done any of the matters she was accused of doing in the letter of 14th October and the whole process was biased. She has now been invited to an investigation meeting with an external consultant but has been suspended for a considerable period of time on spurious and untrue allegations, she ended up by saying "I consider that the storing of sexually explicit photographs of yourself and Mr Rodrigues on my work PC amounts to sexual harassment on the basis that this quite patently violates my dignity and thus has the resulting effect of creating a humiliating and offensive environment in which I have had to work notwithstanding the hostile and aggressive behaviour I have had to suffer and continue to suffer subsequently".

52. In response the respondent's solicitor said that the grievance would be investigated concurrently with the disciplinary as the matters were overlapping, there was no reason why the claimant should not attend the disciplinary hearing which was now re-scheduled for the 1st December and would be dealt with by Alison Driver who was independent and they also said that Mr Hunt and the second respondent would not be present on the premises at the time of the interview with Miss Driver.

53. The claimant's solicitor then said that the grievance should be addressed before the disciplinary investigation, particularly in the light of the explicit photographs issue.

54. On 3rd December the respondent's solicitor stated that the matters would be dealt with together, that the ACAS code of practice did not require the matter to be dealt with separately and a meeting was further arranged for 10th December. The allegations were re-iterated and it was stated that the failure to attend the grievance and disciplinary investigation meeting may lead to it going ahead in her absence and subsequent disciplinary action against her.

55. On 7th December the claimant's solicitors indicated that it was her intention to resign as she considered the actions of their client and the second respondent had destroyed the relationship of trust and confidence and she would be taking a case to the Tribunal. On the same day she wrote to the second respondent and indicated her decision to resign. The solicitors for the respondent replied on 10th December stating that they believed that their suggested way forward was reasonable and that the allegation that the matters against the client had been fabricated was false. The claimant's resignation was acknowledged on 10th December.

56. The claimant subsequently issued Tribunal proceedings as described above on 5th August 2016, the respondent's solicitors advised that the company was in liquidation and they were no longer instructed by the first respondents but they were still instructed by the second respondent. In the correspondence there was evidence by 27th September that the second respondent's solicitor was aware that the claimant had copies of the photographs, in Tribunal the second respondent said he had not been advised of this by his solicitor yet a letter of 27th September to the claimant's solicitor, his own solicitor was saying that the second respondent was considering a claim for the tortuous act of misusing private information without his consent. Consequently it is implausible he did not know this, he clearly did at this time.

57. On 1st September 2016 the claimant's solicitors indicated their view of the lack of merit in the injunctive relief claim and stated that they had been aware since November 2015 that the claimant had downloaded these photographs. In the light of the evidence we find the second respondent had been informed the claimant had copies of photographs but has now become confused about the sequence of events.

58. In respect of the respondent's knowledge of the claimant's daughter's disability the respondent gave evidence that he had no idea that the claimant's daughter was disabled, he thought she was having difficulties due to being vulnerable to grooming and that is what the meetings were about and why she would have had a Social Worker. He said that the fact that she was having meetings at CAMHS had no meaning for him, he did not understand that this was a reference to mental health services (although it was referred to in full in the email) and therefore he denied that he had knowledge of any disability being suffered by the claimant's daughter. Further, that the claimant had produced limited medical evidence that her daughter was disabled at the Tribunal. There was just a G.P.s letter stating the claimant's daughter had mental health problems and asserting this was a disability.

59. The first respondent went into voluntary creditors liquidation on 16th August 2016. The second respondent says he now has no fixed address and provided us with a postal address but he is not always living there, he no longer owns his own property as a result of the liquidation. Further he was unable to access many documents as a result.

The Law

Failure to provide employment particulars

60. The claimant brought a claim that the respondent had failed to provide employment particulars as required to do so by the Employment Rights Act, Section 1 which states that where an employee begins employment with an employer the employer shall give to the employee a written statement of the particulars of employment.

61. This section also states that the statement can be given in instalments and shall be given not later than two months after the beginning of the employment. The section then goes on to say what should be in the statement of employment particulars and under Section 11 the claimant has the right to go to the Tribunal to complain about this failure. Under Section 38 of the Employment Act 2005 the Tribunal finds that the claim was well founded and the Tribunal must award a minimum amount of two weeks pay and may if it considers it just and equitable in the circumstances award the higher amount of four weeks pay.

Constructive Dismissal

62. An employee may lawfully resign employment with or without notice if the employer commits a repudiatory breach. Resignation can be interpreted as an election by the employee to treat himself as discharged from his contractual obligations by reason of the employer's breach. This is known as constructive dismissal and is a species of statutory unfair dismissal by virtue of section 95(1)(c) Employment Rights Act 1996.

63. It was described in **Western Excavating (ECC) Limited v Sharpe [1978]** by Lord Denning as follows: "If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract then the employee is entitled to treat himself as discharged from any further performance. If he does so then he terminates the contract by reason of the employer's conduct. He is constructively dismissed."

64. An employee must act reasonably quickly in responding to a repudiatory breach of contract otherwise s/he may be taken to have accepted the continuation of the employment contract and affirmed the contract. However, mere acceptance of salary without the performance of any duties by the employee will not necessarily be regarded as an affirmation of the contract following an employer's repudiation.

65. A claimant can rely on implied or express terms of the contact. Express terms can be written or oral. The claimant relied on the breach of the implied term of trust and confidence in this case as well as an express (though oral) agreement about salary.

66. In **Wood v WM Car Services (Peterborough) Limited [1982]** the Court of Appeal approved the development of the implied term of trust and confidence.. It was finally given House of Lords' approval in **Malik v BCCI** in 1997 where Lord Stein stated that the question was whether the employer's conduct so impacted on the employee that viewed objectively the employee could properly conclude the employer was repudiating the contract. It is not necessary to show that the employer intended to damage or destroy the relationship of trust and confidence. In **Malik** the formulation is that the employer "must not conduct itself in a manner calculated and

likely to destroy confidence and trust" and it is relevant to consider whether the employer's conduct in question was "without reasonable and proper cause". This is not the same as the range of reasonable responses test.

67. In proving breach an employee may pray in aid evidence of past repudiatory breaches even though he waived his right to object to them at the time. **Lewis v Motorworld Garages Limited [1985]**.

68. In cases where the basis is an allegation an employer subjected the employee to unacceptable workplace stress the Tribunal should apply the ordinary common law principles on stress cases and go on to consider whether any breach by the employer was sufficiently fundamental to be repudiatory. Of course discrimination against an employee will generally be a breach of the implied term of trust and confidence.

69. Failure to deal properly with a formally raised grievance may constitute a contractual repudiation based on a specific implied term to take such grievances seriously and not just on the more general term of trust and confidence. **Goold v Pearmak (Limited) v McConnell [1995] EAT**.

70. The particular incident which causes the employee to leave may in itself be insufficient to justify resignation but may amount to constructive dismissal if it is the last straw in a deteriorating relationship. This means that the final episode itself need not be a repudiatory breach of contract although there remains the causative requirement that the alleged last straw must itself contribute to the previous continuing breaches by the employer. **Waltham Forest Borough Council v Omilaju [2004] CA**.

71. Therefore the claimant has to show that the matters he relies on either individually or cumulatively amounted to a breach of the implied term of trust and confidence. He then has to establish that that breach played a part in his decision to resign and he has to show that he has not unduly delayed or affirmed the contract.

72. A claimant can also rely on specific breaches without a continuing course of conduct.

73. In University of Bournemouth vs Buckland (2010) CA determined that once there has been a breach whatever a respondent does cannot remedy that breach; it cannot be 'cured'. However the employee can affirm the contract as referred to above.

74. The respondent can argue that there was a fair dismissal if constructive dismissal is found. Here the respondent relied on the cumulative performance/conduct issues evidenced in respect of the claimant.

Contributory Conduct

75. Section 123(6) of the Employment Rights Act 1996 states that where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it shall reduce the amount of compensatory award by such proportion as it considers just and equitable having regard to that finding. This is

referred to as contributory conduct. In Nelson -v- BBC Number 2 1980 Court of Appeal the Court of Appeal said three factors must be satisfied if the Tribunal is to find contributory conduct, one, the relevant action must be culpable or blameworthy, two, it must have actually caused or contributed to the dismissal and three, it must be just and equitable to reduce the award by the proportion specified.

Sex Discrimination

76. The claimant brings claims of sexual harassment and victimisation

(a) Harassment

Section 26 of the Equality Act 2010 refers to harassment as (1) a person (A) harasses another (B) if –

(a) A engages in unwanted conduct related to a relevant protected characteristic and

(b) The conduct has the purpose or effect of

(1) violating B's dignity or

(2) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(3) A also harasses B if (a) A engages in unwanted conduct of a sexual nature and (b) the conduct has the purpose or effect referred to in sub-section (1)(b) …

77. Subsection (4) in deciding whether conduct has the effect referred to in subsection (1)(b) each of the following must be taken into account:-

(a) the perception of B

(b) the other circumstances of the case and

(c) whether it is reasonable for the conduct to have that effect, the relevant protected characteristic being sex in this case

78. Unwanted conduct was considered in Reed and Another –v- Stedman 1999 EAT and Institu Cleaning Company Limited and another –v- Heads 1995 EAT decided it was the same as unwelcome or uninvited. The conduct does not to have to be directed specifically at the complainant in order to be unwanted by him or her, for example a female worker attending a training session where remarks of a sexual nature are made to the group as a whole.

79. In Moonsar –v- Five Ways Express Transport Limited 2005 EAT a claimant succeeded in establishing sexual harassment when on three occasions male

members of staff working alongside her downloaded pornographic images onto computer screens, although the images were not circulated to her she was in close proximity and was aware of what was happening.

80. Regarding violating B's dignity or creating an intimidating, hostile, degrading environment includes conduct that has that effect even if that was not the intention. In respect of effect the intention with which something is said or done can be relevant as the Tribunal is required to take into account the perception of the claimant, the other circumstances of the case and whether it is reasonable for the conduct to have that effect and therefore there are subjective and objective elements involved in assessing this. The objective part requires the Tribunal to ask itself whether it was reasonable for the claimant to claim that A's conduct i.e. the respondents had that effect. The circumstances to include other matters such as cultural norms, mental health, previous experience. The prescribed effect must have been brought about by the employer's conduct.

81. In respect of purpose where purpose is not self-evident as is unlikely to be the case the Tribunal can infer purpose for example where it has been clearly indicated to a perpetrator on previous occasions that similar conduct is unwanted and offensive.

(b) Victimisation

82. Victimisation is set out in Section 27 of the Equality Act 2010 which states that subsection 1 A person (A) victimises another person (B) if A subjects B to a detriment because (a) B does a protected act or (b) A believes that B has done or may do a protected act.

83. Subsection 2, each of the following is a protected act.

(a) Bringing proceedings under this Act;

(b) Giving evidence or information in connection with proceedings under this Act;

(c) Doing any other thing for the purpose of or in connection with this act

(d) Making an allegation (whether or not express) (that A or another person has contravened this act).

84. The claimant therefore has to establish

(1) did the alleged victimisation arise in any of the prohibited circumstances covered by the Equality Act;

(2) if so did the employer subject the claimant to a detriment;

(3) if so was the claimant subjected to that detriment because he or she had done a protected act or because the employer believed that he or she had done or might do a protected act.

85. The prohibited circumstances refer to matters arising within the employment relationship. In Shamoon –v- Chief Constable of Royal Ulster Constabulary 2003 (Northern Ireland Court of Appeal). It was established that a detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his or her disadvantage but that an an unjustified sense of grievance could not amount to a detriment.

86. In Derbyshire and Others –v- St Helens Metropolitan Borough Council and Others the House of Lords stressed the test is not satisfied merely by the claimant showing that he or she has suffered mental distress, it would have to be objectively reasonable in all the circumstances.

87. In Bayode –v- Chief Constable of Derbyshire EAT it was held that the claimant who had previously brought a race claim against his employer was not victimised when his colleagues recorded instance involving him in their note books as part of the employer's attempt to protect itself against any further claims by him.

88. There is no need to demonstrate physical or economic consequences to establish a detriment.

Associative Disability Discrimination

89. Section 13 of the Equality Act states that a person (A) discriminates against another (B) if because of a protected characteristic A treats B less favourably. Therefore it is no longer required for the complainant to possess the protected characteristic issue. It was established under previous discrimination law in the case of EBR Attridge LLP and Another –v- Coleman 2010 that the Disability Discrimination Act 1995 could be interpreted in order to achieve this effect. In Attridge the ECJ ruled that the equality framework directive protects those who although not themselves disabled nevertheless suffered direct discrimination or harassment owing to their association with a disabled person and the EAT confirmed that the DDA was capable of being interpreted in line with the ECJ's decision but at the time that did not apply to any other form of discrimination. The ruling in Attridge and others -v- Coleman does not apply to indirect discrimination.

Time off for Dependents

90. Section 57A of the Employment Rights Act 1996 states that:-

(1) An employee is entitled to be permitted by his employer to take a reasonable amount of time off during the employee's working hours in order to take action which is necessary –

(a) to provide assistance on an occasion when a dependent falls ill, gives birth or is injured or assaulted;

(b) to make arrangements for the provisions of care for a dependent who is ill or injured;

….

(e) to deal with an incident which involves a child of the employee which occurs unexpectedly in a period during which an education establishment which the child attends is responsible for him.

Wrongful Dismissal

91. Where an employee is summarily dismissed in circumstances where an employer is not entitled to dismiss summarily because there is no gross misconduct an employee is entitled to make a wrongful dismissal claim, damages for which are notice pay. This equally applies to constructive dismissal.

Conclusions

Sex Discrimination

(a) Harassment

92. We find that the second respondent did leave the photographs on the claimant's computer inadvertently, although he was adamant he did not we think he was simply mistaken in this as clearly the claimant had these pictures and the only other explanation the second respondent could proffer was that she knew his password and had broken into the confidential part of his computer seemed less likely on the balance of probabilities. However we accept and the claimant accepted that he did not put these photographs on her computer with the view to anyone seeing them, he was simply protecting the contents of his phone.

93. In relation to whether this had the effect of creating a hostile, intimidatory offensive environment for the claimant we reject this contention, the claimant had no need to open this icon as it said "Andy's phone". Once she had opened it there was no need to scroll down and open tiles in order to see what the photographs were, we considered that it was the claimant's own actions which caused her to be exposed to the inappropriate photographs and not any action of the respondent, accordingly we find it does not meet the test of sexual harassment.

(b) Victimisation

94. The claimant relied on the following protected acts:-

1. Downloading the offensive images;

2. Texting the respondent on 8th October stating that she was "buzzing";

3. Email on page 118 and 119 complaining regarding the respondent telling someone else about her daughter's meetings with the mental health team and

4. Page 124 changes to her contractual terms complaint.

95. The detriments were the difficulties the respondent made in respect of her hours of work, the changes to her salary, the failure to talk to her in the period cited and the unjustified disciplinary proceedings.

96. In respect of the protected act number (3) above as the claim was put as sex discrimination/victimisation we cannot accept a protected act which refers to disability. If we are wrong we cannot see how this is an allegation that the first or second respondent has done or will do anything discriminatory ,a potential breach of confidentiality but not discrimination.

97. In respect of protected act number (1) a protected act has to be brought to the respondent's attention, they have to know about it and we find the respondent did not know about the fact that she had seen or downloaded these photographs until after the claimant went off sick therefore the protected act number one cannot be a protected act on this basis. As far as the claimant asserts the respondents knew she had seen them we reject this assertion and the claimant had no proof of this she simply assumed it because of it being deleted and because she said the respondent's attitude towards her changed. We have accepted that the respondents evidence that if his behaviour changed it was because of dealing with the fraud and in any event he was adamant throughout he did not believe the claimant had seen them as can be seen from the documentation throughout including the ET3. His refusal to believe this was somewhat incomprehensible particularly after it was referred to in correspondence however the vehemence with which he believed this as recorded in the documentation we accept as proof that this was his position and accordingly anything that he did that the claimant cites as a detriment was not in relation to having believed the claimant had committed the protected act number (1)

98. In respect of protected act number (2) we cannot see that this was a protected act, there was no reference to sex discrimination nor anything concerning discrimination which could be inferred from it and therefore we reject that as a protected act.

99. In relation to protected act number (4) this is clearly a complaint but there is no reference in it whatsoever to any sex discrimination act issues. Accordingly we cannot see how that can be a protected act either.

100. As there was no protected act the claimant's victimisation claim cannot proceed.

101. However if we are wrong on this as we have mentioned above we find that Second respondent was totally unaware that the claimant had seen these photographs and the claimant had no evidence whatsoever that he did know until he was told as a result of solicitor to solicitor correspondence. The claimant relied on the fact that the respondents attitude towards her changed in the period after her holiday, however Second respondent explained this as far as it was correct by saying he was under a great deal of stress due to the fact that a fraud issue had arisen in respect of their accounting processes and he was dealing with this with his Accountant and Solicitor.

102. The claimant was obviously unaware of this and the respondent has failed to plead it in his ET3. Neither did he mention it until the Tribunal hearing at all. However he did provide some documentation during the Tribunal hearing which supported that this issue had arisen and we accept his evidence that he was under a great deal of stress due to this matter. Accordingly there is no evidence that any of the alleged detriments (some of which we have found such as the terms and conditions of the claimant's employment with More4floors) arose because of any protected acts.

Constructive Unfair Dismissal

103. The claimant relied on a series of actions – sexual harassment and victimisation; the change to her terms and conditions; the decision to suspend her on spurious grounds followed by the second respondent saying he would conduct the disciplinary hearing even though he was involved in the incident which he said had led to the suspension and finally the refusal to hear the grievance separately from the disciplinary.

104. We have found no sexual harassment or victimisation and therefore they fall away as potential fundamental breaches.

105. We find that there were two breaches here, first of all the reduction in pay. In these circumstances it is the employer's responsibility to make absolutely sure the position is clear regarding an employee's basic terms and conditions of which pay must be one of the most basic, there was clearly - to put it at its highest - a great deal of misunderstanding here regarding the terms and conditions on which the claimant was to be employed when she moved over to fully manage the More4 Floors section of Jepsons. If there was any misunderstanding this was the responsibility of the respondent employer. We accept the claimant's evidence that the targets being proposed would have been extremely difficult to achieve, consequently where she would be in receipt of, for her, a significantly lower salary than she had been. We accept that her salary structure was not discussed with her prior to the October emails and therefore it would have been natural for her to assume she would be on the same salary at least. There is little in the employment relationship more fundamental than the amount an employee is to be paid for the work done.

106. The second breach was in respect of the first attempt at a disciplinary and the suspension we have accepted the respondent's version of events in respect of the meeting which led to this suspension and consequently find the suspension was justified and a disciplinary hearing would have been justified. However clearly the decision of the respondent to hear the disciplinary himself was a breach of ACAS guidelines and natural justice, albeit this may have been borne out of ignorance of the relevant law and practice again the employer's responsibility to be aware of these matters. This was a breach of the implied term of trust and confidence. It is a fundamental breach as it clearly shows the employer does not intend to treat the employee fairly.

107. In respect of the refusal to hear the grievance and disciplinary separately we find this was not a breach because it was perfectly reasonable in the circumstances, an independent person had been appointed to hear the disciplinary and the matters raising a grievance considerably overlapped with the disciplinary matters so we do not consider this a breach of contract.

108. In respect of the change in hours as the claimant agreed she accepted them and there was no sign outwardly that she was unhappy with them the variation was no longer unilateral, but by consent and therefore cannot be a breach.

109. However the two things identified above - the changes in the claimant's pay and the initial decision of the second respondent to hold the disciplinary by himself - were breaches of contract and were fundamental breaches of contract. Fundamental breaches of contract cannot be mended after they have occurred, thus the bringing in of Alison Driver does not assist the respondent in respect of the second breach we have identified.

110. A question arises as to whether the claimant delayed too long after the first breach before resigning, however in the circumstances we do not think the claimant did delay too long, she was taking legal advice, she was off work sick.

111. Accordingly the claimant's claim of constructive unfair dismissal succeeds.

Contributory Conduct

112. However in view of the fact that we have accepted the respondent's version of events of the meeting of 13th October we find that there was 25% contribution on the part of the claimant.

Employment Particulars

113. We find that the respondent did fail to provide the claimant with employment particulars in respect of her employment with More 4 Floors which (did she sign a contract earlier) and accordingly her claim here succeeds. We award the claimant two weeks pay in respect of this as there was not a comprehensive failure as she had been provided with terms and conditions on other occasions.

Wrongful Dismissal

114. As we have found the claimant was entitled to resign as a result of fundamental breaches of confidence her wrongful dismissal claim must succeed as no gross misconduct was proved at the time she resigned.

Time off for Dependents

115. We preferred the second respondent's evidence in respect of what happened when the claimant's daughter was injured on the bus. Firstly that he did not object to her going in any event but there was no detriment as the claimant was able to make other arrangements. If we are wrong in this we also find that there is an obligation to attempt to make other arrangements if possible in any event and

therefore the factual matrix does not amount to a breach of the legislation on that ground either.

Associative Disability Discrimination

116. This is a direct discrimination claim therefore the detrimental treatment must arise because of the claimant's association with a disabled person. In this case the claimant's daughter.

117. The claimant's case here is that the respondent deliberately changed her hours from the hours agreed to 3.30pm knowing that his would cause her difficulty with her daughter, as she wished to be able to leave so she could meet her daughter from work which is why the 3.30pm time was agreed, the second respondent stated that this change in hours was temporary for six months, he agreed he proposed the later change in hours because the More 4 Floors business needed to improve and then he proposed 7.30 to 5 Monday to Friday and every other Saturday. The claimant agreed so he was unaware she was unhappy.

118. There clearly was a change in October as the emails show that the second respondent was telling the claimant that any cover would in effect have to be paid out of the More 4 Floors business and therefore would affect the profit of that business and ultimately her salary if targets were not met. Although the claimant agreed to this she said she did so reluctantly. We were concerned as to whether there was a detriment in these circumstances but we have not had to decide that given our findings below.

119. The fact that the change in hours made it harder for her to pick up her daughter from school was an effect of the change but we accept the change was driven by the respondent wishing to run his business more efficiently. The claimant had no evidence and there was nothing from which we could draw inferences that the reason he changed her hours was because the claimant had a disabled daughter, accordingly even if the disability of the claimant's daughter could be established and that the respondent at the time had knowledge of it there is nothing to suggest any connection between the change in hours and the disability of the claimant's daughter. Accordingly a direct discrimination claim cannot be made out.

120. Further we accept the second respondent's evidence that he had no idea that the claimant's daughter was disabled we accept his evidence that he believed that she was involved in some sort of vulnerability to grooming and that is why she had a social worker. Accordingly if the second respondent had no knowledge that the claimant's daughter was disabled he was unable to discriminate against her on these grounds and therefore that claim fails. Neither do we find there was anything to establish constructive knowledge.

121. We have not considered indirect discrimination as associative discrimination only applies to direct discrimination.

Summary

122. Accordingly the claimant's claim of constructive unfair dismissal, wrongful dismissal and failure to provide employment particulars succeed. Her other claims fail and are dismissed.

Compensation

123. In respect of compensation for constructive unfair dismissal given that the respondent company is in liquidation we award the claimant a basic award of £2,850 less 25% a sum of £2137.50 plus two weeks pay for failure to provide written particulars of £950 and notice pay of £1597 for wrongful dismissal.

124. If the claimant wishes to pursue a compensatory award she is requested to advise the Tribunal within 14 days and the matter will be listed for a Remedy Hearing.

Employment Judge Feeney
14th March 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

14 March 2017

FOR THE SECRETARY OF THE TRIBUNALS

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2400427/2016

Name of case: Mrs AL Brady v Jepsons Limited

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 14 March 2017

"the calculation day" is: 15 March 2017

"the stipulated rate of interest" is: 8%

MR S ARTINGSTALL
For the Employment Tribunal Office