EMPLOYMENT TRIBUNALS

Claimant: **Mrs Michelle Procter**

Respondent: **(1) Haxby Group Practice**
(2) John James McEvoy

Heard at: **Hull**

On: **15-19 January and (deliberations only) 16 February 2018**

Before: **Employment Judge Maidment**
Member: **Mr D Bright**

Representation
Claimant: **Miss M Setty, Solicitor**
Respondent: **Mr K Ali, Counsel**

RESERVED JUDGMENT

1. The First Respondent failed to comply with its duty to make reasonable adjustments pursuant to Section 20 of the Equality Act 2010 to provide the Claimant with functioning voice recognition software and in failing to maintain full salary during sickness from 5 July 2017. The Claimant's further reasonable adjustment complaints fail and are dismissed.

2. The First Respondent's failure to maintain full salary during sickness from 5 July 2017 also amounted to discrimination arising from disability pursuant to Section 15 of the Act.

3. The First and Second Respondent subjected the Claimant to discrimination arising from disability and disability related harassment pursuant to Section 26 of the Act in proposing that the Claimant be paid for hours worked at a meeting on 26 April 2017 and asking at a meeting on 8 May 2017 if the Claimant would take minutes at a subsequent meeting.

4. The Claimant was unfairly dismissed by the First Respondent and such dismissal amounts to a further act of disability discrimination.

5. The Claimant's complaints of unauthorised deductions from wages and for damages for breach of contract are dismissed upon the Claimant's withdrawal of them.

REASONS

The Issues

1. Whilst the Claimant's complaints had been identified at an earlier Preliminary Hearing, in discussion between the parties at the outset of this final hearing, those complaints were further clarified, in some cases narrowed and/or relabelled in terms of the appropriate legal cause of action. This was by agreement between the parties. Mr Ali confirmed that no issue was being taken by the Respondent in terms of applicable time limits given the continuing state of affairs underpinning the Claimant's complaints and where an unauthorised deductions claim could legitimately be pursued as one of damages for breach of contract for a sum still outstanding as at the date of the termination of the Claimant's employment. In fact, the claim for additional sick pay as an unauthorised deduction/breach of contract was withdrawn by the Claimant during the course of the hearing.

2. It had already been accepted by the Respondent that the Claimant was at all material times a disabled person by reason of carpal tunnel syndrome and the repetitive strain injury affecting her wrists and arms.

3. Whilst Mr McEvoy was named as an individual Respondent, this was in circumstances where the Respondent is a partnership which includes him as partner and where the partnership would be vicariously liable for his actions in any event.

4. The Claimant maintains, pursuant to Section 15 of the Equality Act 2010, that she was treated unfavourably because of something arising as a consequence of her disability in (1) her being told by Mr McEvoy on 8 May 2017 that she had to take the minutes of a future meeting on 10 July 2017, (2) her being told at a meeting on 26 April 2017 that she would be paid for the hours she worked, not her contracted hours and (3) in the application of her Bradford factor score to determine payment during periods of sickness.

5. In the alternative the above complaints relating to the alleged instruction on 8 May 2017 and the payment arrangements communicated on 26 April 2017 were said to amount to unwanted conduct related to disability so as to amount to unlawful harassment pursuant to Section 26 of the Act.

6. The Claimant then alleged that the Respondent had failed to comply with its duty to make reasonable adjustments pursuant to Section 20 of the Act. The first PCP relied upon was the requirement of an employee in the Claimant's role to type and undertake other physical tasks. In terms of a

disadvantage, it was said that due to the Claimant's disability she struggled to complete her job tasks and did so only in some pain. The reasonable adjustments it was said should have been made were: (1) the provision of Dragon voice recognition software sourced and paid for by the Respondent, (2) the provision of additional software when it became apparent that the original software obtained did not work, (3) training on Dragon, (4) the rotation of the Claimant's roles, (5) less computer work, (6) the provision of an alternative minute taker and (7) assistance in the opening of drawers. Alternatively, the Dragon software was said to be an auxiliary aid which ought reasonably have been provided.

7. The second PCP relied upon was the Respondent's management of attendance policy and use of the Bradford factor in ascertaining sick pay entitlement. This was said to put the Claimant at a disadvantage as she was more likely to be absent from work due to her disability. It was said that a reasonable adjustment would have been not to apply the Bradford factor and to maintain full pay during periods of sickness.

8. The Claimant also claims that she was constructively unfairly dismissed. She relies on their being a breach of the implied term of mutual trust and confidence in the aforementioned discriminatory treatment of the Claimant and separately arising out of the Respondent's handling of her grievance in respect of such treatment. The Claimant also contends that her dismissal was discriminatory.

The Evidence

9. The Tribunal had before it an agreed bundle of documents. Having identified the issues with the parties, the Tribunal took some time to privately read relevant documents and the witness statement evidence exchanged between the parties. As a result, when each witness came to give evidence, they could do so by confirming their statements and then, subject to brief supplementary questions, be open to be cross-examined on them.

10. The Tribunal heard firstly from the Claimant. She did not call her husband to give evidence in circumstances where his statement concentrated on issues potentially relevant to remedy only. Then, on behalf of the Respondent, the Tribunal heard from Dr Michael Holmes, GP Partner, John McEvoy, Managing Partner, David Ford, Senior Infrastructure Manager with Embed, Thomas Skelton, Administrator, Julie Lund, General Manager in York, Maureen Barraclough, HR Manager and Dr David Hayward, Senior GP Partner.

11. During the proceedings, the Tribunal asked the parties in an adjournment to conduct an internet search to ascertain the availability of information about the Dragon products. The parties and Tribunal did so and, given some print outs already in the bundle, it was accepted that the information

now provided online was unlikely to have been materially different over the period under consideration in these complaints. The Dragon homepage indicated and provided links to a range of voice recognition products including versions specifically designed for healthcare providers. Technical specifications were also available including minimum system requirements for Dragon to operate.

12. After 2 days of hearing one of the Tribunal members, Mr N Pearse, was unfit to continue, but the parties consented to the Tribunal continuing to sit as a panel of two.

13. Having considered all the relevant evidence, the Tribunal makes the findings of fact as follows.

The Facts

14. The Claimant commenced her employment with the Respondent GP Practice on 19 September 1994 as a part-time clerical assistant and relief receptionist. Since 2013 the Claimant had been the Respondent's Data Quality Systems Manager and then Business Intelligence Team Manager. She was paid around £22,500 per annum.

15. The Respondent is a significant GP medical Practice operating in York and Hull with around 40 direct employees. Its (non-medical) managing partner is Mr John McEvoy, who was the Claimant's line manager from 2013 until April 2016. The Respondent's Practice has grown considerably in recent years with the acquisition of other surgeries and GP Practices.

16. On applying for employment with the Respondent the Claimant declared that she had recently undergone carpal tunnel decompression surgery. The Claimant describe that she also has arthritis in both hands and tendonitis of the wrist and arms. There is no dispute that at all material times the Claimant, by reason of such conditions, was a disabled person.

17. The Claimant had a five-month period of sickness absence in 1997 and a further similar period of sickness absence in 2001. She was absent from work again for just over two months in 2007. The Claimant had been referred to occupational health in 1998 and a report produced dated 9 June of that year referred to a worsening of the Claimant's symptoms in relation to work together with the likelihood that her symptoms would re-occur if she returned to her current hours and duties. There was a recommendation of reduced time spent on keyboard activities with a statement that it was unlikely that she would fulfil a return to work with a full 5 ½ hours on data inputting without a variation of tasks. A further occupational health report of 24 May 2001 suggested that the Claimant was fit to undertake that current role, referring to a long period 'symptom free'. After the 2007 sickness absence, it was noted in a discussion

regarding the Claimant's fitness that she was spending around 4 – 5 hours each day on keyboard tasks and this was acceptable with regular breaks.

18. Under the Claimant's contract of employment, she had been entitled to sick pay of six months on full pay and a further six months' half pay. In 2007 the Respondent proposed to reduce maximum sick pay entitlement for employees to 12 weeks full pay only with reduced entitlement dependent on a Bradford factor score (multiple of days and periods of absence). There was a presentation to staff regarding these proposals on 26 September and staff were informed that the new sickness entitlements would be implemented with effect from 1 April 2008. The Claimant voiced her concerns in a letter to Mr McEvoy dated 31 October. He provided a document to staff on 11 February 2008 with answers to a number of questions which had been raised. One of his responses was that *"absence related for example to pregnancy or a disability may be quickly eliminated from a point system and the changes may arise in work arrangements to help alleviate or remedy the situation."* Mr McEvoy described the reduction in sick pay benefits as a change of policy rather than contract. The only issue ultimately pursued by the Claimant in respect of her own payments arose from July 2017. The Claimant had an entitlement based on her length of service to be paid full pay for up to 12 weeks' of sickness if she had what the Respondent ranked as a low Bradford score. This fell to 8 weeks' if her score was at a defined 'medium' level and with a 'high' score resulting in any payment being at management discretion. In a 2015 absence, the Practice had maintained full salary for the Claimant for a longer period than her strict entitlement.

19. The Claimant wrote to Mr McEvoy on 7 March 2008 stating that she remained unhappy with his response. She received a reply by letter of 10 March 2008 confirming that the policy change would be introduced. The Tribunal notes at this stage that the Claimant's original contract of employment which contained the more generous sick pay entitlement expressly provided that the Respondent had the right to review and vary the payment provisions.

20. The Claimant was based at the Respondents Haxby surgery and in April 2015 this merged with another GP Practice in the York area, Gale Farm. The Claimant's case is that the period up to and after the merger saw an increase in her workload. The Claimant maintains that following the merger there was a reduction in overall staffing, but the evidence upon that is not clear cut in circumstances where a number of employees acquired with the Gale Farm Practice performed tasks which overlapped with those undertaken by the Claimant and her colleagues. Certainly, the Claimant was working a number of hours as overtime although she accepted that this was her choice and she was able to take additional time off in lieu. She agreed that at no point had she ever raised that she couldn't do the hours or work she was being required to undertake. It is clear to the Tribunal from the totality of the Claimant's evidence that she is

a hard-working individual who was likely to get on with whatever was put in front of her at work in a stoical fashion and without complaint.

21. However, the Claimant had a sickness absence from 11-31 March 2015 due to "extensor tenosynovitis of left wrist" and at her instigation had an occupational health consultation on 23 April 2015. The Claimant explained that she was experiencing pain in both hands and arms when typing and occupational health highlighted the need to reduce typing to avoid flare ups. As was subsequently confirmed in a letter from occupational health to the Claimant dated 12 May, recommendations were made regarding equipment which would be useful "in assisting you to manage your musculoskeletal condition". These included a shorter keyboard and that "to help avoid any unnecessary keyboard or mouse work I would recommend voice recognition software – Dragon Professional Naturally Speaking." It was described that this software could be used with a number of different applications including Excel. It is accepted by the Claimant that an adapted keyboard was ordered and available for her use by 19 October 2015.

22. The Claimant quickly took the initiative in investigating the acquisition of voice recognition software. She spoke to Maureen Barraclough, HR manager, shortly after her telephone consultation with occupational health and told her of the recommendations which had been made. However, the Claimant took the lead in investigating the appropriateness and availability of the recommended software, recognising that it was instrumental in helping her in her own job.

23. Already by 24 April the Claimant had contacted a speech recognition company, Voice Power Limited, and obtained a quote of £950+ VAT albeit £750 related to training sessions and support on the use of the software. The Claimant arranged for them to provide a demonstration of the software. The Claimant asked the Respondent's IT manager, Linda Mayes, if she wished to be party to this but she did not attend. Mrs Mayes role in IT was largely administrative but she liaised with external IT support if there were problems and could carry out basic repairs/fixes. She was the main point of contact for the Respondent's external IT service provider, Embed.

24. In the meantime, the occupational health report had not been provided directly to the Respondent as the Claimant had referred herself for the consultation. She chased up its provision and the Respondent certainly had a copy of the aforementioned report on or shortly after 12 May. The Claimant also emailed Mr McEvoy following his authorisation to purchase the keyboard and he expressed a need to understand the software a bit better *"but if this is what it needs then this is what it needs*". The Claimant responded to his email of 8 May by one of her own on 11 May referring to similar software having been installed at another Practice in Pickering although she noted that they might have installed a "medical" package as

opposed to the "professional" software advised for her, although she expressed an (inaccurate) understanding that the main difference would be the larger medical dictionary. The Claimant had notified Mrs Barraclough of the keyboard and voice recognition quote she had received referring also to her having had a demonstration of the software on 5 May. She said that she had also done some research into grants to cover the costs, providing links to an Access to Work site and a link to a separate site which referred to grants for employers. Mr McEvoy responded that: *"on the face of it: it seems simplest if you start the process – as in there are a number of stages for the other grant so this may be fastest and more effective. If it fails we can try the other route. I would hope that we have made reasonable adjustments already and that some grant could be made…"* The Claimant's evidence was that she was saying that she was struggling and that assistance would be appreciated, but she agreed that she did not tell the Respondent that she was unhappy in any way. Mr McEvoy maintained that he had replied having considered the alternative options in respect of the links provided in the Claimant's email but he had to accept that he had not considered them in any depth or sought to understand what was involved, recognising that the second link was in fact to a site applicable for employers in the Irish Republic as is reflected in the website address. The Claimant said that she did not consider the Respondent had acted unreasonably by this stage and that it was right to explore the possible grant available through Access to Work.

25. The Claimant advised Mr McEvoy by email of 13 May that she had arranged a further voice recognition software demonstration to take place on 20 May which was to be attended by Mrs Barraclough as well. She also noted that she had registered her interest in obtaining an Access to Work grant and that she would be contacted in due course to progress this.

26. Shortly thereafter the Claimant commenced completing a grant application form. It is noted that she asked Mrs Barraclough on 18 May how many employees she should declare the Respondent as having for the purposes of the form.

27. The Respondent, through its HR administrator, Jessica Tucker, made a report to the Health and Safety Executive ('HSE') of the Claimant's 'injury' on 21 May. In response, the HSE raised further queries replying to a number of questions Ms Tucker notified them by email that the Claimant's job was mainly computer-based spending 7.6 hours per day at her computer. In terms of the cause of the Claimant's injury, it was answered that the Claimant's condition resulted from repetitive use of mouse and keyboard. She further noted that the Claimant had set up an Access to Work account for buying voice recognition software and that *"this will allow Michelle to continue and work with limited use of the keyboard and mouse."* She went on that the software would enable her to carry out her day-to-day activities without using her mouse or keyboard. Mrs Barraclough told the Tribunal that Miss Tucker had completed the report

and answers to the HSE with the Claimant's assistance and had then asked Mrs Barraclough if she should send it. Mrs Barraclough's recollection was that she had probably seen the documentation addressed to the HSE before it was sent.

28. The Claimant was absent from work due to sickness related to her hand/wrist condition from 11 June 2015 until she returned to work on 27 January 2016. Her entitlement to full pay expired on 2 September, but the Respondent continued payment up until 30 September. During this absence, the Claimant continued to seek to make progress regarding the provision of voice recognition software. In particular, she raised some queries regarding how the software worked. She knew it would work with Microsoft Office applications, but did not know how it would work with other systems. She made contact with a project manager, Tom Clarke, at the CCG on 12 June asking if Dragon worked effectively with the clinical software used to complete clinical templates and referral letters and whether it integrated with the NHS sites and portals used. He had been project manager at a Practice where the software had been installed for GP use. He responded that the general consensus was that Dragon worked well wherever text input was required. The Claimant passed on information she had received having spoken to the Elvington GP Practice, who used Dragon, and a recommendation regarding needing training to get the best from the software. Mr McEvoy responded saying that he was more than happy to explore training *"but we still need to see it in action and find out the cost of the training to see if it is less than the people we first met. I feel that we best wait until you are fit enough to return to work, even partially, and then restart this project as you and the software, need to be trained together."*

29. The Claimant spoke over the telephone to Mr McEvoy on 29 July. Following this conversation, he sent an email to Mrs Barraclough updating her on the Claimant's health situation. He continued: *"We also agreed that she could pursue further investigation into the Dragon voice activated software as she felt able by visiting Practices that were using it. She is hoping that Andy will go with her when he returns from holiday. We agreed that it would be hard to instigate this without having been able to return to work in some fashion."* The Claimant said, before the Tribunal, that Mr McEvoy was keen for her to get in touch with other GP Practices for their views but said she was clear that she wanted the software in place for her return to work.

30. The reference to "Andy" was to Dr Gilmore who was the IT lead at partnership level. An arrangement was made for him to visit the Elvington Practice on 18 August with the Claimant to see Dragon in action. They came back with the belief that this was appropriate software for the Respondent's Practice also. However, they had thought the software demonstrated to be *"quite clunky*". Also, the Claimant stated in an email immediately after the demonstration to Mr McEvoy that her concern was

how the software integrated with NHS systems/packages, particularly given that they were the packages which gave her the most problems. Mr McEvoy's view was that the Claimant should be supported and they should "*give it a go*".

31. Mrs Barraclough wrote to the Claimant on 6 November, following the Claimant having attended the workplace on 22 October for an absence review. She recorded that the Claimant had said that she was unable to carry out simple tasks at home and was administering steroid injections to both wrists. The Claimant was hoping that further surgery would be recommended but noted that there had also been a diagnosis of arthritis to both wrists. It is clear that the Claimant was keen to continue to do whatever work she could. She was told she should not attempt any computer-related tasks and was not to feel obliged to come into work whilst on sickness absence. The letter then stated: *"John suggested that we purchased the Dragon Voice Recognition software that we have been researching, however you declined at the moment as you are unsure if use of the keyboard would still be required."*

32. The Claimant did not agree that this was an accurate note of their discussion. She did not remember any discussion about the purchase of the software. She recalled that she said that training would have to wait until she had had her surgery but that she was not asking the Respondent to delay or put on hold the purchase of the software.

33. The Claimant responded by letter of 17 November. She pulled Mrs Barraclough up for referring to "*we*", as having been researching Dragon clarifying that it was she individually who had done so. She went on: *"I think it is important that this is made clear, as I believe the delay in providing support to my working environment, has been instrumental in the severity of my injury as I persevered with my CTS under a heavy workload and without the assistance that was recommended by an occupational therapist on 23 April. I would also like to clarify the reason I declined to come in whilst on the sick to train on the new software, is that my hands will be required to operate the keyboard in conjunction with the voice recognition and at this moment in time the pain would be too great."* The Claimant confirmed that she would be undergoing surgery in late November and mid-December. She hoped that would be successful and looked forward to returning to work in the New Year "and starting to work with the voice recognition software."

34. Mrs Barraclough next wrote to the Claimant on 8 January 2016 seeking consent for a further occupational health referral. The Claimant's periods of absence were set out which it was said caused Mrs Barraclough to be concerned about the Claimant's health. She said that: *"Consequently, I feel it is only fair to forewarn you that if the evidence indicates that you are unlikely to return to work in the reasonably near future we may, unfortunately, have to consider terminating your employment. I hope this*

does not turn out to be the case." The Claimant expressed herself as being surprised to receive such a letter in the context of her working towards a return to work that month.

35. In any event, a referral was made to occupational health. A report was produced dated 26 January which noted the Claimant's recent surgery and her condition. Against the question of whether the Equality Act 2010 was likely to apply the occupational practitioner ticked the box signifying *"no",* but then against this tick set out the comments: *"It is likely that the arthritis and cervical spondylosis would be covered under the Equality Act but only a court of law can make that decision."* It was then suggested that the Claimant return over a phased period of 4 weeks building her hours up gradually. It was stated that she would require *"micro-breaks (1 – 2 minutes) throughout the day so that she can change position of her hands."* It was also recommended that she have her roles rotated and have periods of time off the computer. It was then stated: *"As Michelle has another underlying degenerative condition with her hands she would benefit from having voice recognition on her computer."* A display screen equipment assessment was recommended for the Claimant on her return.

36. The Claimant attended a return to work meeting with Mrs Barraclough on 27 January. No steps had been taken to acquire the voice recognition software. Mrs Barraclough recorded that the Claimant agreed at the meeting to instigate the Access to Work grant to allow the purchase and said that Dr Gilmore would be the lead for this. It was noted that the Claimant was concerned about using this with a number of other people in the room but was told that she would not have such a busy office once a refurbishment was completed.

37. A further review meeting took place on 8 February. It was recorded that the Claimant assured Mrs Barraclough that she was keeping to her phased return with regular breaks. The Claimant had mentioned her hand/arm as aching but that *"it was as expected with not using a computer for so long".* The Claimant indeed had resumed using the keyboard in circumstances where this was essential to her work, even on the phased return. It was then recorded that the Claimant was in the process of accessing the grant for the software *"though not a quick process*." A note of a further review on 22 February recorded that the Claimant would achieve a full working day by the end of that week. It was noted that 3 quotes for Dragon had been submitted to Access to Work and this was to be chased up by the Claimant. It was recorded that the Claimant was using the keyboard for typing but not data input or submissions and was taking regular breaks. Sue Heslop, her deputy, had covered the Claimant's role while she had been absent and continued to do so during the Claimant's phased return.

38. On 28 January the Claimant emailed her colleagues thanking them for their help and support throughout her sick leave with special thanks given

to Mrs Heslop and then to the partnership including Mr McEvoy and Mrs Barraclough. She noted that she was returning to work with the aid of some new software. The Claimant in cross examination referred to her wishing to be positive to draw a line under matters, although she had been concerned about what she interpreted as being a threat of dismissal in Mrs Barraclough's letter of 8 January.

39. A DSE assessment was undertaken with the Claimant by Mrs Mayes on 11 February 2016. "Sourcing voice recognition" was noted in the comments/action to be taken column.

40. Mrs Barraclough said that there was, after the phased return, no change in the Claimant's duties as the Claimant said that she was managing. She was unsure whether the Claimant was 'disabled', but thought that the Respondent was doing what it needed to do. As regards obtaining the Dragon software she said that the Claimant *"was competent to sort it out ….. it was her project …. I did not want to undermine her by taking it off her."*

41. In fact, to the Claimant's surprise, the Access to Work grant was time-limited and had by January 2016 expired, thus requiring the Claimant to submit a completely fresh application. The Claimant emailed Mr McEvoy on 10 February regarding new quotes she was having to obtain and confirming that she had restarted the grant process. She sought his advice regarding the software to order. Quotes were then provided to Access to Work on 12 February. On 3 March, a grant was approved with Access to Work contributing £437.12 out of a total cost of software and training of £1046.40. The equipment was then ordered quite promptly, with access codes then obtained, and arrived at the Respondent on 1 April. The Claimant said she did not criticise the Respondent for having wanted to pursue the grant, but believed that Dragon could have been purchased and installed during her sickness absence so as to be ready for her on her return to work. She agreed that the lapsing of the grant had caused the further delay from January. The Claimant felt that, this having occurred, it would not have been unreasonable for the Respondent to purchase the software outright given the inevitable delay but she had not felt able to make that suggestion as an effective challenging of Mr McEvoy.

42. Due to Mr McEvoy's absence on a sabbatical, Dr Holmes took over line management responsibility for the Claimant from April to September 2016.

43. The Claimant had her first training session on Dragon on 20 April, but on 11 May emailed Mrs Barraclough to say that she was having difficulty with her computer freezing and Dragon crashing particularly when she had a number of applications open at the same time. She mentioned that Linda Mayes thought that the issue might be a need for a larger memory capacity (RAM) on her computer which would mean asking the

Respondent's IT service providers for a new hard drive. On 16 May Embed, the Respondent's IT service providers, confirmed to Mrs Mayes the need to increase the RAM. The Respondent had no direct contract with Embed and had their services (and service restrictions) effectively imposed upon them by the wider NHS. Individual GP Practices did not typically have a dedicated point of contact within Embed.

44. The Claimant soon discovered that in fact the wrong software had been purchased as only the medical version of Dragon would be compatible with some of the applications the Claimant used, including those used for recording and extracting patient data. This was confirmed by David Lee of Hands Free Computing (from whom the software had been purchased) by 2 June. This then resulted in a further approach being made to Access to Work to acquire the Dragon medical edition which carried with it a cost of £1080. The Claimant understood that a grant would be forthcoming.

45. She met with Mrs Barraclough on 11 July to discuss the situation. Again, the Claimant explained that the software was crashing to the point where she could only use it for a couple of hours each day but that a grant would be available for a medical version of the software compatible with the clinical IT system. It was recorded that the Claimant, not being able use the software as expected, was having an impact on the pain in her hands/wrists and that the Claimant was taking paracetamol to combat this as well as the recommended breaks/exercise. It was noted that Access to Work had closed off the Claimant's claim which would then take at least two weeks to reinstate.

46. The meeting also involved a discussion regarding a change in the Claimant's role. The Claimant's Business Intelligence Team Manager role had 5/6 employees reporting to her. It was not disputed that the Claimant spent around 80% of her time on keyboard tasks. The role was however to expand to cover all of the Respondent's Practices, which would have necessitating the Claimant driving frequently between York and Hull. The Claimant suggested a new alternative role of Research Manager for herself in circumstances where she was not able to drive at this time. This was agreed and the Claimant commenced the new role around the beginning of August 2016. The Claimant's manager was to be Dr Laughey. The Claimant emailed him on 27 July expressing this to be *"an exciting and challenging opportunity for me in a field which I'm passionate about"*. The Claimant then emailed her colleagues on 2 August referring to herself as "*sidestepping*" to start a new challenge in building up the research arm of the Respondent. The Claimant had no direct reports but worked closely with senior professionals within the Practice responsible for enhancing a new revenue stream. This new role was less keyboard intensive than the role of Business Intelligence Team Manager, but still caused, it was accepted, the Claimant to spend around 70% of her time on keyboard tasks.

47. By email of 4 August the Claimant asked Mrs Barraclough for the go-ahead to buy the Dragon medical package given that Access to Work had now agreed to fund this. This was confirmed and the Claimant said that she would contact Hands Free Computing to buy the package. However, matters did not proceed smoothly and the Claimant emailed Access to Work on 23 August notifying them that she had not been able to purchase the equipment as Hands Free Computing were investigating a technical issue in uploading the new software onto her computer due to certain antivirus software installed on it by the local NHS. It had become clear that the software would only work if the CCG was willing to turn off some security firewalls installed on the system.

48. The Claimant agreed that this issue had now to be resolved between Embed and the CCG although she said that she was became the point of contact within the Respondent and that it should have been someone else who was qualified and had proper IT knowledge. She said that it was Linda Mayes who would usually work with Embed and that while she was talking to Mrs Mayes about the issue she had no feedback from her and certainly no offer from her to take over the process. Mrs Mayes was employed an equivalent level to the Claimant so that the Claimant did not understand that she could allocate the task to her. She said that she didn't directly ask Mrs Mayes for help but that Mrs Mayes knew she was struggling.

49. The Claimant refers to an email from David Lee of Hands Free Computing to Dave Ford at Embed copied to herself and Mrs Mayes (albeit she believed that Mrs Mayes was copied in purely because she was the normal point of contact) which referred to the Dragon software hanging/crashing frequently. This was in reply to an email from Dave Ford who said the matter had been passed to him to investigate due to there being possible exclusions required within the antivirus system to allow the software to function. He said that any antivirus changes had to be analysed before they could be made and the risk had to be assessed. He had asked whether it will be possible to obtain a trial version of the Dragon medical software but he was told that the problems in terms of crashing/hanging would happen within Dragon medical just as it already was within the Dragon professional software which had been installed for the Claimant's use.

50. Mr Ford, in his evidence described Mrs Mayes as more expert in clinical applications than IT infrastructure, but nevertheless possessing an understanding of 'IT language' beyond that of the Claimant. He said that no one had indicated to him that there was any 'disability' issue affecting the Claimant. The Claimant's PC (with particular reference to its speed of processor) was described as being on the cusp of coping with Dragon – in theory it had sufficient RAM if all of the RAM was available and not being utilised by other applications open on the PC.

51. The Claimant expressed herself before the Tribunal to be appreciative of the assistance which Mr Ford had provided. On 12 October he informed Mrs Mayes, copied to the Claimant, that the support contract did not include Dragon as accredited software and therefore the Respondent needed to raise the matter with the CCG. If the software was approved by the CCG then the implementation would have to be a "costed project". He said that the main complication was that Dragon required exclusions setting up within antivirus system which were non-standard and, whilst it could be done, there was still a need to maintain a secure environment protected from external threats.

52. Mr McEvoy met with the Claimant on 17 October and followed the conversation with an email to her where he recorded that she was happy in her new post as research manager and that the type of work and flexibility meant that she was able to adapt her needs and avoid exacerbating her RSI. He recorded that it was clear that the antivirus software would have to be turned off. He recorded that they discussed options such as other software or a stand-alone PC but that the Claimant felt that everything was manageable at that time and no further action was required. In cross-examination the Claimant said that she was 'managing' at the time. She said that she did not see the other suggestions as forming any alternative solution and expected the Respondent to move the matter forward with the CCG. She said that the ability to use the Dragon in letters and emails was of only limited assistance to her at the time and the computer still froze. She said that the issues regarding memory capacity had not been resolved. Additional memory had been bought in but the computer she used did not have the capacity to fit extra memory.

53. The Claimant said that she had had a particularly bad day at work on 25 November and was in tears because of the difficulty she was having working. Mrs Mayes said to her that the situation needed to be resolved and suggested that the Claimant speak to Julie Lund, General Manager in York. The Claimant contacted her and she did get involved as a result of the Claimant explaining that CCG approval was required and she did not know where to go. The Claimant understood that Julie Lund had made contact with a senior contact she had within Embed who was able to apply the necessary pressure to the CCG to obtain their approval to the firewalls being taken down to allow the installation of Dragon medical edition on the Claimant's computer. Emails evidenced Mrs Lund making contact with Dave Ford and he then confirming that Angela Wood from Embed had raised the matter with the CCG and was awaiting a response. Mrs Lund further corresponded directly with Angela Wood and, on 6 December, Mrs Wood contacted the CCG requesting authorisation to install Dragon and referring to an email received from Julie Lund to say that the request *"is really urgent now".* By email of 16 December 2016 from the Deputy Chief Finance Officer of the CCG to Angela Wood it was confirmed that the CCG would be happy to support this. Approval was received on 23 December. The Claimant's view was that when Julie Lund became involved and was proactive it had taken 3 ½ weeks to resolve the issue

which could have been done a lot earlier. Mrs Lund said that any GP Practice Manager would be aware that there was a standard list of approved software, with additional permissions required to install anything not on that list. She could not, however, comment on Mr McEvoy's personal knowledge.

54. Dragon medical edition was ordered in the first week of January and indeed installed on 18 January by a senior engineer from Embed. The Claimant, however, as notified to Mrs Barraclough on 14 February 2017 was still waiting for some antivirus prompts to be turned off and was still unable to use Dragon for any length of time without her computer freezing or crashing. She said that the arthritis in her joints very much *"comes and goes to different degrees and no two days the same."* She was still experiencing pain in her wrists, despite following recommendations to limit the stresses on her arm/wrist. Mrs Lund, who had been copied into that email, corresponded with the Claimant on 23 February asking what had happened and if Angela Wood needed chasing further.

55. The Claimant attended a review meeting with Mr McEvoy on 8 March regarding her Research Manager position. He noted: *"We spoke about your health and whilst you are managing, getting the installed voice software to work in your PC remained an issue and it caused your PC to crash."* It was noted that Mrs Lund was dealing with this on her behalf but the Claimant would follow-up. In cross-examination it was put to the Claimant that she was "*managing*". She said that she was doing her job but it would have been a lot easier for her with the software. Mr McEvoy recalled that there was *"no massive plea for help*." As regards Dragon, he thought that the Claimant was happy to progress this and that she would get support if she asked for it.

56. Through April the Claimant continued to experience difficulties with the stability of the software and Dave Ford of Embed was involved in trying to make changes to her PC. Mrs Barraclough told Mr McEvoy on 12 April that she received a telephone call from the Claimant who was clearly upset as her wrists were really painful and she believed that the carpal tunnel problem had returned again. She noted that this had been a slow progression over the past six weeks and the Claimant was at a stage where using her hands was becoming difficult. She recorded that there were still problems with the Dragon software working for around two hours before then freezing and that Dave Ford was trying to solve the issue. Mrs Barraclough had advised the Claimant that that she should only do what she could and then go home and that they would have to meet to discuss the way forward. She suggested to Mr McEvoy that the Claimant worked as and when she could on full pay until 26 April. They could then meet her to discuss matters.

57. A meeting took place with the Claimant on 26 April 2017 where Mrs Barraclough and Mr McEvoy raised with the Claimant that she might

change to a flexible working pattern coming in and staying for as long at work as she was able and being paid for hours worked. There was reference to the Bradford factor scoring which was applied to assess entitlement to sick pay and a suggestion that this form of working would benefit the Claimant in avoiding activating the triggers which would limit sick pay entitlement. The Claimant's account is accepted, it being noted that Mrs Barraclough thought that the Claimant's Bradford score could have been mentioned. Such mention would not have been initiated by the Claimant. The Claimant said that she acknowledged what they were saying with at most a nod of the head but did not agree to any such proposal. Mrs Barraclough and Mr McEvoy came away from the meeting however thinking that she had. In this context Mrs Barraclough emailed human resources to say that the Claimant would commence flexible working from the following day, record her hours worked on an overtime form and submit it on a monthly basis. She would be paid for hours worked only. Mrs Barraclough sent an email to the Claimant on 26 April summarising the meeting. This addressed the Claimant's carpal tunnel symptoms as being treated with steroid injections. It noted that after two years there were still ongoing problems with the Dragon software and that she had now been advised that she needed an up-to-date PC to support the package. The possibility of swapping the Claimant's PC over with someone else's was muted. It noted an agreement for the Claimant to continue to work flexible hours to allow time for the Claimant's hands to rest.

58. The Claimant was provided with a new computer on 27 April which Embed had managed to source. The Claimant was in fact absent due to sickness at this point in time but came in on that day to assist in the reloading of the Dragon software onto her new PC. The Claimant said that she didn't have a chance to use it until she returned to work on either 2 or 3 May but, once she used it, it worked perfectly. She had not booked any training beforehand because she thought it appropriate to wait until the system was working properly.

59. The Claimant remained concerned regarding the suggestion she work flexibly. As a result she queried on 2 May her Bradford score and was told that it fell within the medium range and fell significantly short of the higher range where she would be disadvantaged in terms of not having any entitlement to sick pay. She reverted to the Respondent saying that she wanted to stay on her permanent contract and take sick leave as required and not transfer to flexible working where she would only get paid for the hours worked. Mrs Barraclough replied that taking sick leave as and when required was fine with her until their next meeting when flexible working could be discussed again with Mr McEvoy.

60. Following the provision of the new PC, Mr Ford checked with the Claimant whether she had noted an improvement.

61. The Claimant attended a Practice meeting on 8 May. The Claimant was unable to take notes and did not take notes at the meeting due to her hand problems. Julie Lund took them. At the end of the meeting she said that Mr McEvoy raised the taking of meetings at the next meeting. The Claimant maintained before the Tribunal that she had been told to take the minutes of the next meeting but on further questioning she said that she felt that Mr McEvoy had raised a direct question to make her feel inadequate because she wouldn't be able to take the minutes. She felt that in reality it was an instruction. Mr McEvoy said that he had asked: "can you take the minutes?" The Claimant made up that she was on holiday on the date of the next meeting and Mel Bradshaw volunteered to take the notes then.

62. The Claimant was absent from work due to sickness from 17 May. She received 8 weeks' full salary until 5 July (due to the impact of the Bradford score on her entitlement) and statutory sick pay thereafter. The Tribunal accepts Mrs Barraclough's evidence that sick pay was simply paid according to the absence chart and that the reason for the Claimant's absence had been "overlooked". As regards the pay reduction, Mr McEvoy said he "would accept that we missed it" and if the issue had been raised the Respondent would probably have exercised its discretion to continue paying full salary.

63. The Claimant attended a further meeting with Mrs Barraclough and Mr McEvoy on 30 May. Mr McEvoy said that he would write to her GP to ask what jobs/tasks he believed she would safely be able to carry out. However, they would wait until a report had been received from the Claimant's consultant before doing so. The Claimant said that she could not work at that point in time and would not be able to pull files. McEvoy asked if there was anything the Respondent could do to help. The Claimant explained that doing spreadsheets and adding a lot of data for the nurses recently had been a catalyst to her problems. She said that she had had some voice recognition training but this had not been completed at that point and the software had only been installed on 2 May. Mrs Barraclough followed up this meeting by an email to the Claimant on or shortly after 30 May. Within this there was reference to the Claimant being able to access a counselling service and that when Mr McEvoy had asked if there was anything further that the Respondent could support her with, the Claimant did not believe there was at that time. The Claimant's evidence was that she felt patronised by the reference to counselling.

64. The Claimant raised a grievance by letter of 15 June addressed to Dr Hayward. This referred to the background to her disability and alleged that the Respondent had failed to make reasonable adjustments since 23 April 2015 and whilst the software had been finally installed on 2 May 2017 she had not been trained on it and was still expected to carry out her duties. She said that the delay in implementing the adjustments had been damaging to her condition and worsened it significantly. She further

specifically complained about the flexible working proposal made on 26 April. A further complaint was that the Respondent had failed to pay her in full during periods of sickness in 2015, 2016 and 2017. She complained of the request by Mr McEvoy that she take minutes referring to Mr McEvoy telling her that she would do so at the next meeting in July 2017. She considered that the application of the Bradford score in relation to her situation was an act of further disability discrimination.

65. The Claimant's grievance was copied on to Mr McEvoy who emailed Mrs Barraclough and Dr Hayward summarising his feelings regarding the Claimant's *"unexpected grievance submission*". He said: *"there is no technology that fits this particular bill and in effect, together, we have been trying to adapt another technology to Michelle's needs. I must add that her Occupational Health report states that she is not categorised as disabled under the relevant Act."* As regards the issue of her being asked to take minutes he disputed her recollection and said that his intent was to see if she felt able to take the minutes of the next meeting so that arrangements could be put in place if she was not.

66. Mrs Mayes, in an email to Mrs Barraclough of 5 July, referred to an employee, Tom Skelton, who helped the Claimant on her request with moving heavy boxes. Mr Skelton and the Claimant worked in close proximity to each other and on occasions she asked him to help with physical tasks she was finding difficult. The Claimant did not want to be an imposition, but Mr Skelton was happy to help her and always did. He had cleared with his own manager that he could put his duties to one side to help the Claimant when required. The Respondent was criticised by the Claimant for not being more proactive in specifically allocating someone to assist her.

67. A grievance meeting took place with the Claimant chaired by Dr Mike Holmes on 6 July 2017. This was conducted as a preliminary meeting to discuss the points in the Claimant's grievances. A form of note was compiled and added to which set out the Claimant's representations, background information and the Respondent's position taken in respect of each of her complaints. It was noted that Dr Holmes asked the Claimant if she had thought about her future to which she confirmed that she did not feel that she could come back to post involving significant keyboarding. When asked if she felt she could ever work again she was noted as responding that she had not thought that far ahead. It was also noted that the Claimant was asked what she hoped to get from the process, in response to which she said that she would like a settlement agreement. The Claimant's evidence to the Tribunal was that at the time she submitted her grievance, she had lost trust and confidence in the Respondent. She did not feel that the Respondent wanted her and thought that an agreed severance might give both her and the Respondent a way out of the situation.

68. Mrs Barraclough wrote to the Claimant by letter of 25 July seeking to arrange a further meeting with Dr Holmes on 7 August, said to be an opportunity to discuss her thoughts on the evidence and notes from the last meeting. Such meeting took place and a decision letter dated 16 August was then issued to the Claimant from Dr Holmes. This dealt with the Claimant's complaints in significant detail both in terms of the background history and then in providing conclusions to the Claimant specific complaints. Dr Holmes had initiated the preparation of a log of all relevant meetings and communications with the Claimant. He had spoken, albeit not formally, to Mrs Barraclough, Mr McEvoy and Dr Gilmore. No notes had been taken of what they told him.

69. Dr Holmes felt that the Respondent had reacted to the recommendations of occupational health in the report of 12 May 2015. He accepted that there were delays but did not accept they were the fault of or caused by the Respondent. They were, he said, "multi – factorial". He said that he did not find there was anything further that the Practice could have done to overcome the delays and that the Respondent had been supportive through the period in the form of regular meetings, responses to occupational health recommendations, visits, phone calls, communication with the Claimant herself and liaison with external parties. He said that he put himself in a position where he could 're-live' the situation the Respondent faced in addressing the Claimant's needs, faced with unpredictable barriers. He told the Tribunal that he could not definitively conclude that the Claimant was a disabled person, but the Practice had done what it needed in order to satisfy the Respondent's obligations if the Claimant's condition amounted to a disability.

70. Dr Holmes found that the suggestion that the Claimant work flexible hours had been intended to lessen the financial impact of her sickness absence and enable her to work flexibly so that she could both prevent and respond to her symptoms. He concluded that her sick pay entitlement had been satisfied. As regards the Claimant taking minutes at meetings, Dr Holmes referred to he himself having been in the room when the conversation took place and considering that Mr McEvoy's tone was one of enquiry not of expectation. He found that the Claimant had not been put under any pressure to take minutes and Mr McEvoy's comments were made with a view to ensuring that somebody was present at the future meeting who could take minutes. He did not believe there to be any valid criticism regarding the Respondent's policy of applying the Bradford score in assessing sick pay entitlement. The Claimant was given a right of appeal.

71. Mrs Barraclough wrote to the Claimant on 24 August seeking to meet again to discuss the Claimant's absence.

72. By letter of 29 August the Claimant wrote to Dr Hayward detailing her grounds of appeal against the grievance decision. She also on the same day separately wrote to Dr Hayward giving notice of the termination of her

employment. She said that she felt extremely disappointed and let down after the investigation into her grievances and there being no evidence found that the Respondent could have done more to support the Claimant implementing the voice recognition software that was first recommended to help her back in April 2015. She felt she was still not being listened to – her feelings regarding the likely outcome had proved correct. She described herself as being in a state of shock and disbelief having expected to retire from her job but now having to resign "due to a failure by the Practice to acknowledge that they could and should have done more to help and support me." She said that she considered that her working relationship had broken down and that she felt that she had been discriminated against due to her disability and constructively dismissed.

73. Nevertheless, the Claimant did attend a grievance appeal meeting before Dr Hayward on 14 September 2017. This involved a full and detailed discussion of her grievances. Dr Hayward understood that Mel Bradshaw had volunteered to take notes after Mr McEvoy's 'request' on 8 May 2017. He did not speak to Mrs Lund to see if she recollected the 'request'. More generally, he had been told by Mrs Mayes that the Claimant was struggling at work, but that she was not '*a complainer'*. He said to the Tribunal that this was *"not nice to hear*." He considered that help had been available if the Claimant had asked for it, but that to take things away from the Claimant would have been against her own wishes. As regards the Dragon software he said that*: "you could say in an ideal world, we could have done more, but people did their best."* A grievance appeal decision was issued by letter of 25 September which again dealt in detail with the Claimant's complaints but upheld the decision reached by Dr Holmes at the earlier stage. The Claimant's employment terminated on 28 September 2017.

Applicable Law

74. In order to bring a claim of unfair dismissal an employee must have been dismissed. In this regard the Claimant relies on Section 95(1)(c) of the Employment Rights Act 1996 which provides that an employee is dismissed if she terminates the contract under which she is employed (with or without notice) in circumstances in which she is entitled to terminate without notice by reason of the employer's conduct. The burden is on the Claimant to show that she was dismissed.

75. The classic test for such a constructive dismissal is that proposed in **Western Excavating (ECC) Ltd v Sharp 1978 IRLR 27CA** where it was stated:

76. "*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. The employer is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover he must make up his mind soon after the conduct of which he complains; or, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract".

77. The Claimant asserts there to have been a breach of the implied duty of trust and confidence arising out of the unlawful discrimination she claims to have suffered and the Respondent's handling of her grievance.

78. In terms of the duty of implied trust and confidence the case of **Malik v Bank of Credit and Commerce International 1997 IRLR 462** provides guidance clarifying that there is imposed on an employer a duty that it *"will not without reasonable and proper cause conduct himself in a manner calculated [or] likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee".* The effect of the employer's conduct must be looked at objectively.

79. The Court of Appeal in the case of **London Borough of Waltham Forest v Omilaju 2004 EWCA Civ 1493** considered the situation where an employee resigns after a series of acts by her employer.

80. Essentially, it was held by the Court of Appeal that in an unfair constructive dismissal case, an employee is entitled to rely on a series of acts by the employer as evidence of a repudiatory breach of contract. For an employee to rely on a final act as repudiation of the contract by the employer, it should be an act in a series of acts whose cumulative effect is to amount to a breach of the implied term of trust and confidence. The last straw does not have to be of the same character as the earlier acts, but it has to be capable of contributing something to the series of earlier acts. There is, however, no requirement for the last straw to be unreasonable or blameworthy conduct of the employer, but it will be an unusual case where perfectly reasonable and justifiable conduct gives rise to a constructive dismissal.

81. If it is shown that the Claimant resigned in response to a fundamental breach of contract in circumstances amounting to dismissal (and did not delay too long so as to be regarded as having affirmed the contract of employment), it is then for the Respondent to show a potentially fair reason for dismissal.

82. The duty to make reasonable adjustments in this case arises under Section 20(3) and (5) of the 2010 Act which provides as follows (with a "relevant matter" including a disabled person's employment and A being the party subject to the duty):-

"(3) The first requirement is a requirement where a provision, criterion or Practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage …….

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid."

83. The Tribunal must identify the provision, criterion or Practice applied/auxiliary aid, the non disabled comparators and the nature and extent of the substantial disadvantage suffered by the Claimant. A substantial disadvantage is one that is more than minor or trivial and it must arise from her disability.

84. The case of **Wilcox –v- Birmingham Cab Services Ltd EAT/0293/10/DM** clarifies that for an employer to be under a duty to make reasonable adjustments he must know or reasonably ought to have known both firstly that the employee is disabled and secondly that she is disadvantaged by the disability in the way anticipated by the statutory provisions.

85. Otherwise in terms of reasonable adjustments there are a significant number of factors to which regard must be had which, as well as the employer's size and resources, will include the extent to which the taking the step would prevent the effect in relation to which the duty is imposed. It is unlikely to be reasonable for an employer to have to make an adjustment involving little benefit to a disabled person.

86. In the case of The **Royal Bank of Scotland –v- Ashton UKEAT/0542/09** Langstaff J made it clear that the forerunner legislation, the Disability Discrimination Act, when it deals with reasonable adjustments is concerned with outcomes not with assessing whether those outcomes have been reached by a particular process, or whether that process is reasonable or unreasonable. The focus is to be upon the practical result of the measures which can be taken. Reference was made to Elias J in the case of **Spence –v- Intype Libra Ltd UKEAT/0617/06** where he said: *"The duty is not an end in itself but is intended to shield the employee from the substantial disadvantage that would otherwise arise. The carrying out of an assessment or the obtaining of a medical report does not of itself mitigate, prevent or shield the employee from anything. It will make the*

employer better informed as to what steps, if any, will have that effect, but of itself it achieves nothing."

87. If the duty arises it is to take such steps as is reasonable in all the circumstances of the case for the Respondent to have to take in order to prevent the PCP creating the substantial disadvantage for the Claimant. This is an objective test where the Tribunal can indeed substitute its own view of reasonableness for that of the employer. It is also possible for an employer to fulfil its duty without even realising that it is subject to it or that the steps it is taking are the application of a reasonable adjustment at all.

88. Miss Setty, on behalf of the Claimant, refers to paragraph 6.32 of the EHRC Employment Code which provides that any necessary adjustment should be implemented in a timely fashion. The Tribunal was referred to the cases of **Duckworth v British Airways Plc ET Case No. 330470/11**, **Ministry of Defence v Cummins UKEAT/0240/14** and **Conry v Worcestershire Hospital Acute NHS Trust UKEAT/0093/17**.

89. The Claimant complains of discrimination arising from disability and harassment. In the Equality Act 2010 discrimination arising from disability is defined in Section 15 which provides:-

"(1) A person (A) discriminates against a disabled person (B) if –

(a) A treats B unfavourably because of something arising in consequence of B's disability,and

(b) A cannot show that treatment is a proportionate means of achieving a legitimate aim."

90. The complaint of harassment is brought pursuant to Section 26 of the Equality Act 2010 which states:

"(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—

violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(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;

(c) whether it is reasonable for the conduct to have that effect."

91. The Act deals with the burden of proof at Section 136(2) as follows:-

"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravenes the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provisions".

92. Section 136 is relevant to establishing that the unwanted conduct in question related to the relevant protected characteristic. In order to shift the burden of proof, there is a need for the Claimant to adduce evidence to suggest that the conduct could be related to the protected characteristic, i.e. the Tribunal could reasonably conclude the detrimental treatment to be disability related. The Tribunal was mindful that section 26 does require there to be unwanted conduct related to a protected characteristic. This is wider than the predecessor legislation which required the conduct to be *"on the grounds of"* the protected characteristic, but the breadth of the current section 26 must have limits.

93. Harassment will be unlawful if the conduct had either the purpose or the effect of violating the complainant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

94. A claim based on *"purpose"* requires an analysis of the alleged harasser's motive or intention. This may, in turn, require the Employment Tribunal to draw inferences as to what the true motive or intent actually was. The person against whom the accusation is made is unlikely to simply admit to an unlawful purpose. In such cases, the burden of proof may shift from accuser to accused.

95. Where the Claimant simply relies on the *"effect"* of the conduct in question, the perpetrator's motive or intention – which could be entirely innocent – is irrelevant. The test in this regard has, however, both subjective and objective elements to it. The assessment requires the Tribunal to consider the effect of the conduct from the complainant's point of view. It must also ask, however, whether it was reasonable of the complainant to consider that conduct had that requisite effect. The fact that a claimant is peculiarly

sensitive to the treatment accorded her does not necessarily mean that harassment will be shown to exist.

96. Applying the relevant principles to the facts the Tribunal reaches the following conclusions.

Conclusions

97. The primary complaint in these proceedings has undoubtedly been the alleged failure to make reasonable adjustments in respect of the Dragon voice recognition software. Mr Ali, on behalf of the Respondent, agrees that the provision of fully functioning voice recognition software was a reasonable adjustment to make. The Claimant was at a substantial disadvantage in performing her duties, especially the requirement that she spent a considerable part of her working time operating a keyboard at her computer, when compared to a non-disabled employee who did not have the repetitive strain injury/carpal tunnel syndrome impairment affecting their wrists and arms. Mr Ali points out that this disadvantage did not apply when the Claimant was absent due to sickness. However, certainly when attending work, the Respondent accepts that, had the Dragon software been available and operating effectively, the amount of time the Claimant spent on physical keystrokes at her keyboard would have been significantly reduced which would, if not have completely removed, have certainly substantially alleviated her disadvantage.

98. Of course, the Respondent took steps to ensure that the Claimant was provided with Dragon and that it could function on her work computer. By the time the Claimant's employment terminated the reasonable adjustment had been implemented, was being effectively used by the Claimant and all that remained was the Claimant's attendance at 2 further training sessions after her return from work following her final period of sickness. The issue, therefore, is whether functioning voice recognition software was provided in a timely fashion.

99. Mr Ali maintains that criticism of the Respondent is unfair asserting that the Tribunal is concerned with whether the Respondent took reasonable steps and not whether they followed the "absolute best course of action with the benefit of hindsight".

100. In a similar manner to how Dr Holmes and Dr Hayward approached the Claimant's grievance, Mr Ali refers the Tribunal to a chronology of events identifying the obstacles to providing functioning voice recognition software as they arose. He refers to an initial period from 8 May 2015 to 11 June 2015 where the Claimant undertook to obtain quotes for the software, attend demonstrations and apply for grants. He notes that the Claimant accepted that it was reasonable for the Respondent to apply for a grant for the software at this stage, accepting that the application did not

delay matters. He notes that the Claimant was then from 11 June 2015 to 27 January 2016 absent from work and therefore had to accept that she was not placed at a disadvantage during this period in terms of how she carried out her role. The Tribunal however rejects his factual assertion that the Claimant did not want the software to be purchased in her absence. She indeed did hope that it might be ready for her return to work in which case she could have quickly commenced learning how to use it.

101. In the period from 27 January 2016 to 16 March 2016 it transpired that the funding application had lapsed and had to be resubmitted. The Respondent's position is that it remained at this stage reasonable to make an application for a grant, but that position is more difficult to maintain in circumstances where the Claimant had just returned to work following an absence caused by her disabling condition and in circumstances where following a phased return she was being expected to fulfil her normal duties. The Respondent has, rightly, never sought to argue that it considered the cost of the Dragon software to be significant.

102. Reference is then made to the period from 17 March 2016 to 2 June 2016 during which the Dragon software arrived, but it transpired that, to work with all of the medical records applications used by the Claimant, the medical rather than professional edition of the package was required. Mr Ali maintains that, if the Claimant had searched on Google or read the material available, the correct option was likely to have been obvious to her and that instead of accepting responsibility for this error the Claimant has tried to blame the Respondent. Much of the Respondent's argument, whilst accepting that the duty to make reasonable adjustments rest with the employer, is based upon the Claimant having taken responsibility for obtaining the software as effectively her own personal project and not seeking help from anyone within the Respondent or from an external source.

103. In the period from 3 June 2016 to 5 August 2016 the Claimant makes her second grant application and Mr Ali notes her comment in cross examination that it was reasonable and her choice to make this application.

104. The period from 5 August 2016 to 18 January 2017 is characterised by a concern that the Dragon software may not be able to interact with the wider NHS computer network due to the firewalls and antivirus software in place. However, the intervention in November 2016 of the York General Manager, Julie Lund, resulted in relatively quick progress which was in sharp contrast to the preceding period and is rather illustrative of what could happen when someone with more seniority and knowledge of NHS syestems/bureaucracy got involved.

105. The period from 18 January 2017 to 3 May 2017 is characterised by continuing problems of the computer crashing due to the burden placed on the Claimant's (old) PC by Dragon software.

106. If one looks at these stages, various excuses and explanations can be seen for the delay and positive steps taken by members of the Respondent can be identified. Stepping back, however, and looking at the situation affecting the Claimant in the round, can it be said that the Respondent provided functioning voice recognition software in a timely manner? The Tribunal is in no doubt whatsoever that it cannot. This is not a conclusion reached with the benefit of hindsight.

107. The duty to make reasonable adjustments arose at latest on 12 May 2015 on the Respondent's receipt of the occupational health report by which time the Respondent was fully aware of the Claimant's impairment and the substantial disadvantage it caused. It took in excess of two years for the Claimant to be provided with an effective solution which reduced her typing burden. The situation was not simply one where an auxiliary aid would have enabled the Claimant to work more efficiently with, for instance, greater speed or accuracy. The Respondent's own submission to the HSE records the Claimant suffering an injury at work due to her keyboard work and to voice recognition software having been identified as an effective way of keeping the Claimant safe. This was in the context of a statement that around 70% of the Claimant's work was involved in keyboarding tasks. The Respondent, therefore, in not ensuring that voice recognition software was in place was, on its own admission to the HSE, allowing the Claimant to continue to work in an environment which was harmful to her health and safety. It was imperative and a matter of some urgency that properly functioning voice recognition software be put in place for the Claimant's use.

108. However, the Respondent effectively acquiesced in allowing the Claimant to investigate and source the appropriate software without the Respondent itself considering what might be required and what problems might be encountered in providing an effective solution. The Claimant has been portrayed as a senior manager capable of taking responsibility for her own welfare and of managing what was termed to be her project of acquiring the Dragon software. This overstates the Claimant's status and decision-making power within the Respondent. It fails to recognise that the Claimant had minimal IT knowledge in circumstances where the Respondent had its own IT Manager who, whilst not a IT technician, certainly had more knowledge of systems/terminology and experience of where to go to find solutions. The Respondent had a designated GP partner who took the lead in IT matters but his involvement appears to have amounted to little more in practice than a willingness to give up time to attend a demonstration with the Claimant in the early stages of sourcing a product.

109. The voice recognition software required to assist the Claimant was not a bespoke package for the Respondent. A cursory investigation of the Dragon website reveals the existence already of products specifically designed to work in a healthcare setting. The Claimant did not see this but any competent manager within the Respondent, tasked with assisting the Claimant, ought reasonably to have investigated the products available and (recognising the secondary importance of cost to the Respondent) would have seen it as blindingly obvious that the medical edition of Dragon was what the Claimant needed. The Claimant was all the time seeking to get a product at minimal cost to the Respondent albeit the medical edition was in fact not especially expensive.

110. Again, anyone with any experience of acquiring or using computer software (Mrs Mayes, Mrs Lund, Dr Gilmore, Mr McEvoy and/or others within the Respondent) would at the outset have given consideration to the system requirements for the Dragon to operate effectively. Again, these are published on the Dragon website or would have been quickly ascertainable from any supplier of the product such as the companies from whom the Claimant requested a quote.

111. It is not reasonable for the Respondent to assert that the Claimant is a capable and independent person who would not have appreciated interference with her "project" and who did not ask for help. The Respondent had it acted reasonably in seeking to make the reasonable adjustment would not have left it to chance that an appropriate solution would be provided and would have ensured that the Claimant was aware that the Respondent took full ownership and responsibility and was committed to assisting her.

112. Had the Respondent acted reasonably and in a timely manner, the Tribunal considers that the (medical edition) software would have been purchased (with a contribution towards its cost by Access to Work) and installed ready for the Claimant's use on her return to work after sickness in January 2016. This would have, at least following basic training, provided a partial alleviation of the disadvantage experienced by the Claimant due to her disability.

113. The Tribunal does not consider that it was unreasonable for the Respondent to explore the availability of a grant and financial contribution towards the purchase of the software, but on the Claimant's return to work after sickness and where the Claimant was soon having to resume a significant amount of keyboarding work without any alleviation, there was an overriding imperative that this software be acquired as soon as possible.

114. Being generous to the Respondent, it is quite possible that there might have been an inability to foresee some of the difficulties the

Claimant would then experience with the voice recognition software until it was installed on her PC. There would then have been a need to investigate whether the Claimant's PC required any form of upgrade or indeed replacement to be able to run Dragon and how Dragon interfaced with the NHS clinical records systems. This required again someone with greater IT knowledge than they Claimant to liaise with the Respondent's IT service providers and with the CCG to obtain the necessary permissions for non-standard software to be used. This undoubtedly would always have taken some significant time given the non-standard nature of the request, the Respondents lack of influence and direct contractual relationship with external providers and the general bureaucracy within the NHS. However, the Tribunal is confident in concluding that had the Respondent acted in a timely manner the Claimant would have been able to use, to her significant benefit, fully functioning voice recognition software from 1 June 2016. The success of Julie Lund when she became involved illustrates what could be achieved where there was a will at a higher level within the Respondent to make things happen. The Tribunal cannot dismiss Julie Lund's success at a matter of luck or accident, particularly when her intervention is the only example of someone within the Respondent showing real drive and determination to provide a solution for the Claimant.

115. Otherwise, much of the Respondent's witness evidence is characterised by a willingness to allow the Claimant to progress matters herself and in essence to 'muddle through'. Further, the Respondent seemed to be content to accept at face value the Claimant's lack of requests for help as an indication (which indeed she sometimes expressly gave) of her still managing at work. The Respondent knew that the Claimant was a very independent and stoical individual who would not complain even in extremely adverse circumstances. Again, the Respondent knew that the way in which the Claimant was continuing to have to work, without the assistance of voice recognition software, was a risk to her health and safety.

116. The Respondent failed to comply with its duty to make a reasonable adjustment in providing properly functioning voice recognition software for the Claimant in circumstances where it failed to provide this in a timely fashion. In all the circumstances, this adjustment ought reasonably to have been made by not later than 1 June 2016. This would have given the Respondent sufficient time from the Claimant's return to work to understand the further hardware needs and resolve the firewall/antivirus permissions issue with the CCG.

117. This covers the first three identified reasonable adjustments sought by the Claimant which include the need to revisit the appropriate version of the software required (a need which would never have arisen had there been a reasonable investigation as to the Claimant's needs at the outset) and a need to provide training for the Claimant on Dragon.

118. The next reasonable adjustment sought by the Claimant with reference to her duties at work was a rotation of roles/duties. It was identified by occupational health that the Claimant ought to be able to be flexible in terms of the tasks she performed and would need to take short breaks to stretch and exercise. Indeed, these were allowed to the Claimant within the discretion of the performance of her duties. There is no evidence before the Tribunal as to how a rotation of roles would have alleviated the Claimant's disadvantage and no indication as to what those alternative roles might have been. The evidence before the Tribunal was that any role which might be available for the Claimant to perform would involve a significant amount of keyboard work. The reasonable adjustment of the provision of properly functioning voice recognition software would have alleviated the Claimant's disadvantage so as to render unnecessary any additional rotation of her work tasks.

119. The Claimant next maintains that a reasonable adjustment would have been for her to have been given less computer-based work, but again no alternative option in terms of work tasks has been identified before the Tribunal and the provision of the Dragon software resolved the disadvantage otherwise experienced by the Claimant in having to work on a keyboard.

120. The Claimant next raises as a reasonable adjustment her being excused from taking minutes at meetings. This relates to the meeting she attended on 8 May 2017. Of course, at that meeting she made clear her inability to take notes and there was no requirement that she did so. The Claimant did not attend any other meeting where there was a requirement to take notes. The Tribunal accepts that would have put her at a substantial disadvantage in that her having to physically take down at speed a note of what was said at a meeting would be bound to risk exacerbating her disabling condition and cause her pain. The Claimant, of course, made her excuses in terms of unavailability at the next meeting in July so that a volunteer to take the minutes at that subsequent meeting was promptly found. There was, therefore, never any requirement that she take notes.

121. The Claimant then maintains that she ought to have been provided with designated support for opening drawers and other physical work within the office. The Tribunal generally accepts that the Claimant by reason of her disabling condition was at a disadvantage when having to undertake such physical tasks. However, the reality of the situation was that Tom Skelton willingly assisted the Claimant with any of her needs upon her request. Whilst it is correct that the Respondent had not been proactive in identifying him as someone to provide the assistance, Mr Skelton had cleared with his manager that he was permitted to leave his own duties in order to help the Claimant and, in practice, whenever the

Claimant needed assistance she got it such that there was, in this regard, no failure to make a reasonable adjustment.

122. The Tribunal turns to the second PCP of the Respondent's application of its management of attendance policy and use of the Bradford factor. Firstly, the Claimant was not "attendance managed" and was not taken down any procedure based upon her periods of absence which involved warnings or might have lead to the termination of her employment.

123. The complaint pursued by the Claimant was that she was at a disadvantage in terms of the Respondent's policy relating to payments during sickness in that the period of entitlement to full salary decreased dependent on an employee's Bradford score (a multiple of days and periods of absence). The Claimant by reason of her disability was more likely to have a high score than a non-disabled employee. The Respondent accept that the relevant PCP put the Claimant indeed at a substantial disadvantage as a disabled person so that the duty to make reasonable adjustments might arise.

124. The Claimant's complaint had originally relied on payments during sickness absences in 2015, 2016 and 2017. By the point of submissions, a positive complaint was being pursued only in respect of the Claimant receiving 8 weeks rather than 12 weeks at full pay during her 2017 sickness absence, such that after 5 July 2017 she received statutory sick pay only up until the date of the termination of her employment. The evidence is that, in respect of one of the earlier years, full salary was paid beyond the Claimant's strict entitlement and in any event any complaint in respect of those prior absences is significantly out of time without any explanation advanced as to why no earlier complaint was brought.

125. Ordinarily an employee maintaining that full salary should have been maintained during a period of sickness is in difficulties in that continuing to pay full salary during sickness is rarely a measure which would remove or alleviate a disabled employee's disadvantage in the sense of allowing them to return to work. One factor pointing in favour of a reasonable adjustment might be, however, that the absence from work (and hence the loss of pay) had itself been caused by the employer's failure to make reasonable adjustments. That factor may be said to be of potential relevance in this case. However, fundamentally, this employer in designing it sick pay policy had determined that disability-related absences ought to be discounted when calculating the employees' Bradford score for the purposes of assessing their sick pay entitlement. This specific point was addressed in the questions answers given to employees on the implementation of the new policy and in evidence both Mrs Barraclough and Mr McEvoy were clear that the reason for the Claimant's absence in 2017 had been overlooked and a cut-off of 8 weeks had been applied as at 5 July 2017 automatically based on the Claimant's sickness record but

without any consideration of her disability. This was said by the witnesses to be an oversight in circumstances where, if they had turned their minds to it, the Claimant's full salary would have been maintained certainly up to the date of the termination of her employment. The Respondent has effectively omitted to implement its own considered reasonable adjustment to its sick pay policy. The Claimant's complaint in this regard of a failure to make reasonable adjustments must succeed.

126. In summary, the Respondent failed in its duty to make reasonable adjustments in not providing voice recognition software in a timely manner and in it not continuing to pay the Claimant her full salary from 5 July 2017 whilst absent due to sickness, but otherwise complied with its duty.

127. The Claimant in the alternative frames the cessation of her payment of full salary during sickness as a complaint of discrimination arising from disability pursuant to section 15 of the Equality Act 2010. Mr Ali concedes that he is in difficulty in constructing a defence to such complaint in all of the circumstances. Certainly, the cessation of full salary must amount to unfavourable treatment and again it must be seen as arising in consequence of the Claimant's disability in that it was triggered by her periods of sickness absence which in turn arose out of her disabling condition. The Respondent then has the ability to defend such complaint if it can show that in the implementation of its policy it was acting proportionately in pursuit of a legitimate aim. Its proportionality argument however cannot succeed in circumstances where the Respondent on its own admission had overlooked the Claimant's disability in circumstances where it understood that its policy would be adapted so that employees absent due to disability would not be penalised in terms of reduced sick pay entitlement. In any event, the Respondent cannot have acted proportionately if it failed in a duty to make reasonable adjustments which has just been determined to be the case. The Claimant's complaint pursuant to section 15 must therefore also succeed.

128. The Claimant then brings separate complains of unlawful discrimination arising out of the proposal on 26 April 2017 that she be paid for her hours worked and her being instructed on 8 May 2017 to take minutes at a future meeting. These complaints are brought in the alternative each as complaint of discrimination arising from disability and of disability-related harassment.

129. Dealing with the issue of minute taking first, the Tribunal has concluded that Mr McEvoy asked rather than instructed the Claimant. He asked her whether she would be able to take the minutes at the subsequent meeting in July. Nevertheless, the Tribunal's findings are that he asked whether she would herself take the minutes rather than be responsible for co-ordinating the task of finding an alternative individual to

take the minutes. Nor did he simply make a general enquiry as to whom at the meeting would take the future minutes.

130. Such request does amount to unwanted conduct related to disability. The Claimant did not welcome being asked if she would take the minutes in circumstances where she had a wrist/hand disability which made it difficult for her to take manual minutes in an inevitably pressurised situation and where doing so carried the risk of causing her pain and exacerbating her condition. Mr McEvoy was of course aware of her condition and was aware that at the 8 May meeting the Claimant had asked that someone else take the minutes. The Claimant had an ongoing disabling condition which was not going to get better by the time of the next meeting. If the Claimant was more pain free by that stage, taking minutes risked an exacerbation of that condition. Had there not have been a question mark over the Claimant's ability to take minutes due to a disabling condition, the Tribunal does not consider that Mr McEvoy would have made any request of the Claimant at the end of the meeting. He asked that question because he saw that her condition might be a factor in her ability to do so. This was not a general request for a minute taker routinely made at the close of a meeting in anticipation of the next one. Given the Claimant's condition it is not a question that Mr McEvoy ought to have been raising in circumstances where a duty to make reasonable adjustments would have arisen at the subsequent meeting where inevitably it would have been reasonable to allocate someone else other than the Claimant to take the minutes.

131. The Tribunal does not consider that McEvoy made the request with the purpose of creating an intimidating, hostile or otherwise offensive environment for the Claimant. He was not seeking to make life difficult for her or to give her a cause for concern. The request came out of a lack of sensitivity and appreciation of the Claimant's situation which is evident at various times in the preceding 2 years when the Claimant was allowed to get on with acquiring Dragon herself with the Respondent seeing no need to be proactive in providing assistance to the Claimant and being content to rely on the Claimant's lack of complaint, stoical perseverance and comments that she was "managing" which ought not reasonably to have been taken at face value.

132. However, the request certainly had the effect of creating the requisite offensive environment for the Claimant and she was clearly significantly upset by any suggestion that it might be appropriate for her to be a minute taker. In the context of the Claimant having struggled at work for some time, being ill and in pain as a result of her disabling condition and feeling that she was expected to be the primary mover in any change in her working environment, that perception of the Claimant was not unreasonable.

133. Whilst the situation raised and the nature of the complaint might not be seen instantly as one appropriately characterised as harassment, with all the connotations that raises, Mr McEvoy's request can be said to satisfy the various limbs of the statutory provisions such that the Claimant's complaint pursuant to section 26 of the Equality Act is well-founded and succeeds.

134. It succeeds also as a section 15 complaint where again, applying the facts as found to the statutory provisions, the Claimant can be said to have been treated unfavourably in the request that she take minutes. Being asked to take minutes can be categorised as capable of amounting to detrimental treatment of the Claimant and again it can be said to have the essential connection with her disability and be said to arise out of her disability in the sense that the request was made because there was a question as to the Claimant's ability to take minutes arising out of her disabling condition. The Respondent, through Mr McEvoy, had a legitimate aim in wishing to ascertain who might take minutes at a subsequent meeting but it did not act proportionately in making the request in circumstances where it was again clearly inappropriate from the point of view of the Claimant's disability to contemplate that she should be a person taking minutes at a subsequent meeting. Had she been required to do so at that subsequent meeting or even had she is a matter of practice undertaken the task, the Respondent would have failed in a duty to make reasonable adjustments.

135. Turning then to the meeting of 26 April 2017, the Tribunal's findings are effectively that it was suggested to the Claimant that she work flexibly and get paid for the hours worked in circumstances where this would not count as absence which in turn would mean that she would maintain her full sick pay entitlement. The Respondent's position is that this was a supportive measure and this may indeed have been the Respondent's intention. However, in circumstances where the Claimant might have absences due to sickness and be paid full salary, what was being proposed was that the Claimant work flexibly such that periods of non-work would not be counted as sickness and therefore she would not receive payment for them. On the evidence reference made to the Claimant's Bradford score and the context of this was that the Claimant's Bradford score would not be adversely affected. This in turn would mean that she retained full sick pay entitlement albeit this was sick pay entitlement which the Claimant would never use nor benefit from in any event if she was only ever going to be paid for hours worked. In this context, the suggestion can be seen as unwanted conduct. Again, whilst it did not have the purpose of creating an offensive environment to the Claimant, it certainly on her evidence had that effect. In circumstances where it was being suggested that she alter her working patterns so as not to trigger sickness absences which were entirely genuine, disability-related and for which she had an entitlement to be paid, it was not unreasonable for the Claimant to have that perception of the Respondent's conduct.

136. It has to be said that the unwanted conduct was a suggestion which the Respondent thought that the Claimant had accepted, was never in fact put in place and the suggestion was quickly resiled from when the Claimant raised that she had not in fact agreed to it. Nevertheless, it still amounted to conduct falling within section 26 of the Act and therefore an act of harassment. Again, at first blush the circumstances may not be thought to be such as to be termed unlawful harassment but an application of the legal principles to the facts produces that outcome.

137. The complaint is alternatively brought as one of discrimination arising from disability and again when the legal principles are applied to the facts, such claim also is made out and succeeds. The suggestion that the Claimant be paid only for hours worked and not receive effectively full salary during periods of sickness in respect of the time she was unable to work, did amount to unfavourable treatment and clearly this arose out of the Claimant struggling at work due to health issues which arose out of her disabling condition. The Respondent might indeed have a legitimate aim in seeking to manage sickness but did not act proportionately in that its suggestion, whilst giving the Claimant some flexibility, also prevented her from triggering her entitlement to payment during periods of sickness. Such complaint in the alternative therefore is well founded and also succeeds.

138. The Claimant next brings a complaint of unfair dismissal and relies upon the acts of unlawful discrimination as found by the Employment Tribunal and the Respondent's handling of her grievance as singularly and, more particularly, cumulatively amounting to a breach of the implied duty of trust and confidence.

139. Indeed, the acts of discrimination and, in particular, the Respondent's failure to implement the reasonable adjustment of voice recognition software in a timely manner did amount to a fundamental breach of the Claimant's contract of employment. The Claimant's objectively justified feelings of frustration and lack of care on the Respondent's part were then compounded by the suggestion that she work flexibly and then by the request that she take minutes of a subsequent meeting.

140. Certainly, by the time the Claimant raised her grievance as at 15 June 2016, she felt that trust and confidence had broken down and struggled to see how she might return to work, concluding that a severance package might be a mutually acceptable solution in circumstances where she genuinely considered that the Respondent did not want her back at work. Nevertheless, she genuinely pursued a grievance process expecting at the very least a recognition by the Respondent of how it had fallen down in its treatment of her.

141. The Claimant dissatisfaction with the Respondent's handling of the grievance and its outcome did form part of her ultimate decision to resign from her employment but in circumstances where the Tribunal does not consider the Respondent, through either Dr Holmes or Dr Hayward, to have acted so as to breach trust and confidence in their handling of the grievance. The Tribunal considers that each of them took their tasks seriously and, whilst there might be criticisms in terms of the depth and lack of formality of investigation, it cannot be said that the Claimant's concerns were ignored or given only cursory consideration. The fundamental conclusion they reached that the Respondent had sought to provide voice recognition software and had reasonable explanations for the failure to do so earlier can be understood in the way they approached the question stage by stage looking at whether there was a reasonable excuse for delay at each point in time. Their enquiry was nevertheless a genuine one.

142. However, the Claimant by delaying her decision to resign and raising her grievances (and indeed awaiting their outcome) cannot be said to amount to an affirmation by her of her contract of employment nor can it be argued that she did not resign in response to the earlier discriminatory acts.

143. When the Claimant resigned, the primary reason for that decision was the failure to make reasonable adjustments in terms of the voice recognition software and the conduct of the Respondent at the April and May meetings which caused the Claimant to take great offence and with justification reinforced her view that the Respondent did not fully appreciate the nature of her condition and the difficulties it caused to her. The Claimant was constructively dismissed. In circumstances where the Respondent does not put forward any potentially fair reason for dismissal, her claim of unfair dismissal must therefore succeed.

144. Given that a material and indeed very significant cause of the Claimant resignation was her having been subjected to unlawful discrimination, not least in the prolonged failure to make reasonable adjustments, that dismissal must also be categorised as a further act of unlawful discrimination.

Employment Judge Maidment

Date: 9 March 2018