THE EMPLOYMENT TRIBUNALS

BETWEEN

Ms Fung Yee Cheung ***Claimant***

and

JJW Hotels & Resorts Limited ***Respondent***

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Region: London Central **ON**: 10, 11, 12 and (in chambers) 19 March 2021
Before: Employment Judge Paul Stewart **Members: Ms Orlean Stennett and Ms Liane Venner**

Appearances:
For Claimant: **Mr Nikolas Clarke of Counsel**
For Respondent: **Ms Cheryl Reid of Counsel**

JUDGMENT

The claims of direct disability discrimination and discrimination arising from disability are dismissed. The claim of unfair dismissal is upheld.

REASONS

1. The Claimant worked for the Respondent from 5 September 2016 until she was dismissed on 17 May 2019. The stated reason for dismissal was redundant. The Claimant disputes that reason. She asserts the reason for dismissal was a sham and the process followed was unfair. Additionally, the Claimant asserts that she was discriminated against on the grounds of her disability – she was diagnosed with cancer in April 2018, a fact she disclosed to the Respondent by an email dated 23 April 2018. Her selection for redundancy was, she claims, both an act of direct disability discrimination and discrimination arising from her disability and contrary to section 15 of the Equality Act 2010. She also claimed in her ET1 certain sums that were owing to her upon termination of the contract of employment. We understand that, by the time of this hearing, these sums had

either been paid or, by agreement, were be paid to the Claimant's satisfaction. In consequence, we did not hear evidence in respect of those matters.

2. We heard evidence first from the sole witness for the Respondent, Mr Zahy Deen. He is a solicitor who was asked to conduct a hearing to consider the appeal the Claimant mounted against dismissal. Next, we heard the two witnesses called on behalf of the Claimant, first Mr Falak Youssef who had been the Chief Finance Officer at the Respondent when the Claimant was hired for the post of Financial Accountant. He had interviewed the Claimant when she successfully applied for that post and was part of the management team to whom the Claimant reported until he left the Respondent's employment on 31 December 2017. Finally, we heard the evidence of the Claimant.

3. We did not hear evidence from the person who took the decision to dismiss the Claimant. Mr Richard Brook was the Group Head Corporate Finance. He initiated the process and conducted the procedure which led to the Claimant's dismissal. He left the employ of the Respondent in or about December 2019.

Facts

4. The Claimant qualified as an accountant in 2002. The Respondent is a private limited company which is involved in the operation of several hotels and resorts throughout the UK and is part of the MBI Group whose website describes it as

> a privately-owned group of companies, active across three continents. Rooted in Zambia, it is focused on five core sectors: mining, energy, agriculture, fast-moving consumer goods, and soft drinks.
>
> The companies at the heart of MBI Group are under the direct control of the Yousuf family. For more than 20 years, the family has continually worked to grow a diverse portfolio of leading businesses. Each family member has particular responsibility for different areas of business interest, under the family's overall direction and control. In 2018, the family established the MBI Group in order to bring together its various business interests.

5. The Claimant started full-time employment with the Respondent as a Financial Accountant on 5 September 2016. The advertisement for the post of Financial Accountant mentioned the post-holder was expected to process financial information from several areas of the business, including the family matters of Sheikh Mohamed Bin Issa Al Jaber. We understood employees referred to those family matters as the "MBI Foundation". Within the UK, the Respondent owned and operated two hotels – one in Leeds called "42 The Calls Hotel", and the other in Edinburgh called "The Scotsman" which, when the Claimant joined the Respondent company, was in administration.

6. Initially, because there was a backlog of work in respect of the Leeds hotel, the Claimant concentrated her work on that business. Several weeks into her work, the Claimant was asked to cover for the Assistant Accountant, Ms Saleem, whilst she was on holiday. In fact, Ms Saleem did not return from holiday, so the Claimant found herself covering the Assistant Accountant's role as well as her own.

7. The Respondent took on two temporary workers to assist in the Claimant's workload in the period December 2016 to March 2017. After these temporary

workers left, two accountants - Mr Gamboa and Mr Sergio Borges - were seconded from the Respondent's Portugal division.

8. The Claimant found the working environment very stressful and asserts that she often worked in excess of her contracted hours as well as working through her lunch break.

9. On 18 April 2018, the Claimant was diagnosed as suffering from cancer. She informed the Respondent of this diagnosis on 23 April by an email that was sent to the manager to whom she reported, Mr Richard Brook, and two others, Ms Andrea King and Mr Borges. The Claimant at this time continued to work as normally as she could which, as she explained, meant she worked in the office at Wigmore Street in London as much as she was able to and from home when she had to attend hospital appointments. She had access to her work emails at home and she also had the use of a mobile supplied by the Respondent.

10. On 10 July 2018, the Respondent informed staff including the Claimant that it was closing its office in Wigmore Street for a major refurbishment which was anticipated would take until the middle or end of August. Staff were told they should work from home although restricted access to the site was provided to three members of staff (a receptionist, an IT worker and Mr Gamboa).

11. Shortly thereafter, the Claimant found herself unable to access her work emails. This led her to contact the IT helpdesk who promised they would deal with it but her exclusion from her work emails continued leading her into repeatedly sending chasers to the IT helpdesk. The Claimant never recovered the use of her work email address and, as instructed by Ms Andrea King - a director of the Respondent, the Claimant twice created an alternative email address, the first of which came to be blocked – so the Claimant believed - by the IT department.

12. On 18 February 2019, Mr Brook who held the position of Group Head Corporate Finance, telephoned the Claimant and asked her to attend a meeting on 20 February 2019 to discuss possible redundancy. Later that day, the Claimant discovered that her mobile telephone supplied by the Respondent no longer was connected to the service provider. To the Claimant, this suggested her redundancy was pre-determined.

13. Mr Brook drafted and sent the Claimant a letter on the same day as his phone call setting out the reasons why she was being considered for redundancy. However, the letter which was sent by email and by post was not received by the Claimant before she attended the meeting on 20 February: the email address to which it had been sent was the Claimant's original work email address which had not been operational since shortly after the closure of the office in Wigmore Street and the postal address incorporated an incorrect postcode for the Claimant.

14. The meeting on 20 February was held in the Wigmore Street offices of the Respondent. When the Claimant arrived at the building, her key fob that normally would have permitted her access to the premises did not work. This served to confirm an impression already formed on 18 February that her departure from the Respondent was inevitable.

15. At the meeting, the failure of the letter to get through to the Claimant was realised. She was given a copy of the letter, but Mr Brook only went ahead with the

meeting on the basis that he and the Claimant would meet again on 22 February by which time the Claimant would have been better able to prepare herself. In the letter, Mr Brook had set out the reason for the Claimant's role being considered redundant thus:

> Since last May 2018, the Company has allowed you to work from home and it has been pleased to do so. From time to time and as necessary, you have attended at the office.
>
> In July 2018 the company's London legal and finance department, both of which operated from Wigmore St, were effectively closed and following the termination of members of staff including Amjad Saifib and Martina Jovovic, Clifford Goldhill and Anthony Neal [Anthony Neal resigned. Also I remind you that Faiak Yussouf left at the end of 2017. Such remaining functions of the London finance department are either currently now been finished up or have been already passed to Dr Sergio Borges who has subsumed these duties within his own duties and responsibilities. As you will appreciate Dr Borges works and lives in Portugal and this is where the main assets and interests of the company are located.
>
> Regardless of the effective closure of the London office [see above] the company chose to maintain your employment in the hope that suitable work could be allocated to you. However, without the previous structure [it will be replaced] and where it now seems logical for all financial issues to be dealt with in one office [Portugal], the requirement for your London based position and the assistance that you have provided no longer exists. Indeed, where your duties can be subsumed by Dr Borges it does not seem necessary for the retention of your position. In the light of the above situation and after considering all possible options, the company formed the opinion that it is necessary to make your position redundant. As you are aware your work has almost completely diminished and it is likely to cease altogether. As a consequence and, if no suitable alternative employment can be found, it may result in the need to make a redundancy.

16. Mr Brook explained, in line with the position as set out in his letter, that the London office had significantly shrunk in terms of numbers. Various staff had been "let go" and the London office was effectively to be shut with all accounting operations being outsourced to Portugal. The London office was in future to operate as a skeleton function and as a family office.

17. The Claimant asked who had been made redundant and Mr Brook responded in a slightly equivocal manner as the Minutes of Meeting record:

> RB – did not state who had been made redundant but confirmed that FC was not the only employee being considered for redundancy. The MBI Foundation people would continue to use the office and also the two web designers appointed by Andrea [*King*]. RB stated that the legal department is no longer present and with no plans to re-staff it which FC had knowledge of.

18. Although we did not hear from Mr Brook – he no longer works for the Respondent – it appears that certain of the actions of the Respondent in the latter half of 2018 and later were a response to the discovery of what appeared to it and two other parties, namely Sheikh Mohamed Bin Issa Al-Jaber and MBI & Partners UK Limited (the MBI Group), to have been serious misconduct on the part of Mr Salfiti who was both a solicitor and the head of MBI's legal department. Mr Salfiti was suspected of having conspired with another man to defraud Sheikh Mohamed. As a result, an ex parte freezing order on the assets of both men was obtained in the

Chancery Division on 10 September 2018. This freezing order was subsequently discharged on the ground of material non-disclosure on 2 November 2018.

19. It seems likely that the equivocal response to the question asked of him by the Claimant as to who was being made redundant stemmed from the investigation into the activities of Mr Salfiti. That investigation had led to the dismissal of all the members of the legal department. Later, during a redundancy consultation meeting, Mr Brook told the Claimant that the closure of the office in July 2018 for refurbishment had been a scenario fabricated for the purpose of preventing the legal team entering the building.

20. The second meeting as part of the consultation process for redundancy that was scheduled on 20 February for 22 February did not take place because of ill-health on the part of the Claimant. It was rescheduled for 25 February and the Claimant was able to attend. She was able to take a photograph of the staff rota that was displayed in the premises that showed that the receptionist and the two accountants from Portugal were permitted to enter the building whilst she was excluded. That made her consider herself to have been treated in the same manner as were the personnel in the legal department. She asked Mr Brook about the fact her email account, her key fob and her mobile phone all were not working. Mr Brook did not provide her with any satisfactory explanation: he merely said he was aware that “there were issues”.

21. Mr Brook was a little more informative in this meeting. He told the Claimant that the whole accounting function was being relocated to Portugal. He observed that “it would be hard to give you a role there due to language barrier”. He said he was conducting the meeting in place of the director, Ms King, who was sick but, in conducting the meeting, he was not acting as a director, rather as the Head of HR who was no longer with the company. All the members of the legal department had been dismissed for “irregularities”, the office was closed now because the office was closed “as the legal department was found shredding documents on an industrial scale”, these being “sensitive company documents” and “now the legal department are the subject of legal action” and legal work was being outsourced to a firm of solicitors.

22. The meeting lasted nearly three quarters of an hour. Towards the end of the meeting, the Claimant asked Mr Brook if he had located her personal belongings and, if so, whether she could take them with her that day. Mr Brook said some belongings had been found but they would be sent by post. No arrangements were made then for a further consultation meeting.

23. The Claimant was left wondering what would happen next. By mid-March, she had not heard anything, and she emailed Mr Brook on 19 March asking if a decision had been made. She received a response on 23 March when Mr Brook said that there would be a further consultation meeting on 27 March 2019 to discuss the outstanding issues pertaining to her pay, the consultation process and the position of Mr Gamboa.

24. She attended the meeting on 27 March when she and Mr Brook discussed the problems with her pay, potential cost saving exercises for the Respondent and alternative roles to avoid redundancy. The Claimant mentioned she was struggling to work from home without guidance or support, and she felt completely

ostracized in doing so when many of her colleagues were still working from the office. Mr Brooks was unable to give any answers that the Claimant found satisfactory.

25. The Claimant again was left awaiting developments. She chased for an update on 8 April and then received a letter dated 17 April 2019 that told her she was being made redundant as the accounting function, headed by Sergio Borges, was being conducted henceforth in Portugal. Mr Joao Gamboa who had been on secondment in London would also move back to Portugal. She would be paid up to 17 May 2019.

26. The Claimant wrote a formal response to her letter of dismissal on 25 April 2019. She declined to accept that she was being made redundant and asserted that reason for her dismissal was a sham. She further stated that she was being treated unfairly in that she was being treated in the same way as employees who had had their employment contracts terminated in that:

    a) She had received an email informing her that the building was closed for refurbishment.

    b) She was excluded from the premises in Wigmore Street in the same way as those dismissed.

    c) Her company email access was terminated; and

    d) She was given “no guidance from the office” on how she “should be working from home without access”.

27. She continued in her letter as follows:

> Of more import, however, is you confided in me at a redundancy consultation meeting that no refurbishment work other than general repairs and maintenance was taking place and the story mooted was a sham as a means to close the legal department and terminate the contracts of the employees of that section. Given this, and considering my exclusion, it is arguable you have confused the natural boundary lines between the Finance and Legal Departments of the company whereby you are considering me as one and the same and placing me in the same position as them.
>
> I naturally note, particularly, your emphasis on how you misrepresent the facts without care or concern. You state my exclusion is a natural course to follow and is the case for all yet when I have attended the consultation meetings I have seen on the sign-in reception sheets that other people are attending work in the normal manner.
>
> … …
>
> To conclude, you are asking me to accept your notice of redundancy which I decline. I am prepared to acknowledge receipt of the same but respectfully advise you have erred in the simple task of distinguishing a dismissal from a redundancy. Masquerade at your peril. It is beyond doubt my dismissal is unfair and I have not been made redundant.

28. On 17 May 2019, which was the final day of her employment, the Claimant, having heard nothing further, emailed Mr Brook chasing him for pay slips for March and April 2019 and seeking payment of outstanding expenses, of underpayments of salary and for outstanding pension contributions that had not been paid. She also sought minutes of the meeting that had been held on 27

March. She heard nothing and, over the course of weeks until 5 August, she sent a further seven emails to Mr Brook.

29. On 7 August 2019, she received an email from Mr Zahy Deen who described himself as a solicitor and "Head of Legal London" for MBI & Partners UK Ltd. After apologising for not having contacted her sooner after Mr Brook had passed him her letter, he said:

> I regard your letter of 25 April to amount to an appeal against the decision to terminate the appointment by reason of redundancy
>
> In light of your letter I invite you to an appeal meeting to address the concerns that you have set out within your letter. In addition to hearing your representations at an appeal meeting, I will undertake a complete review of the entire process leaving to the decision to provide notice to you by reason of redundancy.
>
> In light of the above, I invite you to an appeal meeting. I propose it takes place on 19 August 2019 at 11 am at our offices 78 Wigmore Street, London.
>
> Please confirm that you do, in fact, wish me to consider your letter as an appeal and that you will attend the above meeting.

30. The Claimant responded on 12 August. While she said she would attend the meeting on 19 August at the allotted time, she asserted that Mr Deen appeared confused with what had been going on "for a year now and what my current / legal position is with" the Respondent. She referenced her letter of 25 April to Mr Brook to explain her position. She continued:

> Regardless, you are inviting me for a meeting as you are of the view that I wish to appeal against your decision to make me redundant.
>
> Rather than considering me as a potential candidate for redundancy you have treated me in the same manner as fellow employees who were also excluded from the premises at 78 Wigmore Street London W1U 2SJ in July 2018 and whose contracts of employment were subsequently terminated.
>
> Even if this is to be a case of simple redundancy, and company failed to follow the redundancy procedure as stipulated by employment law and also failed to engage with me for a number of months hence the reason for the high number of emails dated
>
> [*and here the Claimant inserted the dates of 12 emails from the 20th of April to the 5th of August 2019*]
>
> I have sent, including a telephone conversation with Richard Brooke on 7th August 2019 which yet again justifies my suspicion that redundancy was used an alternative to dismissal and as a cover up to brush away the inconsistencies carried by the company for a number of months intended to fire me unjustifiably. The least to say, the company has acted in breach of employment law and / or redundancy procedures.

31. Mr Deen had not been employed by the Respondent, or any sister company, when the redundancy procedure followed by Mr Brook began. He began employment as in-house counsel with MBI & Partners UK Ltd in March 2019. In that role, he was asked to perform the function of hearing the Claimant's appeal by the outside solicitors who were now advising the Respondent following the removal of its legal department. He had been told "You are the perfect fit – you never worked with her – you don't know her!"

32. He saw his function, as he explained to the Tribunal, as being "to listen to the Claimant's points as to why we had made the wrong decision". He was expecting her to provide him, if she could, with grounds for reversing the decision of Mr Brook. He told us he was not an employment lawyer.

33. What he was not prepared for was an employee who did not regard herself as an appellant. As far as the Claimant was concerned, she was attending a meeting that would allow her the opportunity of pressing for payment of the various contractual claims which have been settled since she presented her ET1.

34. Furthermore, the Claimant made a covert recording of the conversation that ensued at the meeting, the transcript of which, without dissent from the Respondent, has been included in the trial bundle. The transcript shows Mr Deen struggling to elicit grounds of appeal from the Claimant who is much more interested obtaining some commitment from Mr Deen that money owed to her would be paid. In her witness statement, the Claimant commented that:

> 47. On 19th August 2019, I attended the meeting with Mr Deen. During the meeting, Mr Deen refused to discuss anything else apart from a redundancy appeal and ignored the matters stated in my email of 12th August 2019, despite my affirmation of that being the reason why I was attending. Throughout the entirety of the meeting, Mr Deen was condescending, patronising and constantly interrupted when I was speaking.

35. In his statement, Mr Deen referred to the meeting thus:

> 13. I had the conduct of the claimant's appeal. Unfortunately, she was not cooperative and refused the offer of the appeal, this can be evident in the transcription provided by the Claimant. The Claimant did not even allow me to fully explain about our meeting or the purpose of her appeal.
>
> 14. Unfortunately, the appeal was secretly recorded by the Claimant without my knowledge or authority, I nevertheless, included the transcription in the hearing bundle, as its contents might assist the honourable tribunal. I would have expected the Claimant to simply ask me to arrange for the meeting to be recorded, there was no need for her to act this way.
>
> 15. I did however try my best to explain to the Claimant, that it was in her best interest to take the opportunity of the appeal, and in particular I asked if she had any other reasons for the Respondent to consider, she provided me with none.

36. During her meeting with Mr Deen on 19 August, the Claimant challenged Mr Deen asserting that he had "actually followed procedure" to which Mr Deen had replied "That is your point what is your next point .... What is your second point?" When asked about this exchange during his evidence, Mr Deen said "I cannot remember now what my understanding of the procedure was but I believe that I understood at the time the procedure which the Claimant asserted we had not followed." However, Mr Deen in his evidence also said he did not know whether there was a policy that he was following when hearing the appeal.

37. The lawyers who had persuaded him to undertake the hearing of the appeal decided after the hearing that the Claimant had not decided to continue her appeal. Mr Deen specified that he did not undertake any review himself of the dismissal and later in his evidence indicated that he, as well as the instructing solicitors, regarded the Claimant as not having proceeded with her appeal.

38. We were not shown any letter addressed to the Claimant spelling out the conclusion that Mr Deen and / or the solicitors who had instructed him had reached, that is, that the Claimant had effectively discontinued her appeal.

39. As the sole witness for the Respondent, Mr Deen was not able to provide any evidence to support the assertion contained in paragraph 3 of the Respondent's Grounds of Resistance that, from July 2018 to the effective date of termination, "the Respondent" (clearly a drafting error in that it should read "the Claimant") "was granted compassionate leave on full pay to allow her to concentrate on her treatment and recuperation". The Claimant's case is that this assertion is untrue. She says she worked from home as and when she needed to in order to attend hospital appointments, but it was the Respondent that prevented her from attending the office from July 2018 through to her dismissal due to the purported office refurbishment.

The Law

40. The statute law giving rise to the right not to be unfairly dismissed is well-known and is contained in Part X of the Employment Rights Act 1996. That making direct discrimination on the grounds of disability or discrimination arising from disability is to be found in the Equality Act 2010 at sections 13 and 15 respectively.

41. We bear in mind section 136 of the Equality Act relating to the burden of proof.

Discussion

42. We will deal with the disability issues first. The Claimant was working from home for the most part once she had been diagnosed with cancer. It is true that, as she discerned herself, she was treated less favourably than others in being shut out from the premises, in having her email account rendered unusable, in having withdrawn from her the access her key fob entitled her to and in having her mobile phone account closed.

43. The Claimant told us, and we accept, that during the redundancy consultation, Mr Brook revealed that the closure of the premises was a fabrication which was deployed to exclude from the premises people in the legal and finance departments who were considered to be engaged in a very serious fraud on the company. The Respondent has never alleged that the Claimant was involved. We heard no evidence from the Respondent as to why it was considered appropriate to exclude the Claimant or why she was deprived the use of her company email account or her mobile phone. However, we conclude on the balance of probabilities that, in the days following the discovery of activity deemed to be fraudulent, there was uncertainty as to how many staff were involved and the unfavourable treatment afforded the Claimant was a by-product of steps taken to limit the activity of those who were perceived to be defrauding the Respondent.

44. We conclude that the reason for such unfavourable treatment was unconnected to the Claimant's disability. That conclusion is consistent with the Claimant's view of the matter because she has not asserted such unfavourable treatment to be discriminatory.

45. The Respondent's perception of fraudulent activity had led to the dismissal of the entire legal department and the resignation of the chief accountant. It had caused the Respondent, the Sheikh and the MBI Group to take to litigation, a decision

which led to at least four judgments in the Chancery Division, themselves taking up 20% of the Trial Bundle for this hearing.

46. It seems to us that the reason the Claimant received such unfavourable treatment was all to do with the suspicion that existed at the time the activity which led to the allegations of fraud was uncovered. Although no allegation was made at any stage that the Claimant was involved, blanket measures taken to stop the suspected fraudulent activity adversely impacted on the Claimant.

47. In respect of the dismissal of the Claimant, the act which she claims was discriminatory, the Claimant did not establish such facts that, in the absence of any other explanation, we must hold that the Respondent had discriminated against the Claimant. If we are wrong about that, we were satisfied that the Respondent had explained sufficiently that the dismissal was unconnected with the Claimant's disability.

48. We turn to the claim that the dismissal was unfair. We were satisfied that the Respondent established that the reason for dismissal was redundancy. After the cessation of accountancy work for the two hotels that the Respondent owned in the UK, such work that was left for the accountancy function of the Respondent was being transferred to Portugal. However, we were also satisfied that, in treating that reason as being sufficient reason for dismissal, the Respondent acted unreasonably. We say that for the following reasons:

    a) No evidence was presented to us, and thus we could not be satisfied, that the Respondent had genuinely applied its mind to the appropriate size of pool before deciding that the Claimant should be in a pool of one.

    b) No evidence was presented to us, and thus we could not be satisfied, that there was a proper investigation into alternative employment within the Respondent or its sister companies.

    c) After the closure of the Wigmore Street premises, the Claimant had been working from home albeit that her ability to do the same had been made considerably more difficult by the removal of her company email account and the denial of her mobile phone connection. With the accountancy function being relocated in Portugal and consideration given to the possibility of the Claimant relocating to Portugal, something that was ruled out on the basis that the Claimant was undergoing treatment in the UK and did not speak Portuguese, there appears to have been no consideration of the possibility that the Claimant might continue to work remotely.

    d) The loss of the Claimant's company email account ahead of the introduction to her of the fact that her role was being considered for redundancy on 18 February 2019, the removal on the same day her mobile phone connection and the realisation on 20 February 2019 that her key fob no longer functioned to allow her to enter the premises on Wigmore Street inevitably, so it seems to us, led the Claimant to think that her redundancy was a forgone conclusion. A fair procedure entails the employer behaving in a way that maintains the trust and confidence of the employee that the process of consultation is genuine. The Respondent failed in this respect.

e) The Respondent's handling of the appeal was shambolic. Mr Deen stated in his letter of 7 August 2019 that he would "undertake a complete review of the entire process leading to the decision to provide notice to you by reason of redundancy". When giving his evidence, Mr Deen's attention was drawn to the question asked of him by the Claimant in their meeting on 25 February 2019 as to the procedure he was following. Mr Deen asserted that, while he could not now remember what his understanding of the procedure was, nonetheless at the time he believed that he understood the procedure being followed. We did not find that convincing. We were left with the impression that Mr Deen had no understanding of what, if any, redundancy procedure was being used to effect the dismissal of the Claimant. Mr Deen had not read properly the emails which the Claimant had sent or, if he had, he had failed to investigate ahead of the meeting and address the legitimate concerns she had raised. He did not conduct a complete review. The review he conducted amounted to no more than inviting the Claimant to present reasons as to why a different decision should have been reached in preference to the decision that was made. He did not even know how many employees the Respondent had. As the person appointed on the advice of external solicitors to hear the appeal against dismissal, it fell to him to make the decision on the appeal. However, the pertinent decision on the appeal was made by the same external solicitors after he had reported to them.

f) We were troubled by the assertion made in the Grounds of Resistance that "since July 2018, the Respondent" (clearly a drafting error in that it should read "the Claimant") "was granted compassionate leave on full pay to allow her to concentrate on her treatment and recuperation". The Claimant contends this assertion is untrue. We have seen no evidence for the assertion and, given that it forms part of the Respondent's case, must concur with the Claimant. We note that it was Mr Deen who, on 26 November 2019 as acting solicitor for the Respondent, sent in the completed ET3 and the Grounds of Resistance. That Mr Deen could advance such an assertion confirms to us that he could not have conducted the complete review referred to in the previous paragraph.

Conclusion

49. We dismiss the claims relating to disability discrimination but uphold the claim that the dismissal was unfair. Our hearing was solely in relation to liability: we have not dealt with remedy.

50. We invite the parties to attempt to agree remedy thereby avoiding a further hearing. However, if no agreement is reached after the expiry of a period of two weeks from the date upon which this judgment was sent to the parties, we give permission to either party to make an application to the Tribunal to have a hearing date for remedy listed before this Tribunal. Such application should be accompanied by an estimate, agreed if possible, of the length of the hearing that should be listed. As both parties are represented, we leave the parties to agree the case management directions that would be required for such a hearing. But, in default of agreement as to the directions required, we give permission to either party to apply to have the case listed for a preliminary hearing (case management) after the expiry of a period of three weeks from the date upon which this judgment was sent to the parties.

21 July 2021

Employment Judge Paul Stewart

DECISION SENT TO THE PARTIES ON

21/07/2021

FOR SECRETARY OF THE TRIBUNALS