EMPLOYMENT TRIBUNALS

Claimant: Miss M Creedon

Respondent: Barclays Bank Plc

HELD AT: Manchester **ON:** 10 July 2017

BEFORE: Employment Judge Feeney

REPRESENTATION:

Claimant: In person
Respondent: Mr A Ohringer

JUDGMENT

The judgment of the Tribunal is that:

1. The respondent's application for a strike out of the claimant's claims succeeds in respect of the following claims:

    (1) Harassment – Allegation 15

    (2) Failure to make reasonable adjustments – allegation 4

    (3) Section 15 Equality Act 2010 – all the allegations

    (4) Whistle-blowing

        (i) protected disclosure involving the claimant's union and

        (ii) whistle blowing detriment set out at paragraph 38 (iv) of this judgment

2. The respondent's application for the claimant to pay a deposit succeeds in respect of the following claims:

    (1) Harassment – allegations 2, 11, 12, 13 and 14

    (2) Reasonable adjustments – 3 and 4

(3) Whistle-blowing detriment – set out in paragraph 38(v) of this judgment

3. All the claimant's remaining claims can proceed to a final hearing.

REASONS

1. The claimant brings a claim of unfair dismissal, disability discrimination and public interest disclosure. Following a Case Management Discussion on the 2nd May 2017 the matter was listed for a Preliminary Hearing on the question of disability due to be heard today. Following the CMD on 2nd May the respondents felt they had insufficient evidence to concede disability and therefore the hearing remained listed. The claimant's alleged disabilities are Psoriasis, Psorasitic Arthritis, Post Traumatic Stress Disorder, Generalised Anxiety Disorder.

2. On 3rd July the respondents applied for a Strike Out of parts of the claimant's claim and Judge Franey agreed that these issues would be added to the disability hearing due today.

3. Following that decision correspondence was received from the claimant contending that she was having difficulty obtaining all the relevant medical evidence she needed to prove her case, consequently this morning I have decided just to consider the respondent's striking out claim and to re-list the disability hearing. The claimant today said she had her GP records and that these would be sent to the respondent's solicitor as soon as possible. I advised the claimant that it could very well be that the respondent concedes disability on receipt of those documents although issues may still remain regarding from when they concede disability and the issue of what knowledge they had of her disability and its effects.

4. In respect of the "whistle blowing" claim the respondent submitted that the claimant's first whistle blowing was that something she potentially could rely on but the second was not. Her second protected disclosure was to her union officer and as it was not to her employer it was not within a protected disclosure within the meaning of the legislation.

5. The claimant also sought to add further disclosures she had made to the respondent's internal whistle blowing line and she had set these out in the further and better particulars however the respondent's representative had not seen these until today. They were all connected with the initial disclosure which was the respondent's failure to care for their employees' health and safety at work and potential breach of a legal obligation in respect of their regulatory activities. In respect of the additional protected disclosures she also added a concealment issue.

6. I also enquired as to the claimant's means and was satisfied as she was working that she could meet the deposit orders made below.However the claimant should be aware that she is at a greater risk of a costs award in pursuing a claim in respect of which a deposit order has been made. The claimant should obviously re consider in the light of the reasons for the deposit order whether she has a reasonable prospects of overcoming the caveats which have led to the deposit order

being made. The claimant's attention is drawn to the presidential guidance and the comments therein cautioning against bringing a myriad of claims andrecommending for consideration that claimants concentrate on their 'best' claims.

The Law

7. In respect of the striking out Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 Schedule 1 states:-

> (i) at any stage of the proceedings either on its own initiative or on the application of a party a Tribunal may strike out all or part of a claim or response on any of the following grounds:
>
> > (a) that it is scandalous or vexatious or has no reasonable prospect of success;
> >
> > (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious.
> >
> > (c) for non-compliance with any of these rules or with an order of the Tribunal.
> >
> > (d) that it has not been actively pursued;
> >
> > (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).
>
> (ii) a claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or if requested by a party at a hearing.

8. The respondent also asked that if the claim were not struck out a Deposit Order be issued in respect of each separate claim. This is dealt with by Rule 39 which says:

> (i) where at a Preliminary Hearing (under Rule 53) the Tribunal considers that any specific allegation or argument in a claim or response there is little reasonable prospect of success, it may make an order requiring the party (the paying party) to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument;
>
> (ii) the Tribunal shall make reasonable enquiries into the paying parties ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.
>
> (iii) the Tribunal's reason for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.

(iv) if the paying party fails to pay the deposit by the date specific in the specific allegations or argument to which the Deposit Order relates shall be struck out.

(v) if the Tribunal at any stage following the making of a Deposit Order decides a specific allegation or argument against the paying party for substantially the reasons given in the Deposit Order:

(a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purposes of Rule 76 unless the contrary is shown and

(b) the deposit shall be paid to any other party (or if there is more than one to such other party or parties the Tribunal orders) otherwise the deposit shall be refunded.

9. If the deposit has been paid to a party under paragraph 5(b) and a Costs or Preparation Time Order has been made against the paying party in favour of the party who received the deposit the amount of the deposit shall count towards the settlement of that order.

Legal principles in respect of striking out and deposit applications

10. It is well known that the Appeal Courts have cautioned Tribunals against striking out a discrimination or whistle blowing claims in all but the clearest cases. Anyanwu -v- South Banks Students Union 2001 and Eszsias -v- North Glamorgan NHS Trust 2007.

11. The respondent relied on A B N Amro Management Services Limited -v- Hogburn 2009 where Underhill J stated that "it is fair to note the force in these observations will inevitably depend on the nature of a particular issue and Lord Hope in the same case (Anyanwu) made clear that in an appropriate case a claim for discrimination can and should be struck out if the Tribunal can be satisfied that it has no reasonable prospect of success. In Bowles -v- Downham Market High School 2011 the EAT re-stated that for strikeout the claimant must have no reasonable prospect of success, if there is a significant dispute on the facts the claim should not be struck out. Lady Smith stated however "there are of course cases where fairness between the parties and the proper regulation have access to the Tribunal to justify the use of this important weapon in the Employment Judge's available armoury but his application must be very carefully considered and the facts of the particular cases properly analysed and fully understood before any decision is reached.

12. In Patel -v- Lloyds Pharmacy Limited EAT 2012 the EAT stated "neither Ananywou nor Morris KLJ's observations however require an Employment Judge to refrain from striking out a hopeless case, merely because there are unresolved factual issues within it. In such a case I believe that the correct approach is that which I have adopted in order to take the claimant's case at its reasonable highest and then to decide whether it can succeed. There is a further possibility that

discrimination cases are by their very nature so sensitive and for the individual concerned society as a whole, so important that they should be allowed to proceed simply because on the McCall principle something might turn up. This was an issue canvassed in ABM Amroe Management Services Limited -v- Royal Bank of Scotland 2009 EAT, submission was made by Counsel for the employer that it was wrong in principle to allow an apparently hopeless case to proceed to trial in the hope that "something may turn up" during cross examination. No clear answer to that proposition was given by Underhill J because it was unnecessary because as he observed there was no basis for supposing that cross examination could advance the claimant's case. In my judgment the proposition made by counsel for the respondent in that case is right. In a case that otherwise has no reasonable prospect of success it cannot be right to allow it to proceed simply on the basis "something may turn up". That is the position here. It is theoretically possible and response to skill cross examination the two interviews or Mr Bore or any of their senior managers might fall over themselves and admit discrimination for an inadmissible reason. If there is a proposition that such a possibility requires a case to proceed then every disability discrimination case that turns to any extent upon the oral evidence in response to cross examination of the employers witness must be allowed to proceed, I do not believe that there is any such principle".

13. In respect of deposit orders the respondent drew my attention to Spring -v- First Capital East Limited EAT 2011 where it was said that the Tribunal can take into account the likely prospects of the claimant establishing factual matters and further that a separate Deposit Order can be made in respect of each allegation, Wright -v- Nipponkoa Insurance (Europe) Limited EAT 2014.

Further relevant law

Disability discrimination under the Equality Act 2010

14. In respect of Section 13 direct discrimination a person A discriminates against another B if because of a protected characteristic A treats B less favourably than A treats or would treat others.

15. Section 26(1) of the Equality Act defines harassment as unwanted conduct relating to a protected ground that has the purpose or effect of violating a person's dignity and/or creating a hostile and/or intimidating working environment. Section 26(1) states that 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:
>
> (i) violating B's dignity or
>
> (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment.

16. In deciding whether conduct has the effect referred to in subsection 1(b) each of the following must be taken into account.

(a) the perception of B

(b) the other circumstances of the case and

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

17. Section 15, discrimination arising from a disability.

(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 the treatment is a proportionate means of achieving a legitimate aim

(2) Subsection (1) does not apply if A shows that A did not know and could not reasonably have been expected to know that B had the disability.

18. Section 20 refers to reasonable adjustments, where this Act imposes duty to make reasonable adjustments on a person this section, Sections 21, 22 and the applicable schedule apply and for those purposes a person on whom the duty is imposed is referred to as A.

19. The duty comprises of following three requirements of which the relevant one is the first requirement is a requirement where a provision, criterion or practice of A 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 that disadvantage ….

20. Schedule Eight of the 2010 Act sets out when the duty arises and part three sets out the limitation on the duty. 20(1) states that A is not subject to the duty to make reasonable adjustments if A does not know and could not reasonably be expected to know (a) in the case of an applicant or potential applicant that a disabled person is or may be an applicant for the work in question or (b) that a disabled person has a disability and is likely to be placed at a disadvantage referred to in the first, second or third requirement.

<u>Public Interest disclosure</u>

21. Section 43 of the Employment Rights Act sets out the law on protected disclosures. Section 43B states:-

(i) in this part a qualifying disclosure "means any disclosure of information which in the reasonable belief of the worker making the disclosure (is made in the public interest and (tends to show one or more of the following):

(a) that a criminal offence has been committed, is being committed or is likely to be committed;

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject; and

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur;

(d) that the health or safety of any individual has been or is likely to be endangered;

(e) that the environment has been, is being, or is likely to be damaged or

(f) that the information tending to show any matter falling within any of the preceding paragraphs has been or is likely to be deliberately concealed.

22. Section 43(c) states that a qualifying disclosure is made in accordance with this section if the worker makes the disclosure (a) to his employer or (b) where the worker reasonably believes that the relevant failure relates solely or mainly to:

(i) the conduct of a person other than his employer or;

(ii) any other matter for which a person other than his employer has legal responsibility to that other person;

(iii) a worker who in accordance with the procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer is to be treated for the purposes of this part as making the qualifying disclosure to his employer.

23. The claimant in accordance with the order made on 2nd May, that she provide further and better particulars of each of her disability and protected disclosures claim brought seventeen allegations of disability harassment, seven allegations of failure to make reasonable adjustments, five allegations of direct discrimination, six allegations of discrimination arising from disability. The respondent did not challenge all of those.

24. In respect of whistle blowing the claimant alleges two protected disclosures:-

(a) her call to the respondent's whistle blowing team on 22nd August 2016;

(b) the call to Neil Corrnock of her union on 23rd or 24th August.

(c) She sets out several detriments which she says arose as a result of making the protected disclosure(s) which the respondent had no notice of before the hearing but they agreed to address them during the hearing.

Conclusions

Harassment

25. In respect of the claimant's disability harassment claims the respondent challenged allegations 1, 2, 3, 7, 8, 10, 11, 12, 13, 14, 15 and 17. 1, 2, 3, 11, 12, 13, 14 and 15 were challenged on the basis that the factual scenario was not one of harassment and the factual scenario was not related to disability, in respect of the others the respondent relied on the fact that the allegations were not related to disability.

26. Taking each allegation in turn:

Allegation 1

The respondent put up barriers so the claimant was not provided with adequate training to function in her role.

The claimant goes on to say that:

"The respondent's response to this was dismissive, hostile and deliberate to cause her stress by forcing her on live calls without the promised academy theory classroom. She was told from this meeting you are going straight on calls, you have had enough training that the business is going to provide. It was alleged it was said "what are you doing off the phones I told you to go straight on, get on there now why are you off. Stop what you are doing, you are wasting time, get on the phones now".

I consider that the first part of the claim is general and non specific, the second part does include comments which are capable of being described as creating a hostile and intimidating environment, however the claimant describes the effect of these as the tone and conduct of the respondent was to humiliate the claimant making it difficult for her as she had mental impairment of concentration, memory issues recall and embarrass her. The claimant says, “I told Christine that I was very anxious and distressed with their treatments and that their collective behaviour was discriminating, Christine became hostile in her manner and refused further training and in doing so left me feeling intimidated”.

The claimant however has not explained why the respondent's action in insisting that she went on the phones without academy training was related to her disability. However she has some prospects of success if she can establish the perpetrators knew of her disability and its effects or that after she told them, putting her contentions at their highest ,the behaviour continued.

Allegation 2

Barriers put up, reasonable work place adjustments not put in place

The respondent purposely delayed or did not put in place adjustments to cause the claimant difficulties in embedding back in the business.

These are not allegations of conduct causing an intimidating environment but of a failure to implement reasonable adjustments in respect of which the claimant has a separate claim. In addition, in relation to the alleged decision not to put into action work place adjustments (the claimant not specifying which ones) the claimant has produced no evidence that this refusal was because she was disabled or related to anything connected with her disabilities however I cannot say she would not be able to establish this whilst it seems unlikely she would be able to show a deliberate intention to delay implementing the reasonable adjustments because she was a disabled person rather than through incompetence I have decided not to strike this matter out as it does have a small prospect of success depending in cross examination, accordingly I order a Deposit Order of £50.

Allegation 3

Barriers put up in dealing fairly with the claimant's complaints about training adjustments and disorientation of forcing her on late shift without warning impacting medication schedules

The claimant raised the adjustment with her manager Christine McAleese who ignored them and after she had forced the claimant on late shift without warning it impacted on medication taking. The claimant said this created an intimidating and offensive environment for the claimant and her conditions were ignored.

The respondent says it did not put the claimant on the late shift for a reason related to her disability but because that was the shift she was allocated to so therefore there is no connection with disability.

Considering the claimant's case at its highest she needs to establish that Christine McAleese's motivation was her disability and that putting the claimant onto a late shift was deliberate in order to create a hostile and intimidatory environment. This requires evidence as does the respondent's defence. If the respondent has documentary proof regarding this issue it should obviously this to the claimant immediately. None was strictly referred to in the hearing and accordingly as the matter requires evidence it is not struck out. However, the claimant should bear in mind if evidence is produced that this was the reason the claimant was put initially on the late shift then the respondent may seek costs in respect of this issue.

Allegation 4

The respondent forced the claimant to go on live calls on Monday 15th August to Friday 19th August 2016 and then one manager (Alex Bell) mocked her as

a schedule showed that she should have been off that day laughing loudly at the surrounding management to join. The manager didn't alter it purposely so if I didn't attend I would be punished and if I did I was humiliated and intimidated instead. The claimant had this regularly where a schedule wasn't adjusted and management were confrontational as to why she wasn't on calls when she was on her phased return.

She explains this comment was harassment as Alex Bell was mocking her mental health trying to encourage the other surrounding management to participate. The claimant explained at the hearing that the mocking of her mental health was that she had forgotten that she was off and this was a symptom of her short term memory loss which was symptom of her disability of depression/GAD. In respect of this it is the conduct potentially is harassment and is potentially related to the claimant's disability accordingly this is a potentially viable claim.

Allegation 7

On 11th October the claimant says that Christine McAleese said "you should leave and find a job you want to do" she says this comment was degrading and violated her dignity. As the context of this comment would need to be ascertained in order to decide whether it was related to the claimant's disability or not and/or whether its intent was benign/innocuous this claim is potentially viable.

Allegation 8

On 6th October 2016 Christine McAleese in front of the claimant humiliated her in front of colleagues by saying "Marie is just not passing she is struggling with behaviours on every call" again this has the potential to be related to disability. However it may also be a fair comment by someone tasked with assessing the claimant's performance. Evidence will be required therefore this claim should proceed to a full hearing.

Allegation 11

On 15th to 27th August Christine McAleese manipulated the claimant's calls structure to manipulate and infiltrate so that her calls would be marked down and take away the consistency of them, she downgraded every phrase to cause the claimant difficulty so would second guess what to say. Christine did this to such an extent it caused the claimant great distress, an example was "don't catch up" sabotaging her call flow and structure and micro managing the claimant".

It was impossible to understand what the claimant meant by this. The claimant therefore in my opinion will have great difficulty establishing this claim given its lack of clarity. Accordingly I find it has little reasonable prospect of success and I order a deposit of £50.

Allegation 12

The claimant requested her sampling documents for weeks and asked again in the team meeting, her manager became confrontational demanding to know why she wanted them, “you get feedback like everyone else”. The claimant says, “I needed them for my development and Christine played on my mental deficiency causing distress and wouldn't always feedback what she had written”.

It was not obvious why the manager refusing to provide these documentations was related to the claimant's disability and the claimant could offer no explanation other than the respondents knew that she might be bringing a personal injury claim however I could not see how this would lead to such a comment, it was less likely to lead to such a comment.

Further, the comment contained within it is a context to the effect that the claimant was being treated the same as everyone else. Accordingly I consider this has little reasonable prospect of success and order a deposit of £50.

Allegation 13

The claimant's work was excessively scrutinised by Christine McAleese and Nick Ellyard as they were trying to force the claimant out on capability. Christine would mark the claimant's work excessively low with colleagues questioning her motives as my calls were no different to theirs. Christine would then get her under manager to feedback these results without being given an opportunity to speak or challenge and being denied the appeal process.

The claimant describes these as creating an intimidating, hostile environment with the respondent not supporting her health conditions or putting in place work place adjustments of target reductions due to the claimant’s inability to concentrate.

The claimant could offer no further elucidation of how these activities were due to or related to her disability as she did not accept that her calls were any worse than any of her colleagues which if they had been and she had been criticised for them might have been harassment related to a disability.

However this claim does require an enquiry into the purpose or effect of the respondent’s actions in order to ascertain whether they could have created an intimidating environment. However, if at the end of the day of the claimant cannot establish that their actions were due to her disability her claim will not succeed. Accordingly this claim has little prospect of success and I order a deposit of £50.

Allegation 14

5th October 2016 “I don't know how you've done it” referring to the claimant qualifying for a bonus. The claimant then goes on to discuss the reasonable adjustments she should have been enjoying at that time and how the respondents had failed to introduce them. The claimant did not explain how the comment was related to her disability. Because of this the claim has little reasonable prospect of success and I order a £50 deposit.

Allegation 15

The claimant was made to see IMA (Independent Medical Assessment). The respondent failed to act when it was reported she was being bullied and harassed and instead created libel conduct records (as only seen on 29th April 2017 as a result of her partial SARS). The report specified the claimant was fit to work yet the respondent was looking for loopholes to force her out. The claimant said that it was violating her dignity as no other colleague had the level of scrutiny on their healthcare with a view to removing her. It created an intimidating environment as the respondent was attempting to force the claimant out of work.

The claimant could not explain how this matter created an intimidating environment in respect of her having an IMA assessment as this on the face of it was to assess her mental health and it would be unreasonable to suggest it had the purpose or effect of creating an intimidating environment for the claimant. The respondent failing to act to reports of her being bullied is too general, more specific matters need to be relied on which would require an amendment. In any event the same scenario is dealt with under types of disability discrimination by the claimant.

Accordingly I strike out this claim as having no reasonable prospect of success, as there is no evidence the referral was anything other than a positive measure and indeed as the outcome was that the claimant was fit to work, which was the outcome she wanted, I cannot understand how it creates an intimidating and hostile environment.

Allegation 17

Marie can't do her job.

It was fed back to the claimant from her union representative that Nick Ellyard had said “Marie can’t do her job”.

It is possible this comment is related to the claimant's disability as if she could not do her job it might have been caused by her disability. Accordingly this is a potentially viable claim although as it has been reported second hand it may not meet the definition of creating an intimidating environment as the person who made it did not have the purpose in mind of the information being relayed to the claimant. If the respondent’s witnesses confirm that this was either not said or said in confidence to the union official then the claim would fail. On balance it seems more likely it would have been said in confidence. However, the matter requires evidence therefore this claim is allowed to proceed.

Failure to make reasonable adjustments

27. The reasonable adjustments relied on by the claimant were:-

(1) The requirement of the claimant to have breaks at set times. The claimant said this put her at a substantial disadvantage because of her Psoriatic namely discomfort and pain if she waited for the set breaks. The reasonable adjustment was that the claimant should have had regular micro breaks to help mobilise stretch to ease the pain. The respondent stated that the claimant was given these breaks, the claimant disputed this, as there was a factual dispute in respect of that this claim was not subject to the striking out or deposit order.

(2) The claimant was required to meet standard targets when she returned to work which put her at a substantial disadvantage by reason of her anxiety and PTSD which affected her short term memory and caused her to have difficulties with remembering matters. A reasonable adjustment would have been to reduce her targets by 10%. The respondent stated that her targets were reduced. The claimant disagreed. This is a simple factual dispute that will have to be resolved at Tribunal.

(3) The requirement that the claimant sat on a standard chair which detrimentally affected her because of her Psoriatic Arthritis, affected her blood flow and caused her pain and discomfort. She had been assessed as requiring a different chair on the 24th May but this was not provided until June. I find that this has little reasonable prospect of success in view of the short time lapse between the recommendation and the provision of the chair, accordingly I impose a deposit in respect of this case of £50.

(4) Provision of a special keyboard. The respondent says this was assessed on 24th May, the claimant said it was not provided for in total a week and then she was required to work elsewhere for a week without the keyboard. As this was provided within a reasonable period I considered this had no reasonable prospect of success and strike it out.

(5) The claimant stated that the PCP was being required to work a mixed shift pattern with late shifts up to 9pm which put her at a substantial disadvantage because of her set medication time of 7.30 for taking her Insomnia Anxiety medication. The reasonable adjustment was a flexible working request to work an early static shift, the respondents failed to action this in a reasonable time frame and this was affecting the claimant's medication routine and causing her disorientation in work. The respondent says that the flexible working request was made on 6th July and a new working pattern was agreed commencing on 29th August, the claimant said that it did not commence until 5th September. This was a gap of a maximum of two months. Whilst this is arguably a reasonable period before adapting her working arrangements, this claim has some prospects of success. Accordingly the claimant can proceed with it.

(6) This is the same issue in respect of short breaks. Accordingly as it is a factual dispute this claim remains.

(7) The claimant was required to be trained to the same standard as everyone else, she said this put her at a substantial disadvantage because of her anxiety condition and the respondent did not provide adequate training for her to fulfil her role, the reasonable adjustment was that the claimant should have had the following training after having nine months off the phone – Academy Classroom Theory for four weeks and then taking Academy calls for four weeks where her work would be marked, assessed and fed back by designated trainers and all training courses completed prior to going live on calls to customers. The respondent in respect of this says that the claimant was given 50 hours suitable training. As the respondent did not have details of the training provided and the claimant disputed that the training provided was reasonable. Accordingly this is a matter which should be decided by a full Tribunal.

Direct Discrimination

28. Number 1 was really in two parts, the first was that the respondent made the claimant read a 500 page procedure guidance as a training tool and the claimant had mental impairment which made this very difficult to do and they knew this. Secondly, that they directly discriminated against her when they refused to allow her to attend Academy Classroom Theory training. The respondent stated there was no reason to suggest that this was because of her disability however I find it requires evidence to establish why the claimant was not allocated to the Academy Classroom Theory Training. In respect of the 500 page procedure guidance the respondent needs to show that this was a requirement they would have imposed on anyone with or without a disability, accordingly this is not struck out nor a deposit issued.

29. Two is that the claimant was forced onto live calls between 15th and 19th August. This is linked to the requirement for the claimant not to have the Academy Training which she wanted. The respondent needs to establish that other people would have been treated the same therefore this will require evidence.

30. Three. This concerns the same issues regarding Academy Theory training group and therefore no new issue arose.

31. Four. These are allegation seven, allegation eight, allegation eleven, allegation twelve, these require evidence so no further order is made in respect of them. Derogatory comments about her mental health condition were made by Christine McAleese. The claimant states that she relies on the matters in her harassment claim for this.

32. Five. Workplace adjustments not actioned or dragged out beyond reasonable time scales. This is a reasonable adjustments (in respect of this reasonable adjustments which have survived my findings above) claim and there was no evidence that any delay or non-action was due to the claimant's disability. However I could not say this had no prospect of success as it would depend on the

respondent's rationale for any failure to implement reasonable adjustments in respect of those reasonable adjustments which have survived my findings above.

33. In relation to the passport health documents referred to by the claimant in respect of this claim, this is something which the claimant says should have been uploaded onto her HR space. The respondents need to explain whether this was done or it if was not done why not. They did not have that information today and accordingly that claim can proceed.

Discrimination pursuant to section 15 of the Equality Act 2010

34. In respect of these claims the claimant has to establish that her unfavourable treatment (if there was any) was because of "something arising in consequence of claimant's disability". The claimant could not explain in respect of any of her Section 15 claims what the "something arising" was. Instead the claimant's complaints seemed to be that the respondents horrendous working conditions caused her illness/disabilities, I advised her that this was a personal injuries claim or possibly would contribute to her constructive dismissal (the respondents made no comment on the constructive dismissal claim, there was no striking out or deposit application in respect of that). As the claimant could not explain what the "something arising" was and I could not suggest anything on the basis of considering the matter she relied on I have struck out the Section 15 claims, they are as follows:-

(1) the respondent's heinous working conditions in the Manchester Processing Centre and in collection and recoveries where excessive pressures of excessive rates of regulatory change were put on the claimant who developed PTSD and GAD, Scalp Psoriasis and Socratic Arthritis from those working conditions. The respondent discriminated against the claimant in its unfair treatment of her return to work, its blatant attempts to not put in place reasonable working requests, some dragged out by months, others not even given, the failure to uphold the health passport for ERI Direct but use it as a tool to punish the claimant as the respondent did not want to support her disabilities, Nick Ellyard returned to work 29th April and failed to action what was agreed.

(2) the respondent mocked the claimant in respect of her mental health when she was forced Monday to Friday week commencing 15th August 2016 on full time hours (after being on early morning phased return due to mental health conditions) without warning and her manager didn't alter the internal schedule for her, saying "Marie why have you come in its your RDO then laughing in an over the top manner to get the surrounding managers to join in (the Alex Bell reference under harassment). He was the same manager who had been micro managing me, bullying me, following me around and being hostile in communications with me. My condition was used to humiliate me and degrade me in front of others.

(3) the respondent forced the claimant without communication or Academy Classroom Theory Training on live calls week commencing 15th August 2016 creating a hostile, intimidating environment. This caused the claimant high distress, the respondent recorded her conditions against her as conduct (as

seen in the SARS 29th April 2017) and she was made to see another IMA, Independent Medical Assessor as a result of them creating the atmosphere of stress for the claimant and more medical records sought (the claimant is going through all the documents she has received in her SARS 2017 to see which ones have been defamed, have malicious communication or liable, the respondent hasn't been compliant with the ISO instructions to:-

(i) provide her information specifically case related and

(ii) the C and R management haven't released all the files, documents as soon are fraudulently created as seen in SARS).

(4) the respondent forced the claimant without warning from a phased return onto shift work that had lates, the respondent did not communicate with the claimant and the claimant was getting home after 9.30, two hours after when she should have taken her medicine for Insomnia and GAD, the respondent impacted the claimant's health as she was disorientated that week. Week commencing 22nd August 2016 Christine McAleese and Nick Ellyard they added conduct to the claimant's file when she was distressed by this.

(5) the respondent has made up liable conduct records as seen on SARS for 29th April 2017 and malicious communications in connection to the claimant's anxiety conditions, various dates were liable comments had been re-added also to older dates after then receiving an AXA IMA report stating she was being bullied and harassed the same date the defamations were uploaded/documented.

(6) the respondent when the claimant was suffering from PTSD reactions July 2015 due to the respondent implying she was trying to get a financial reward for fraudulently on a bonus investigation the claimant put forward (to check if she had qualified) then stopped her attending counselling and did not refer her to occupational health. This resulted in the claimant going on long term sick on 20th November 2015.

35. In respect of this last claim the respondents stated that the claimant was out of time in respect of this and that it was not included in her original claim. I asked the claimant whether she was content for this claim to go forward as background only rather than a specific claim but the claimant did not withdraw this matter, accordingly a decision is required as to whether the claimant should be allowed to amend to add(if the respondent’s contention is correct),whether it is out of time and whether it would be just and equitable to allow it to proceed. However there was insufficient time at the hearing for the claimant to give any evidence in respect of this and therefore it would not be appropriate to decide this at this juncture.

36. I intend to write to the claimant and ask whether she is content that it is considered as background information or if she wishes to rely on it as a claim it will be added to the next hearing on disability to decide whether or not it would be just and equitable for the claimant to proceed with it and the claimant is to provide a witness statement in that regard in respect of which I will issue a further Case Management Order.

37. The claimant can rely on the above matters in respect of her constructive unfair dismissal claim if she has pleaded them.

Protected Disclosures

38. In respect of the claimant's protected disclosure against the union I find that in accordance with 43(c) of the Employment Rights Act 1996 a qualifying disclosure should be made to the employer unless the complaint concerns conduct of somebody other than the employer in which case should be made to that other person. A disclosure can be made to another person who is authorised by his employer under a whistle blowing procedure however that was not the case here; the claimant did not suggest that. Neither did the claimant argue that disclosure to the union official was disclosure to a prescribed person or any other person to which a disclosure can be made under Section 43. Accordingly the disclosure in respect of the trade union official has no reasonable prospect of success and is struck out however the claimant can rely on the factual basis as it appears she believes it is relevant to the issue of causation, i.e. the connection between the protected disclosures and the detriments.

39. The detriments the claimant relied on were matters relating to the respondent trying to force her out of employment.

40. I discussed with her the fact that many of the detriments she was relying on for her whistle blowing she also relied on for her disability discrimination claim and argued that those detriments had arisen before the protected disclosure she relied on which had arisen on 22nd August. She said because the efforts to force her out became more desperate at this juncture, I also asked the claimant what evidence she had that the alleged detriments were related to disclosure given that the disclosure had been made to the respondents internal whistle blowing section, she said she believed the respondents had accessed her emails although she had no proof of this. The respondent said that to access her emails would require a request to IT. The claimant said there was one incident where she had a "lock out" and to correct this required a manager to attend her computer to allow her back in again and she believes that her emails could have been accessed on that occasion. Further that the union officer had told the respondent that she had brought a whistle blowing but again the claimant had no evidence of this.

41. The matters the claimant relied upon as detriments were:

(i) failing to train her (as previously argued);

(ii) making her work late shifts when she came off phased return;

(iii) the failure to put in place workplace adjustments on working time;

(iv) that the union officer, Caroline Cliff, asked the claimant to suggest a figure for her to leave. The claimant refers to this as "entrapment" as there had been no discussion about any such settlement. She believes that management knew about this and that bullying behaviour increased after this point. However I could not really see how this was connected with any protected disclosure and would not be unusual for a union officer to discuss with their member whether they were prepared to leave for a sum and then to institute negotiations with the employer. If the claimant is saying that her managers were worse to her after they thought she was going to get a settlement this meant the treatment was not as a result of the protected disclosure. Therefore considering the way in which the claimant puts her claim, this was not a detriment arising from the protected disclosure. Accordingly this claim is struck out. (this was no 8 in the claimants list of detriments)

(v) "the union on me [not clear what the claimant means here] complaining about breach of disclosures, pulled rank and I was threatened alongside them with Nick Ellyard also when I had said I had gone to grievance and early conciliation due to the heinous treatment I was subjected to and union collusion. I lasted until 28th October 2016 as I could not cope further in that working environment on top of my health conditions and getting daily threats". The claimant did not explain what the threats were that she was referring to therefore if she could not explain it in these detriments it seemed to me there was little prospect of success with this detriment. Therefore I order a deposit of £50. (this was no 9 in the claimant's list)

(vi) "Christine McAleese continued to ring and harass me whilst off work with work related stress asking me about the intricate points of my grievance, she was ringing daily", the claimant felt she was being backed into a corner. This has the potential to be a detriment if it can be shown this was not justifiable conduct therefore I accept that this potentially could be a detriment, again putting the claimant's claim at its highest. (no 10 on the claimant's list)

Employment Judge Feeney

Date 23rd August 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

31 August 2017

FOR THE TRIBUNAL OFFICE

[JE]