EMPLOYMENT TRIBUNALS

Claimant: Mrs A Patel

Respondent: Leicester City Council

Heard at: Leicester

On: 1, 2 and 3 October 2018

Before: Employment Judge Faulkner
Ms K McLeod
Mrs S Higgins

Representation

Claimant: Mr I Patel (the Claimant's son)
Respondent: Mr P Linstead (of Counsel)

JUDGMENT

The unanimous decision of the Employment Tribunal is that the Claimant's complaint of discrimination arising from disability as defined by section 15 Equality Act 2010 fails and is dismissed.

REASONS

Complaint

1. This case was concerned with a complaint of discrimination arising from disability, as defined by section 15 of the Equality Act 2010 ("the Act").

Issues

2. It was agreed at the outset of the Hearing that it was appropriate to deal with the question of liability first, with issues related to remedy to be dealt with subsequently should the complaint succeed. The Respondent had previously accepted that the Claimant was disabled at the relevant time within the meaning of section 6 of the Act, and any time limit issues were resolved at the Preliminary Hearing before Employment Judge Dyal on 24 April 2018. It was agreed at the start of the Hearing that the single act relied upon for the purposes of section 39(2) of the Act, i.e. the act said to constitute discrimination, was the Claimant's dismissal with effect from 19 February 2016. Mr Linstead confirmed that the Respondent did not contest that it

knew (or could reasonably have been expected to know) as at 19 February 2016 that the Claimant had the disability in question, nor that it treated her unfavourably because of something arising in consequence of her disability. The single issue to be decided therefore was whether the Respondent could show that the dismissal was a proportionate means of achieving a legitimate aim.

Facts

3. The Tribunal received and read statements from the Claimant, Michelle Roehrig (Team Manager within the Contact Service of the Respondent's Children, Young People and Families Department, and the Claimant's line manager from around summer 2014) and Paul Hetherington (one of the Respondent's Administrative and Business Support Officers). Each of these witnesses also gave oral evidence. The parties had agreed a bundle of documents approaching 200 pages. The Tribunal read those pages of the bundle referred to in the witness statements, making clear to the parties that it was for them to highlight other documents which they considered important for the Tribunal to consider. Both Mr Patel and Mr Linstead also made oral submissions. Both advocates presented their questions and submissions clearly and fairly. The Tribunal would wish to acknowledge in particular that Mr Patel, who is wholly unfamiliar with legal proceedings, conducted his cross-examination of the Respondent's witnesses in a way which clearly put those matters which were of concern to the Claimant. The heart of this case is that she was dismissed because of long-term sickness absence dating back to 17 November 2014, related to the loss of her voice. The Claimant's impairment has improved considerably in recent times and, whilst quietly spoken, she appeared able to give her oral evidence to the Tribunal without difficulty.

4. Based on all of the above the Tribunal made the following findings of fact. It confined itself to findings which it was essential to make, aiming to avoid straying into matters in dispute between the parties but which did not go to the issue identified above. Page references in these Reasons are references to the bundle, and of course where there were differences in the accounts given by the various witnesses, the Tribunal's conclusions as to fact are on the balance of probabilities weighing up the relevant evidence.

5. The Respondent is a large employer of around 16,000 employees. The Claimant was employed from 4 October 2010 until 19 February 2016, for at least the last 4 years of that period as a Contact and Assessment Worker in the Respondent's Children's, Social Care and Early Help Division.

6. It is helpful to say a few words about the nature of the contact service in which the Claimant worked. It was and is a frontline, statutory service intended to provide a safe environment for children to have contact with the families from whom they have been removed by the Respondent for their safety and well-being. The contact takes place pursuant to interim care orders made by the Courts. The Claimant and her colleagues thus provided supervised contact, often at the Respondent's premises, but sometimes in public places if appropriate. At the relevant time there were three buildings designated by the Respondent for this purpose, namely St Martin's which was for the more volatile and difficult families, and St Andrew's and another building for other contact meetings. Managers and administrative staff in the team were based at St Andrew's.

7. Contact workers were expected to keep detailed records of contacts, to be used for an overall – and no doubt in many cases ongoing – assessment of whether a child could return to its parents. The Claimant and her fellow workers were thus working with vulnerable children, but also on many occasions with vulnerable adults,

observing the latter's parenting of and care for their children. It was and is, the Tribunal had no doubt, a very busy service responsible for a high and increasing number of looked-after children. Ms Roehrig's evidence was that a contact worker would regularly start work at 8.45 am, be in the contact room by 8.50 am to greet the child and family and then supervise the contact which may last for up to 4 hours. Often the worker would take on another contact after lunch, and might also take on another after 3.30 pm after the conclusion of the school day. They would write up their reports in between. In this way the worker could end up with up to 15 contact sessions per week, though the Claimant wished to emphasise that each day was different and so would not necessarily entail three contact sessions, which the Tribunal accepted. It is nevertheless clear that the contact sessions were the essence of the role.

8. The Respondent's sickness policy at the relevant time was that shown from page 124 onwards. It included a number of provisions which it was relevant for the Tribunal to note:

8.1. At page 124, "…high levels of sickness absence can have a significant impact on the council's service. The council may, therefore, need to take appropriate action, which could lead to dismissal, if the length or frequency of absence becomes unsustainable";

8.2. At page 127, in relation to absence which may result from a disability, "consideration will be given to whether there are any reasonable adjustments that could be made to the employee's working arrangements";

8.3. At page 133, "Given the nature of long-term sickness, the many and varied forms it can take and differing circumstances surrounding each case, flexibility may be required in implementing this procedure";

8.4. At page 134, a commitment to help employees return from long-term absence and where appropriate and possible to make reasonable adjustments (to the workplace, working practice or working hours), consider redeployment and/or agree a return to work programme; and

8.5. At page 135, "The length of absence may reach a point where the manager considers the employee's job can no longer be held open".

9. The Claimant's first sickness absence related to her voice was in November 2014. She had some earlier sickness absence unrelated to her voice but it is unnecessary for the Tribunal to say anything further about that.

10. The Claimant has had problems with her voice since around 2009. She says that she was unable to speak above a whisper at her interview with the Respondent in 2010 and that during the interview she advised the Respondent about her intermittent voice loss. Ms Roehrig could not recall if she was present at the interview. The Tribunal accepts of course that it was many years ago, and in any event finds it unnecessary to decide whether she was or was not. What Ms Roehrig does recall is that there were times prior to November 2014 when the Claimant's voice was reduced to a whisper, or at least to a lower volume which was hard to hear, though not to the extent that she lost it completely. It is important to say a little more about that background.

11. Ms Roehrig says, and the Tribunal accepts, that during these periods the Claimant was not assigned to work at St Martin's nor asked to go out for contact sessions, in both cases for safety reasons. She was thus based at the St Andrew's

building where there was management cover, sometimes supervising contacts, but sometimes being removed from that work altogether and being confined to administrative tasks, principally typing up her observations. These adjustments to accommodate the Claimant were not made over a long period. Doing her best to recall events, Ms Roehrig thinks that there was a single period of a week to three weeks when the Claimant was unable to do her full duties, any other such occasions being more limited in length. Ms Roehrig's evidence, which the Tribunal accepts, was that if a contact worker was unable to do assessments, ultimately, they would end up with no work as they would run out of assessments to write up, so that making such an arrangement could only ever work for a short period. The Claimant says that she carried out her work on a number of occasions, including facilitating contact assessments, when she was barely able to speak, speaking with parents in a whisper and to children in the same way. As will become apparent, particularly when the Tribunal assesses the occupational health advice given to the Respondent prior to the Claimant's dismissal, it is not necessary to resolve this conflict of evidence.

12. Returning to the start of the sickness absence which ultimately led to her dismissal, the Claimant says in her Claim Form (page 7) that on 14 November 2014 she lost her voice and was unable to go to work. She was signed off by her GP from 17 November 2014. She also says in her Claim Form (again, page 7) that after a couple of weeks off, she was advised that she could return to work but was told by Ms Roehrig that she was a risk to the service users and herself and that she could not return. In oral evidence, the Claimant first said that she was advised by her doctor not to go into work as he felt it was best for her to rest her voice and see if it came back. When subsequently asked about the comment in her Claim Form, she initially suggested that it was the doctor who advised her she could return to work, but accepted that this was inconsistent with that doctor providing fit notes which covered the whole of the period from November 2014 to the date of termination of her employment. She then suggested that the advice was given by occupational health, but agreed that this was also inconsistent with their advice, which in any event – see below – came later. Whatever the Claimant meant by this comment in her Claim Form, we are clear that Ms Roehrig did not receive medical advice saying the Claimant could return to work but nevertheless prevent her from doing so. The Claimant's settled evidence appears to have been that she was fit to do the job, but trusted her doctor and so did not challenge his advice. She had a lot going on, she said (this included her husband's ill-health, which is dealt with further below) and so says that she did not think to raise with either the Respondent or occupational health her belief that she could return. As it transpired, she did not return to work at any point prior to her dismissal more than 15 months later.

13. In the early days of her absence, the Claimant attended speech therapy and other medical appointments, the details of which were of course important to her but are unnecessary for the Tribunal to recount. On 16 January 2015, Ms Roehrig visited the Claimant at her home. This was a brief and supportive visit, and it is right to note there were many supportive and sympathetic emails from Ms Roehrig subsequently. Again, it is not necessary for the Tribunal to recount in any detail the correspondence between the Claimant and Ms Roehrig in the initial months of the Claimant's absence from work, except to say that ultimately and thankfully the Claimant was medically advised that there was no sinister cause for her symptoms.

14. The Respondent eventually arranged for the Claimant to attend an occupational health appointment, to assess her fitness for work and likely return to work date. The referral is at pages 52 and 53 and was completed by Ms Roehrig. At page 53, the referral reads, "Aisha is communicating at all times in her role with social workers, other professionals, parents, children, staff and managers. Aisha would be required

to attend meetings and give feedback where appropriate". The Claimant accepts that at this time there was no reason to think that her voice loss would be indefinite.

15. The resulting occupational health report, dated 29 April 2015, is at pages 55 and 56. It identified that the Claimant had seen a specialist in February 2015 but that this had not identified a cause for her symptoms. It also made a number of further comments which it is relevant to note:

15.1. "[The Claimant] was talking in a whisper today which required quiet and concentration on a one to one basis to hear and apart from an occasional short-lived return of her voice there has been little improvement … she finds talking effortful and uncomfortable after around 15 minutes, and that it leaves her feeling very tired";

15.2. "A return to work date into her contracted role is unknown at this time";

15.3. "If it were operationally practicable she is fit for duties where she is not required to talk very much or for prolonged periods".

15.4. "… she is unable to talk at a normal volume or for prolonged periods of time … I am unable to comment on a time frame for the return of her voice to a level where she is able to carry out her contractual duties";

15.5. "Currently I am unable to comment on her future service and attendance";

15.6. "She is not fit for her normal role at present until her voice volume and strength have improved, but would be fit for administration or similar duties where talking is minimal".

15.7. "I am optimistic this will resolve in time, but the timeframe of her recovery is unpredictable at present".

16. The Claimant accepts that the report was correct in stating that she was unable to talk for more than 15 minutes without feeling very tired and that this meant doing her job would have been very difficult at the time. The possibility of a voice activator was mentioned by the occupational health adviser, which it was said could reduce the need for the Claimant to project her voice and increase it volume. This was not discussed with the Claimant at the follow-up meeting referred to below, nor at any time later. It is not clear to the Tribunal what the adviser was referring to and no evidence was provided during this Hearing as to how exactly it might have assisted the Claimant. Ms Roehrig was also unsure what was being referred to, but said that in relation to work in the contact rooms, she is not sure how it would have been of assistance, given the volume generated by the general noise of those meetings. In any event, essentially the report concluded that further specialist assessment was to be awaited to see if an explanation of the Claimant's condition could be found, and the voice activator was a possibility to consider at that juncture.

17. The meeting to discuss the report took place, at the Claimant's home, on 23 June 2015. The Tribunal was surprised that no formal, typed notes of the meeting were produced by the Respondent, kept on the Claimant's file and indeed sent to her afterwards, but nevertheless it seems clear that what took place at the meeting is generally agreed. Ms Roehrig's account is that the following two points were discussed, not necessarily in the following order. First, the Claimant raised her wish to return to her post but it was discussed with her that the occupational health report clearly said she was unable to do so. Secondly, it was noted that the Claimant said she had a number of medical appointments coming up, including with a consultant, the possibility of an operation, the use of a camera to examine her throat, and an

appointment for speech therapy. Ms Roehrig's account was unchallenged and is therefore accepted by the Tribunal.

18. The meeting did not consider adjustments to the Claimant's role, either then or subsequently. Ms Roehrig says it was felt by the Respondent that this should await the outcome of the imminent medical assessments, which the Tribunal notes is consistent with the occupational health report. Ms Roehrig also says there was discussion about the length of the Claimant's sickness absence and the difficulties for the Respondent in sustaining that, though Ms Roehrig was clear that it was not appropriate to talk about dismissal at this juncture so as not to pre-empt what the medical advice would reveal. Nevertheless, her evidence is that it was clearly stated that the Respondent could not sustain this length of absence and that if there was no improvement, the Respondent would have to consider what to do then. It appears the Claimant's union representative concurred with this view and the Tribunal accepts that these comments were made, not least because it seems clear that there was some general discussion about redeployment. On that subject, the Claimant says she did not pursue redeployment opportunities over the ensuing months because of her health and other personal circumstances. She also says that because she had studied only for certain things, she felt she could not apply for certain roles, telling the Tribunal she was not qualified or experienced in administration for example. It was clear to the Tribunal that her wish was to return to her role as a contact worker.

19. Correspondence continued between Ms Roehrig and the Claimant thereafter, including in relation to the Claimant's ongoing medical support such as speech therapy. On 19 August 2015 Ms Roehrig emailed the Claimant to say that a further occupational health referral was required and attached questions she proposed to ask. The questions are at pages 65 to 66 and included, "How long would OH expect the condition to last?", "In your opinion, is the employee fit to continue working in their current role?", "Please provide details of what (if any) aspects of the role the employee is not fit to continue with or which duties require adjustments", and "Are there any adjustments (of either temporary or permanent nature) which could be made in order to enable the employee to return to their role?". The Claimant accepted she had the opportunity to comment on those questions.

20. The referral was eventually made some time later, on 9 November 2015, and is at pages 70 and 71. Again Ms Roehrig was the author. Her comments included, "[The Claimant's absence] is having an impact on our service and outcome for children and should we be considering ill health dismissal or any other alternatives". Part of the reason for the delay in the referral appears to be because the Claimant was on holiday from mid-September to mid-October 2015, in part to seek potential medical help for her condition overseas. The occupational health report resulting from the referral was dated 17 November 2015, pretty much exactly a year after the Claimant had first gone off sick. It is at pages 72 to 74. The report said the Claimant had been seen by an ENT specialist and by a voice therapist but there was no change in her condition. It also stated as follows:

20.1. "[The Claimant] reports that she is unable to speak normally and her voice l only a whisper";

20.2. "She feels able to return to work in a job where speaking on the phone will not be a component";

20.3. "She is fit to return to work any time to a suitable job which does not require speaking on the phones. She could speak to clients or colleagues face to face but

she can only do so in a whisper. They will need to be close to her or listen attentively to get what she is saying. Working with children could be an issue";

20.4. "I think she could [render future reliable service] if a suitable job is found for her. It is unlikely that she could do so in her current job. I understand there is concern about her working with children since she is expected to speak with a clear voice which she cannot do";

20.5. "It is difficult to say whether her voice will come back at all in future. Nothing very specific has been found to explain the cause of her loss of voice".

20.6. "I do not consider her fit to do her current job working with children but she is fit to undertake alternative work in an office or out of office as long as speaking on the phone is not a major component".

20.7. "I see no added benefit of writing to her doctor for a report".

The Claimant agreed in evidence that the report said she was not fit to do her current job, nor did she dispute that it could not be said when she could return to it.

21. By way of a letter of 7 December 2015, which is at page 76, the Claimant was invited by the Respondent to a meeting on 15 December 2015 to discuss the report. The relevant parts of the letter read as follows: "The purpose of the meeting is to discuss the sustainability of your continued employment with the Authority in light of your long period of sickness absence, together with the recommendation for ill health redeployment in the most recent Occupational Health report. //I must advise that one possible outcome of this meeting will be that a decision is taken to apply the recommendation for ill health redeployment. Should this occur, notice of your dismissal on the grounds of ill health may be served at this meeting".

22. Again, the Respondent produced no formal notes of the meeting on 15 December. This is again surprising, notwithstanding the fact that Ms Roehrig's absence for several months thereafter because of a combination of annual leave and medical reasons meant that she could not have produced them herself. Broadly speaking however, the main points of discussion appear clear on this occasion also.

23. Present at the meeting were Ms Roehrig, an adviser from Human Resources called Kalpesh Masani, the Claimant and her union representative. Ms Roehrig's evidence is that at the meeting the Claimant stated that she agreed with the occupational health advice and did not wish to exercise her right to a second medical opinion set out in the sickness absence policy. In her oral evidence the Claimant contested that account, though she accepted that during the meeting she was speaking through her union representative – because of the difficulties with her voice – and that this is probably what was said by that representative. The Tribunal noted the Claimant's evidence that she questioned this matter in whispered discussion with her representative and was advised that the Respondent was doing the right thing. She said later in her oral evidence that she herself had stated that she agreed with the occupational health advice and did not want a second opinion. Whatever was the case, the Tribunal concludes that at the very least this is what the representative said, and that it is perfectly understandable that Ms Roehrig took this as what the Claimant had said, given that she was speaking through her representative. This is also consistent with the follow up letter referred to below which noted the Claimant's comment to this effect.

24. At paragraph 20 of her statement, Ms Roehrig says that the Claimant's length of absence, the occupational health report and the medical treatment the Claimant had

received were all discussed at the meeting. On the basis that there was no indication of when her voice would return and on the basis of the occupational health recommendation that she was fit for alternative work as long as speaking – specifically, telephone speaking – was not a major component of that work, the Claimant was advised that she would be redeployed. This was in accordance with the Respondent's redeployment procedure. The Claimant was told that the redeployment period would be concurrent with the period of notice of termination of her employment in her role as contact worker, which would run from 15 December 2015.

25. The letter following up the meeting was not sent to the Claimant until 15 January 2016. The delay was due to the Christmas and New Year holiday, and Ms Roehrig's absence referred to above. Although the outcome of the meeting was clear, again the Tribunal is surprised the letter could not have been sent in Ms Roehrig's absence. The letter is at pages 79 and 80 and essentially confirmed the outcome of the meeting described above. The Claimant was informed she could apply for any post up to her existing grade, provided she met the essential criteria, and that any redeployment would entail a four-week trial period. Although the Respondent says she could also have applied for higher grade posts, the Tribunal saw no clear evidence that the Claimant was aware of this possibility. Her contractual notice period was five weeks. This was extended, as was her redeployment period, by four weeks to 19 February 2016 because of the delay in sending out the letter. The Claimant repeated several times in her evidence what she told Employment Judge Dyal at the preliminary hearing in April, namely that her union representative told her that in the light of her levels of absence she had been correctly dismissed.

26. The Respondent says that requiring the Claimant to maintain a satisfactory level of attendance, and applying its absence management policy in dismissing her, was a proportionate means of achieving a legitimate aim. In fact, it put very clearly to the Tribunal that it had three aims in terminating the Claimant's employment, namely maintaining quality of service, reducing cost (primarily the use of agency workers) and achieving consistency of service. These aims are considered below in the Tribunal's analysis, but it is appropriate at this juncture, in making findings of fact, to recount the evidence of Ms Roehrig in these respects.

27. Ms Roehrig's unchallenged evidence was that to employ agency staff during the Claimant's absence cost the Respondent around £37,000 over about a year; this was not the whole period of the Claimant's absence because when she initially went on sick leave the Respondent deployed her colleagues to provide cover, something which will be referred to again below. Ms Roehrig said, again in unchallenged evidence and which as a broad proposition the Tribunal in any event accepted, that agency workers come and go more easily than employees, and as paragraph 17 of her statement implies, this also increased cost for the Respondent, i.e. the cost of securing agency staff in the first place. The Claimant's salary, employer's NI and pension contributions seem likely on the documentation (her salary is confirmed at page 39 as around £24,000) to have amounted to around £29,000 per year. The Tribunal had no reason to doubt Ms Roehrig's further evidence that there were a number of financial reviews going on at the relevant time across the Respondent authority. As has not been uncommon in recent years for local authorities, the Respondent's budget was overspent. This had resulted in a recruitment freeze which meant teams had to put a business case to senior management even to recruit agency staff. The Tribunal also accepted Ms Roehrig's evidence that a temporary employment contract was not really feasible given the unpredictability of the length of the Claimant's sickness absence.

28. In relation to quality of service, Ms Roehrig said a number of things. The Tribunal had no difficulty accepting her evidence that the work she, the Claimant and colleagues were involved in could be very volatile and even when that was not the case, there might be large sibling groups attending contacts which created a noisy environment. It accepted too the need for a contact worker to be able to communicate clearly for sustained periods of time in that environment, whether it was particularly volatile or just ordinarily noisy, for the benefit of the families and for the benefit of the children, many of whom would need considerable reassurance in a very difficult context. Equally, on the evidence before the Tribunal, it accepted that occasions would arise when a contact worker needed to be able to use their voice in a firm way, for example if in some way the contact session or the behaviour of a child was getting out of hand, so that both the families and the children would know that the contact worker was in control. The need to be heard is endorsed by the fact that this is an environment where children can make disclosures and by the requirement for the contact worker to be something of a role model to the parents in the way they deal with the children.

29. Additionally, Ms Roehrig said that part of providing the right quality of service involved contact workers talking on occasion to the Respondent's legal team, more regularly to social workers, sometimes to foster carers and even sometimes appearing at Court and liaising with the police. She added that sometimes a contact worker would be required to give feedback on a contact straightaway as the social worker may need to act on it urgently, which the Tribunal could fully understand and accepted. The Claimant's oral evidence was that she only spoke with one social worker, that this was only occasionally, and that she rarely used the telephone at all, though her statement refers without qualification to the need to talk to clients by phone and in person and the need to call the office, sometimes urgently, when out and about. She thus accepted in oral evidence that her statement suggests she used the phone regularly. She also accepted in oral evidence the obvious point that she needed to speak with parents and children during contacts.

30. Ms Roehrig was clear in her oral evidence that staff covering for colleagues impaired the quality of service the Respondent was able to offer as it took those staff away from writing their own assessments. Alternatively, the cover might have been provided by a senior contact worker which took them away from managerial tasks, conducting supervisions and the running of the Respondent's buildings. She added, and the Tribunal had no doubt this was the case, that staff providing cover for the Claimant's absence were not happy about doing so because of the impact this had on the time they had available to complete reports. The Tribunal also accepted Ms Roehrig's evidence that during the Claimant's absence there had been occasions when the Respondent had to cancel contact sessions, something it is accepted was a very serious matter.

31. As to consistency of service, Ms Roehrig's evidence, which again was accepted not least because it was essentially unchallenged but also because it seemed to the Tribunal self-evident, is that agency workers do not go through the same probationary arrangements that are put in place for new employees, and therefore generally do not have such a clear understanding of the requirements of the job. She says at paragraph 9 of her statement that it was "better for families involved in care proceedings to have consistent contact workers because of the vulnerable children involved". Her oral evidence was somewhat more specific, in that she stated that consistency was required in practice in respect of the parenting assessments carried out by a contact worker, i.e. the same contact worker would be assigned to the assessment of particular parents on an ongoing basis. As for contact with children, her evidence was that the Respondent arranged for the same contact worker to see

a particular child where possible, though this was not always achievable and so was more of a requirement for those children with particular needs.

32. In accordance with the outcome of the meeting of 15 December 2015, as confirmed in the letter of 15 January 2016, the Claimant was allocated a redeployment officer as a standard requirement of the Respondent's redeployment policy at the time which is at pages 141 to 146. That redeployment officer was Mr Hetherington. The redeployment policy provided that, "The Council will work proactively with the employee to look for suitable alternative employment", paragraph 3.6 going on to say that the role of the redeployment officer included helping the employee to identify any transferable skills and discussing with them the type of roles which might be suitable. The policy committed the Respondent to giving the employee the opportunity to apply and be considered for vacancies before they were advertised either internally or externally.

33. Mr Hetherington was informed on 18 December 2015 that the Claimant was to be put into the redeployment process and he put that into effect on the same day as can be seen from the computer printout at page 147. The Respondent's standard practice was to produce a weekly list of all vacancies. The first vacancies made known to the Claimant would ordinarily have been those advertised on 17 December 2015, but there were none on that date nor (unsurprisingly) on 24 or 31 December either. The first vacancy list sent to the Claimant was therefore that dated 7 January 2016. She was sent a list every week thereafter until the termination of her employment, each list comprising several pages. All of these lists were in the bundle, at pages 148 to 177. Mr Hetherington says, and the Tribunal accepted, that he checked the vacancy list every week to see what might be suitable for the Claimant and expected her to contact him to say if there was anything she was interested in.

34. Mr Hetherington's first verbal contact with the Claimant was in mid-January 2016, when he contacted her by telephone. He spoke with her son initially and it was agreed that they could be in touch by telephone again if needed; it appears there were one or two phone contacts thereafter but the content of those conversations is unclear. As for identifying what might be suitable for the Claimant, Mr Hetherington based this on the grading of the role, though he was clear that he did not make the Claimant aware of some jobs and not others as this was not for him to decide.

35. Mr Hetherington accepted that no skills audit was carried out to establish the Claimant's skillset, nor indeed were any other steps taken beyond the provision of the vacancy lists. Accordingly, the working hours which the Claimant might have been interested in were not discussed with her, and Mr Hetherington is also unaware of any discussion within the Respondent about what adjustments might be needed in respect of a particular role to enable the Claimant to undertake it; he was just told she had a voice problem. In paragraph 6 of his statement, he says he was informed the Claimant was unable to engage in a role which involved speaking. He nevertheless agreed that it was (and is) the Respondent's normal practice to assess a person's suitability for a role based on their skillset, experience and so on, and then if they are appointable to look at reasonable adjustments which may be required. Mr Hetherington's account in this respect is consistent with the email sent to him by Mr Masani on 17 December 2015 which is at pages 77 and 78. The email stated, "[The Claimant] has a form of laryngitis which has affected her ability to speak; she can only speak in a whisper and is therefore unable to engage in a role which involves speaking". Mr Hetherington accepted that the Respondent could have considered redeployment of the Claimant from Summer 2015, the subject having first been discussed at the 23 June meeting and imagines that many potentially suitable jobs would have been available for the Claimant between then and 18 December 2015

when she was entered into the redeployment process. Ms Roehrig's view on this point has already been noted, namely (in summary) that it would have been inappropriate to discuss redeployment in detail at that earlier stage.

36. A number of specific roles were mentioned in evidence during this Hearing, including that of Childcare Sufficiency and Sustainability Officer, Research and Performance Analyst, an ABSO Level 3 Transport post, an Oral Health Officer post and a Risk Management Officer post. Mr Hetherington does not specifically know what those roles involved and did not discuss the details with the relevant managers, with one exception. At paragraph 9 of his statement he says regarding the Childcare Sufficiency and Sustainability Officer role that he spoke to the manager and mentioned the Claimant's voice problem, the Claimant having expressed an interest in the position. The manager wanted the Claimant to speak to her anyway, and it is agreed that the Claimant spoke to the manager accordingly. She subsequently emailed Mr Hetherington to say (page 84), "Hi, I spoke to Suzanne and she filled me in on the role. I would be expected to make presentations to different bodies and with no voice there is little chance of that possibility. I will keep looking in the meantime. Thanks, Aisha". The Claimant's evidence was that the manager said it would be very difficult for the Claimant to apply for the job because it entailed making presentations to different groups of people. The Tribunal accepted that evidence, not least because the Respondent put forward no alternative account of the conversation in its evidence. The Claimant's understanding is that making presentations was a significant part of the role.

37. As to the Research and Performance Analyst role, the Claimant's evidence was that it was beyond her as it entailed preparing research proposals and financial data, neither of which she was used to. On 23 February 2016, in response to the Claimant's email to him of 19 February expressing an interest in the ABSO Level C Transport and Oral Health Officer roles, Mr Hetherington emailed her the details, together with details of the Risk Management Officer role. In doing so he highlighted the speaking required in each case, saying (page 91), "A lot of telephone contact with customers", "face to face activities" and "delivering training face to face". Mr Hetherington says the Claimant did not apply for any of these posts, whilst the Claimant's evidence is that she could not remember what happened regarding them. On that basis, the Tribunal concludes that she did not submit applications for any of them.

38. On 26 February 2016, the Claimant emailed Mr Hetherington regarding a number of other jobs – all part-time. Her email said (page 92), "Hi Paul, I was looking at the following jobs which are all part-time …". The Tribunal could not identify the nature of the jobs as the email simply provides the Respondent's internal codes. By his reply of the same date (also page 92), Mr Hetherington advised that as the Claimant's employment, and therefore the redeployment process, had ended, she could not express an interest in these roles. In his evidence to the Tribunal he distinguished this response from his email of 23 February 2016, which also fell after the termination of the Claimant's employment, because the Claimant had expressed an interest in the posts referred to in that email whilst her employment was continuing, i.e. on the termination date itself.

39. The Claimant said in oral evidence that there were three further posts she would have been suitable for in the various lists Mr Hetherington sent to her. Two of these she would not have applied for however, for as they offered very few hours per week. The other was a Childcare Assistant role – see page 160 – but she did not apply for it. She was also asked about a Registration Officer role, which appeared in one of the vacancy lists at page 158, and said that she could not provide high quality registration which seems to have been the essential requirement of the role.

40. It is also important to note that the Claimant's husband was also unwell and undergoing medical treatment at this time. He sadly passed away in January 2017. On 18 December 2015 he was told he would be admitted to hospital for an operation imminently. Over the next month he and the Claimant were therefore regularly attending medical appointments, and in mid-January he had a serious operation and spent around a month in hospital, initially in intensive care. The Claimant says that this meant she did not look very carefully at the vacancy lists, understandably so, even in respect of jobs she might have been able to apply for. At no point did she make management or Mr Hetherington aware of her circumstances however (although Ms Roehrig appears to have had a limited understanding that the Claimant's husband was unwell) nor did she make it known to anyone that her ability to engage in the redeployment process was impaired.

41. Finally, prior to delivering judgment on the third day of this Hearing, the Tribunal asked Ms Roehrig to return to the witness stand to give evidence as to whether the Claimant was in fact replaced, that important point having been omitted from the parties' evidence. Although she was unable to give details, such as the replacement's name and precisely when they were appointed, her unchallenged evidence, which the Tribunal was content to accept not least given its favourable assessment of Ms Roehrig as a witness generally, was that the Claimant was replaced at some point later in 2016.

The law

42. Section 15 of the Act provides as follows:

"*(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".

43. Of course, given the single issue to be decided, in summarising the relevant law the Tribunal needed only to refer to the question of whether what an employer did was a proportionate means of achieving a legitimate aim, which will be referred to below as "justification" for convenient shorthand. The Tribunal draws the following principles from the relevant case law.

44. First, the burden of establishing this defence is on the Respondent. That was of course accepted by Mr Linstead.

45. Secondly, it is for the Tribunal to reach its own decision as to whether what the Respondent did was justified. In assessing the Respondent's actions the Tribunal is not to apply a reasonable responses test as it would in an unfair dismissal case. In other words, the Tribunal is not to assess whether the Respondent acted within the range of reasonable responses open to reasonable employers in the circumstances. These were points made by the Employment Appeal Tribunal in **Hensman v Ministry of Defence [2014] UKEAT/0067/14** to which Mr Linstead referred. The more serious the discrimination, the more convincing the justification must be.

46.Thirdly, it follows that the Tribunal must undertake a fair and detailed assessment of the Respondent's business needs and working practices, making clear findings on why the aims relied upon were legitimate, and whether the steps taken to achieve those aims were appropriate and necessary.

47. Fourthly, it is generally accepted that "cost alone", that is financial considerations without anything else, cannot be a legitimate aim – see for example the decision of the Court of Appeal in **Woodcock v Cumbria Primary Care Trust [2012] EWCA Civ 330.**

48. Fifthly, what the employer does must be an appropriate means of achieving the legitimate aims and a reasonably necessary means of doing so. In **Homer v Chief Constable of West Yorkshire Police [2012] UKSC 15** it was said by the Supreme Court, approving the judgment of Mummery LJ **in R (Elias) v Secretary of State for Defence [2006] EWCA Civ 1293**, that three things are required: first, a real need on the part of the employer (in other words something sufficiently important to justify limiting a fundamental right); secondly, what the employer did must have been appropriate – that is rationally connected – to achieving its objectives; and thirdly, what the employer did must have been no more than was necessary to that end.

49. The sixth principle the Tribunal noted, again with reference to the judgment of Mummery LJ in the case just mentioned, is that it is necessary to weigh the Respondent's needs against the seriousness of the detriment to the disadvantaged group as it would be in a case of indirect discrimination, or in a case under section 15 the disadvantaged person. In other words, as was said by the Court of Appeal in **Hardy & Hansons plc v Lax [2005] EWCA Civ** part of the assessment of whether the aim can be justified entails a comparison of its impact upon the affected person as against the importance of the aim to the employer. It is not enough that a reasonable employer might think the aim justified. The Tribunal itself has to weigh the real needs of the Respondent, against the discriminatory effects of the requirement. A measure may be appropriate to achieving the aim but go further than is reasonably necessary in order to do so and thus be disproportionate.

50. Seventhly, in **O'Brien v Bolton St Catherine's Academy [2017] EWCA Civ 145,** Underhill LJ giving judgment for the Court of Appeal held that in principle the severity of the impact on the employer of the continuing long-term sickness absence of an employee must be a significant element in the balance that determines the point at which their dismissal becomes justified, going on to say that it is not unreasonable for a tribunal to expect some evidence on that subject. What kind of evidence is appropriate will depend on the case. Often, it will be so obvious that the impact is very severe that a general statement to that effect will be enough; but sometimes it will be less evident, and the employer will need to give more specific evidence of the difficulties caused by the absence. Again, this is primarily for the Tribunal to determine. Underhill LJ went on to say that the proportionality test can, and should, accommodate a substantial degree of respect for the judgment of the decision-maker as to his reasonable needs (provided he has acted rationally and responsibly), but it is for the tribunal to strike the ultimate balance. A number of factors were recognised by the Court of Appeal as relevant to the tribunal's assessment in that case and it seemed to this Tribunal that they were no less relevant in the present case. Those factors were the duration of the employee's absence; the evidence as to when she might be expected to return; the reasonableness of the employer waiting a little longer; and the impact of her continuing absence.

51. Lastly, it is also appropriate to ask whether a lesser measure could have achieved the employer's aim - see **Naeem v Secretary of State for Justice [2017] UKSC/27**. In the present case, consideration of alternative employment is part of that assessment. Mr Linstead accepted that an employer will struggle to establish proportionality if there were reasonable adjustments – which might include redeployment – that could have been taken to avoid the unfavourable treatment.

This reflects what is said in the Equality and Human Rights Commission Statutory Code of Practice at paragraph 5.21. Mr Linstead drew the Tribunal's attention in this regard to **Monmouthshire County Council v Harris UKEAT/0010/15.** The employment tribunal in that case erred in its assessment because at the time the employer was considering its decision to dismiss it was not being said that there were any reasonable adjustments it might make to avoid that disadvantage. The tribunal seems to have assumed that certain steps it had identified would reasonably have been required of the employer at the time of the decision to dismiss, but it was not part of the employee's case that those steps would have removed the disadvantage at the time. The tribunal did not demonstrate that it had regard to the fact, on its findings, that there were no reasonable adjustments the employer might have made when it was considering the decision to dismiss. That seems to this Tribunal to support Mr Linstead's submission that whether in relation to the Claimant's substantive role or any alternative role she might have been considered for, the Tribunal can only have regard to the evidence which is presented to it of what adjustments could reasonably have been made to ameliorate the disadvantage to the Claimant caused by her disability. That may seem an obvious point, but it is worth spelling out.

52. In summary, the aims pursued by the Respondent must equate to a real business need on its part; the actions it took must have contributed to achieving those aims; and this must be assessed objectively, regardless of what the Respondent considered at the time. Proportionality is about considering not whether the Respondent had no alternative to dismissal, but whether dismissal was reasonably necessary to achieve its aims.

Analysis

53. The Tribunal's conclusions, applying the law to the facts of this case, were unanimous and were as follows.

54. First of all the Tribunal considered the Respondent's aims in dismissing the Claimant – to manage cost, ensure quality of service, and maintain consistency of service. The Tribunal was conscious in scrutinising these aims that the burden was on the Respondent, but was in no doubt that the identified aims were legitimate, particularly for a local authority exercising statutory duties. It is appropriate to comment on each aim in turn and explain how the Tribunal came to that conclusion.

55. It has already been noted that cost savings alone would not constitute a legitimate aim, but as the Court of Appeal in **Woodcock** made clear, financial considerations can be taken account when other aims are also in view. The Tribunal has no doubt that it is legitimate for local authorities to seek to manage cost, particularly in the difficult economic times that have been encountered by many, if not most, local authorities in recent years. It is clear that the Respondent faced increased cost during the first year of the Claimant's absence when she was being paid her contractual sick pay, but even more noteworthy is that after that point the cost of engaging agency workers was greater than the cost the Respondent would have incurred had it being employing her in active service. With financial reviews taking place as already noted, any local authority is entitled to take a very strict view of its financial position and this Respondent was no exception.

56. As to the Respondent's wish to provide an acceptable quality of service, again the Tribunal was in no doubt as to the legitimacy of this aim. The service in which the Claimant was employed was an essential and statutory service and the context in which each contact session the Claimant was meant to be engaged in took place was an order made by the court. Contact workers such as the Claimant were to

prepare reports to be provided to the courts and there is no doubt that adherence to established timescales in writing up those reports was, and is, crucial. Further, in a potentially (and often in practice actually) very volatile working environment, making sure communication to those using the service was effective was clearly a legitimate aim given the sensitive and difficult nature of the contacts taking place. There were other aspects of providing a quality service which the Tribunal also accepted as legitimate, such as the need for the contact worker to model good parenting, the reassurance of the children involved in the contacts and clarity for all as to what was expected and what was taking place during them. It was also legitimate to require contact workers to provide appropriate communication, sometimes urgently, to social workers and other professionals. And it was equally legitimate to want to be able to provide contacts away from the Respondent's premises and to seek to avoid cancellations.

57. The Tribunal also found that consistency of service was a legitimate aim. It was legitimate to provide the same worker for assessment of parents. The reason for this is that it would give confidence to those involved in the process and help the contact worker build a relationship with the parents, both of which must in most cases have made for better contact sessions. In turn this would give confidence to the Respondent itself that the reporting process was both effective and thorough.

58. In short, the Tribunal thought it inarguable that the Respondent had legitimate aims that it was trying to achieve. The Tribunal was satisfied that the Respondent had been specific about those aims in giving its evidence, rather than just making generalised assertions, and had demonstrated why it was necessary to achieve them. In his closing submissions, Mr Patel conceded as much, and sensibly so.

59. The second crucial question to consider therefore was whether dismissing the Claimant was a proportionate means of achieving a legitimate aim. The Respondent had legitimate aims, but did it act proportionately in dismissing the Claimant to achieve them? It seemed appropriate to the Tribunal to carry out its analysis of this question in two main parts, namely first the removal of the Claimant from her role as contact worker, and secondly the question of redeployment.

60. In respect of the proportionality of the decision to remove the Claimant from her role as contact worker, the Tribunal considered a number of matters.

61. First, the Tribunal recognised that this decision was very serious for the Claimant. Termination of a contract of employment will invariably be a matter of considerable seriousness, with usually significant impact on the employee. That is certainly true in this case, and so the Tribunal was conscious of its responsibility to scrutinise particularly carefully whether the Respondent had satisfied the statutory test.

62. That said, and secondly, the expert medical opinions provided to the Respondent and shown to the Tribunal, whilst inconclusive as to the cause of the Claimant's condition, were conclusive as to the impact of the condition on her employment. This was the case both in April 2015 and in November 2015 shortly before the decision was taken to terminate the Claimant's contract. That expert opinion was that she was unable to carry out her role as contact worker. The Claimant's own view on that question was somewhat less categoric as the Tribunal has found but, ultimately, she too had to concede that there were serious impediments in the way of her rendering effective service in the role.

63. Thirdly, the Claimant's absence was a long one – over 12 months by the time of the decision to dismiss in December 2015 and over 15 months by the time the dismissal took effect.

64.Fourthly, despite the efforts of many medical professionals to diagnose a cause for the Claimant's symptoms, the documentation available to the Tribunal indicated that they were unable to offer any evidence at all to the Respondent as to when the Claimant would be able to make an effective return. At the time of the Respondent's decision to dismiss the Claimant therefore, the condition which was causing her sickness absence was ongoing.

65.Fifthly, as already indicated, the Claimant did not challenge the occupational health advice which the Respondent had been given, either herself or through her union representative. She agreed the opinion was correct, despite her wish to return to work. Consistent with that acceptance, she declined to exercise her right to seek a second opinion.

66.Sixthly, no alternative to removing the Claimant from her role as contact worker appeared to be put forward by occupational health, the Claimant's union representative or the Claimant herself. There was as has been noted a tentative reference to a voice activator in the first occupational health report in April 2015, but there was no evidence before the Tribunal of what precisely that was or what it could have been expected to achieve in terms of enabling the Claimant to provide effective service. The occupational health adviser stated that it was something to be explored once a more conclusive understanding of the nature of the Claimant's condition was available. As already noted, no such understanding had emerged by the time the decision was taken to remove her from the contact worker role.

67. Seventhly, the Respondent was covering the Claimant's work by deploying her colleagues or agency staff. The Tribunal was told by Ms Roehrig of a number of ways in which this had a negative effect on the service the Respondent was seeking to provide, as has been noted above in some detail. There was the impact on the ability of colleagues – managerial or other colleagues – to effectively perform their own duties such as report writing, which in turn had an impact on their morale as evidenced by complaints about the extra work they were expected to do. The thrust of the Respondent's evidence in this regard was that this was only in the initial stages of the Claimant's absence so that by the time the decision to remove her from the role was taken her work had been covered by agency staff for several months. That was not without its own impact however. The Tribunal accepted Ms Roehrig's account of the issues created by the use of agency workers in such a service. They may well be less experienced than individuals who secure roles as permanent employees, and are thus likely to need more time by way of supervision from managers, all of which presented a risk to high quality service delivery. Deployment of agency workers also increased cost. For these reasons it was natural that the Respondent should seek to replace such workers with a permanent employee, which as noted could only be done if the Claimant's employment in the role came to an end.

68. The Tribunal noted the agreed evidence that there had been short periods prior to November 2014 when the Claimant had worked with a voice of reduced volume. It also noted the Claimant's insistence that she could have returned to the role. It is however particularly notable that the Claimant herself agreed in evidence that during the period of her long sickness absence she was unable to converse for more than 15 minutes without becoming very tired. The Tribunal also observed that what had happened before November 2014 was very different to what took place from November 2014 onwards, in that the Claimant did not encounter in that earlier period consistent and complete loss of the ability to speak for prolonged periods of time. The Tribunal concluded therefore that it was entirely appropriate for the Respondent, in making the decision to remove the Claimant from the contact worker role, not to consider what had taken place before November 2014 and to conclude – based of

course on medical evidence and its interactions with the Claimant – that she could not effectively perform it. Contact sessions were the essence of the role.

69. In summary the Tribunal concluded therefore, considering all of the evidence it had seen, that the Respondent reached a proportionate, considered and balanced decision that it needed to fill the Claimant's position with a permanent employee in order to meet its legitimate aims, and that the only way of doing that in the light of the evidence before it was to remove the Claimant from that position. Whilst the Tribunal would wish to acknowledge again the fact that this was very serious for the Claimant, the evidence the Tribunal has seen suggests that the Respondent had no other practical alternative. It would not have been appropriate for the Claimant only to carry out administrative work – that would simply not have been the fulfilment of the core function of the role.

70. As already indicated, the question of whether the Respondent acted proportionately in relation to alternatives to the Claimant leaving its employment altogether is really the practical question of redeployment. In legal terms this is the question of whether a lesser measure than dismissal could have been deployed to achieve the Respondent's legitimate aims, i.e. assigning the Claimant to another role. The Tribunal considered very carefully both the evidence presented to it in relation to this issue and the relevant law. It agreed with Mr Linstead – as already noted, it may seem an obvious point but it is important to make – that it could only consider matters that had been put to it in evidence. There were a number of matters which the Tribunal took into account in assessing the proportionality of the Respondent's actions in this regard, as now follows.

71. It is clear that from 18 December 2015 until her employment terminated in February 2016 the Claimant was given lists of all vacancies the Respondent was looking to fill. There were nevertheless a number of respects in which the Respondent's redeployment procedure could have been operated more effectively. The Tribunal would wish to make clear that this is not at all to criticise Mr Hetherington, who carried out his duties with very good intention and with a desire to help the Claimant. The Tribunal found him to be an entirely honest and straightforward witness. The fact was however, as he frankly admitted, that through no fault of his own he was inexperienced in dealing with ill-health redeployment and was unaware of many of the details of the roles the Claimant expressed an interest in. The redeployment process could have been improved by the preparation of a skills assessment, such as is mentioned in the Respondent's redeployment policy. It could also have been improved by a more detailed exploration of whether the Claimant – with her particular physical impairment – could have undertaken any of the roles she was made aware of, focussing on what she could have offered rather than what she could not. This is a point which is considered further at the end of these Reasons.

72. The first matter the Tribunal considered in this regard, taken chronologically, was the fact that the redeployment process only began in December 2015, when it was discussed in general terms at the meeting with the Claimant in June 2015, noting Mr Hetherington's frank admission that there are likely to have been many roles the Respondent was holding vacant between June and December which the Claimant may have been suitable for. The Tribunal considered whether the redeployment process could in fact have begun earlier and, if so, what the impact of doing so would have been.

73. There are three points to note. First, the Respondent's redeployment procedure provided that it would look to find suitable alternative employment when, based on a recommendation from occupational health, an employee was no longer capable of

permanently carrying out the duties of their role despite reasonable adjustments (page 142). It is acknowledged of course that compliance with its procedure is by no means a complete answer to the question of whether the Respondent acted proportionately in this regard, but it is to be noted that the Respondent complied with the procedure in this case. Secondly, it is correct as Mr Linstead submitted that the focus of the Respondent – but, significantly, also of the Claimant – prior to the meeting on 18 December 2015 or at least prior to the November 2015 occupational health report, was on getting the Claimant back to her substantive role and not on redeploying her. That is evidenced up to and including her going abroad in mid-September 2015 for a month, in part to seek treatment that would enable her to return. It was not the only possible way the Respondent could have dealt with the matter, but it was a measured and proportionate response nevertheless, for it to be clear that the Claimant could not return to her substantive role before actively seeking redeployment opportunities for her. Thirdly, and in any event, the Tribunal was not given any evidence of roles the Claimant could have applied for and in all likelihood secured – with adjustments or otherwise – between June and December 2015. Again, this is a point returned to below.

74. As to the actual roles made known to the Claimant as detailed in the Tribunal's findings of fact, there are a number of things to note. First, the Claimant's focus was clearly and understandably elsewhere, that is on caring for her husband, and so there were many roles other than the one she discussed with the relevant manager (Childcare Sufficiency and Sustainability Officer) that she may have been suitable for but did not pursue. Secondly, she did not tell the Respondent that she was in any sense unable to effectively engage in the redeployment process. The redeployment procedure said in terms that there could be an extension of the redeployment period in extenuating circumstances; the Claimant did not take advantage of that. Thirdly, with the exception of the Childcare Sufficiency and Sustainability Officer role, the evidence before the Tribunal did not identify any post that the Claimant would either have wished to apply for (some she would not have applied for because of their limited hours) or been at all obviously capable of carrying out. The Respondent cannot have acted disproportionately in not considering the Claimant for roles she did not apply for, when it did not know that she was potentially hampered in doing so by her husband's illness, nor in not considering her for roles she plainly could not fulfil based on her skills and experience.

75. As to the Childcare Sufficiency and Sustainability Officer role, the Tribunal has concluded that the relevant manager put the Claimant off applying for it because of her difficulties with her voice. That is perhaps regrettable, though the Claimant accepted that she understood oral presentations to be a significant part of the role. Further, as already noted, the Tribunal agreed with Mr Linstead's analysis of how the question of reasonable adjustments to potential alternative roles feeds into the question of proportionality. If the Claimant could have identified to the Tribunal a reasonable adjustment that the Respondent had not made and which would have kept her in the Respondent's employment in the Childcare Sufficiency and Sustainability Officer role or any other role for that matter, it is agreed that would be a very significant factor to consider in the assessment of proportionality at this point. The question of course would be what would have been reasonable, not what would have been possible. The fact is however that no such evidence was available to the Tribunal in relation to any of the possible alternative roles. It is important to make clear that it would be wrong of the Tribunal to speculate as to what those reasonable adjustments might have been and what they might have achieved. In relation to the Childcare Sufficiency and Sustainability Officer role, although the Tribunal understands the Claimant will have felt put off applying for it as a result of her conversation with the manager, it was for her to demonstrate to the Tribunal how the role could have been done differently but still effectively, in other words what

adjustments could have been made to it to enable her to carry it out. The same is true for any of the other advertised roles. It cannot be for the Tribunal to search for or make that case.

76. Finally, and for completeness, as Mr Linstead submitted, procedural issues are generally less important in a case such as this than they might be say, in an unfair dismissal case, so that for example the delay in convening a meeting or sending a letter or the absence of notes were worthy of the Claimant's observation and complaint, but not matters which in the Tribunal's judgment impinged on the question of proportionality.

77. In summary, the Tribunal concluded that in this respect – as overall – whilst there were certainly ways in which the Respondent could have dealt with certain matters more effectively as has been noted, it nevertheless demonstrated that the dismissal of the Claimant was a proportionate means of achieving its legitimate aims. The Tribunal's unanimous judgment was therefore that the Claimant's complaint should fail and be dismissed. The Tribunal acknowledged in giving its judgment and reasons orally, and records here, that this will have been a disappointing outcome for the Claimant and indeed for Mr Patel, especially given the personal circumstances they have been through in the last few years. That said, the Tribunal grappled in detail with the facts of this case and the relevant law and was satisfied that it reached the only conclusion available to it.

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Employment Judge Faulkner

Date: 12 October 2018

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE