**Case Number: 3200682/2018**

**RM**

# EMPLOYMENT TRIBUNALS

**Claimant:** **Ms Laura Attersley**

**Respondent:** **SOS Domestic Abuse Project**

**Heard at:** **East London Hearing Centre**

**On:** **12, 13 & 14 December 2018**
**7 January 2019 (In Chambers)**

**Before:** **Employment Judge Russell**
**Members:** **Mrs L Conwell-Tillotson**
**Ms C Smith**

**Representation**
**Claimant:** **In person**
**Respondent:** **Mr M Blitz (Counsel)**

**JUDGMENT** having been sent to the parties on 10 January 2019 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

# REASONS

1 By a claim form presented to the Tribunal on 4 April 2018 the Claimant sought to bring complaints of constructive unfair dismissal, disability discrimination and being "bullied and victimised" during her employment. Her statement attached to the claim form sets out in detail the factual matters upon which the Claimant relied. The Respondent resisted all claims. The Claimant relies upon a physical impairment to her right knee and leg requiring her to use a crutch and limiting her mobility. The Respondent concedes that her impairment meets the statutory definition of a disability and that it knew that she was disabled, but not that it had knowledge that the Claimant was placed at a substantial disadvantage by reason of her disability.

2 In Further Information about her claim, the Claimant identified claims of direct discrimination, failure to make reasonable adjustments in respect of an office chair, a requirement that she complete her own risk assessment, the requirement that she used an office upstairs rather than providing her with a downstairs office, the failure to undertake risk assessments for group work with young children and/or seeing clients in a refuge. As victimisation and harassment, the Claimant complained about the verbal withdrawal of the reasonable adjustment of a ground floor therapy room on 15 January

2018, a failure to provide adequate or consistent management from the start of her employment and a failure to follow the ACAS Code of Conduct during a disciplinary process and/or during a grievance process from January 2018.

3 At a Preliminary Hearing on 13 June 2018, the Claimant withdrew her complaint of constructive unfair dismissal as she lacked the required period of continuous service. Following the hearing, the Claimant again provided further information. Regrettably, no final list of issues was agreed before this hearing. At the outset and again at the close of this hearing, I took the opportunity to review the issues with the parties. The Claimant confirmed that she was not bringing a complaint of direct discrimination because of disability. During the hearing, the Claimant accepted that any shortcomings on the part of Ms Heales in the disciplinary and grievance procedures were due to error and not her disability or protected acts. The definitive list of issues was agreed as follows.

*Section 15, Equality Act 2010 – unfavourable treatment because of something arising in consequence of disability*

3.1 Did the Respondent treat the Claimant unfavourably as follows?

(i) Providing inadequate management support;
(ii) Providing an inadequate chair;
(iii) Not allowing her to use the children's therapy room as an office;
(iv) Requiring her to undertake group work with children and see children in the refuge without carrying out risk assessments;
(v) Inappropriate conduct in the meeting on 19 January 2018.

3.2 If so, was it because of something arising in consequence of her disability?

3.3 If so, has the Respondent shown that it was a proportionate means of achieving a legitimate aim?

*Section 20, Equality Act 2010 – failure to make reasonable adjustments*

3.4 Did the Respondent apply the following provisions, criteria or practices (PCPs)?

(i) The requirement to work in an upstairs office;
(ii) Not allocating her an exclusive base from which to work.
(iii) The requirement to undertake the full range of duties, including group work and/or seeing children at a refuge;
(iv) Use of standard office equipment.

3.5 If so, did it put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled?

3.6 If so, at any relevant time, did the Respondent know or could it reasonably have been expected to know the Claimant was likely to be placed at any such disadvantage?

3.7 If so, would it have been reasonable for the Respondent to have taken the steps set out below to avoid any such disadvantage?

(i) Allowing the Claimant to use the children's therapy room as a permanent office.
(ii) Not requiring her to undertake group work with children and see children in refuges;
(iii) Carrying out risk assessments for the group/refuge work.
(iv) Providing a suitable chair.

*Section 26, Equality Act 2010 – harassment related to disability*

3.8 Did the Respondent subject the Claimant to unwanted conduct as set out in the s.15 claim?

3.9 If so, did it relate to her disability? The Claimant says that the Respondent was uncomfortable dealing with her as a disabled person and this impacted upon her relationship with management and colleagues.

*Section 27, Equality Act 2010 - victimisation*

3.10 Did the Claimant do a protected act on any of: 10 January 2018, 15 January 2018, 19 January 2018 and 1 February 2018?

3.11 If so, was the Claimant subjected to a detriment as a result? The detriment relied upon is:

(i) Subjecting her to a disciplinary investigation and process from 19 January 2018;
(ii) Bullying and intimidating conduct by Ms Conlon and Ms Doughty at the meeting on 19 January 2018, including a comment about working at Tesco.

4 We heard evidence from the Claimant on her own behalf. From the Respondent we heard evidence from Ms Jenny Hubbard (Chief Executive), Ms Jane Heales (external HR Adviser) and Ms Sarah Conlon (Operations Manager). We were provided with an agreed bundle and read those pages to which we were taken in evidence. We heard oral submissions from the Claimant and written submissions provided by Mr Blitz supplemented orally. Following the conclusion of the hearing but before the Tribunal met in Chambers, the Claimant sent an email with further submissions on grounds that she had been unwell on the final day of the hearing. In the circumstances, we considered it appropriate to allow her to do so and took into account the contents of her email of 17 December 2018 to which the Respondent did not reply.

**Findings of Fact**

5 The Respondent is a small charity providing support to adult and child victims of domestic abuse. It employs around 15 people and has an annual turnover of approximately £600,000. Its main offices are situated in Westcliff on Sea in a two-storey building. On the ground floor is an office, kitchen, waiting room, two consulting rooms and a meeting room (now the children's therapy room). On the first floor is a counselling room and a number of offices. The age and size of the building is such that installation of a lift is not reasonably practicable.

6 The Claimant is a qualified psychotherapist. Her employment with the Respondent was her first job after a serious road traffic accident affecting the use of her right leg. On her application form, the Claimant disclosed that she is registered disabled and walks on crutches, whilst it did not affect her ability to do the job she could struggle with a lot of stairs or carrying things. The Claimant was interviewed on 14 December 2016 by Ms Hubbard and Ms Georgina Beadon (Chair of Trustees). The interview was held in the downstairs meeting room. There are no contemporaneous notes of the interview.

7 The Claimant's evidence is that her disability was discussed during the interview, she was told that the meeting room in which the interview was held was to be turned into the children's therapy room in which she would be based from around April 2017. The Claimant's case is that she agreed that she could work upstairs temporarily. Ms Hubbard agrees that the Claimant's disability was discussed as was the need to work on the first floor and the inability to install a lift. Her evidence is that the Claimant said that she had no problem managing stairs as she did so at home. Ms Hubbard's evidence is that they also discussed the possible use of the downstairs meeting room as the children's therapy room or additional working space subject to funding. Ms Hubbard denies that they discussed using this room as office space for the Claimant. Ms Beadon's written statement in the subsequent grievance investigation confirms Ms Hubbard's account of the discussions during the interview.

8 On balance, we find that the interview was a positive discussion for all present where both the Claimant and Ms Hubbard were optimistic about their ability to work productively together in the future. In the discussion about working arrangements, we find that Ms Hubbard told the Claimant that if the anticipated funding was received in April 2017, the Claimant would be based from the downstairs room. However, we find that the parties meant different things by "based". The Claimant interpreted this to mean that the room would be her permanent working space. The Respondent meant that it would be her base in the sense of the place where she would undertake therapeutic work with children. As for the discussion about stairs, this was the Claimant's first job back after disability and she was keen to re-establish her career and profession. On balance, we find it more likely than not that she did say that managing stairs would not be a problem. Even if the Claimant said this in the belief that it was only a temporary arrangement, she did not make this explicit to the Respondent.

9 Ms Hubbard met the Claimant on her first day of employment, 13 February 2017, to discuss any improvements to the office which would assist her. Neither Ms Hubbard nor the Claimant considered any external advice necessary. The agreed file note records that no additional adjustments were required and that the Claimant had found a more comfortable chair and been provided with a foot rest. The file note does not refer to working on the first floor which was where the Claimant was initially located. As the Claimant said in evidence, this was her first day back at work as a disabled person, she needed to find out her needs as she went along. This is consistent with our findings about the Claimant's optimism about her ability to cope at work and her belief that she would only be working on the first floor for a couple of months.

10 At the time the Claimant commenced employment, the Respondent's workforce grew significantly following the TUPE transfer of staff from Southend Borough Council. It was intended that Ms Conlon, the newly appointed Operations Manager, would manage

the Claimant. This was not initially possible as Ms Conlon was required to cover the departure of another manager, assume responsibility for the staff who had TUPE'd to the Respondent and look after her existing case load of support to victims of abuse. To ease an otherwise untenable workload, Ms Hubbard assumed some of her responsibilities including line management of the Claimant.

11 The Claimant had a number of individual meetings with Ms Hubbard in the course of her employment. Some were staff supervision meetings; others were one-to-one or review meetings. In the Claimant's November 2017 probation review, Ms Hubbard accepted that management supervision had not been ideal or consistent, repeating the explanation about Ms Conlon's workload. For example, the Claimant did not have a one-month probationary review meeting whereas some of her colleagues did. The Claimant did, however, have a one-to-one meeting with Ms Hubbard in April 2017 and a further meeting with her on 14 June 2017. Whilst there was a lack of formal management supervision, the Claimant was provided with support both by Ms Hubbard and Ms Conlon. A table showing the supervision of the Claimant and her colleagues did not greatly assist us. It covers only the period June 2017 until April 2018; the other staff were not psychotherapists and does not include the Claimant's six-month probation meeting or her staff supervision meetings with Ms Hubbard. Overall, we did not find that the number of meetings with the Claimant differed materially from those of her colleagues in any event.

12 Ms Hubbard took contemporaneous notes in the one-to-one supervision meetings which she then typed up and stored. Copies were not given to the Claimant for agreement at the time. We have taken into account the oral evidence of the witnesses and any contemporaneous emails in resolving any disputes as to the accuracy of the notes. We bear in mind that the oral evidence of the witnesses is likely to have been affected by the passage of time and with the difficulties which subsequently arose in the employment relationship. On balance, and unless specifically stated to the contrary, we have accepted the contemporaneous note as being the more accurate record of what was discussed.

13 At the first one-to-one meeting in April 2017, Ms Hubbard and the Claimant discussed using the downstairs room as a children's therapy room, the need to do so efficiently overall and to equip it with a laptop, mobile telephone and suitable chair. The need for a laptop in the room is consistent with the Claimant's case that she would use the room at least in part for some of the paperwork and administrative work linked to her therapeutic work as we accept her evidence that she would not use a laptop or telephone during the actual therapy sessions. The Claimant confirmed that she was managing to use the stairs. Ms Hubbard encouraged her to ask colleagues for support, not carry hot drinks on the stairs and minimise their use. The agenda item "Personal risk assessment" records that Ms Hubbard was still awaiting the risk assessment of her work station and facilities from the Claimant. As in the initial interview, we consider that both the Claimant and Ms Hubbard were keen that the employment relationship succeed. The Claimant did not identify any problems in her workplace caused by her disability and Ms Hubbard was supportive of any needs which she may identify.

14 On 8 May 2017, Ms Conlon says that she had a conversation with the Claimant about a family member's ill-health and potential future treatment for her leg. Ms Conlon's note records that she offered the Claimant a downstairs office, advised her to sit downstairs if the stairs felt like too much and said that she would take steps to ensure that colleagues let the Claimant know when her clients arrived. Ms Conlon's evidence is that

the Claimant refused the offer of a downstairs office. The Claimant denies that there was any such conversation.

15 We accept Ms Conlon's evidence that the document containing the note was completed contemporaneously on a running basis to record significant conversations. Ms Conlon gave spontaneous additional evidence about the context in which the conversation took place. On balance, we accept her evidence as truthful that a conversation in the terms recorded occurred. It is consistent with the positive desire of the Respondent to support the Claimant, for example Ms Hubbard's instruction to minimise use of the stairs. It was not a formal conversation but a brief discussion which was not followed up in writing and has been forgotten by the Claimant in light of the subsequent souring of the employment relationship. At this early stage in her employment, the Claimant was keen to be seen as part of the team which was upstairs. She enjoyed a good working relationship with her colleagues, including Ms Conlon, as can be seen from the use of smiley faces emojis and the salutation "hun" in email correspondence. It appeared that the downstairs room was being prepared for her use and in the circumstances, she did not consider it desirable to move downstairs at that point.

16 In May 2017, Ms Hubbard completed the Claimant's risk assessment on her own. The Claimant had not provided information in advance; this was not because she was reluctant but because she did not know what was expected of her. Whilst we accept that Ms Hubbard's request that the Claimant complete her own risk assessment was intended to ensure that it most precisely addressed her particular needs, this was not made clear enough to the Claimant.

17 Ms Hubbard identified hazards in connection with stairs, carrying equipment and files and unnecessary physical exertion by walking to the Children and Young People's office. The recommended actions were consolidating work with clients on the ground floor, relocating the Claimant's office downstairs to minimise travel around the building and reduce stairs to essential use only. The agreed action item was that the Claimant would be relocated to "**ground floor office/therapy room**." Given that the ground floor of the building had both an office and a therapy room, we consider this to refer to use of both rooms rather than, as the Claimant contends, to use of the therapy room as an office by the Claimant. The Claimant did not dispute that the contents of the risk assessment were discussed with her informally shortly thereafter and that she raised no concerns.

18 In meetings on 14 and 28 June 2017, the Claimant was reminded by Ms Hubbard that she needed to submit a list of requirements for the children's therapy room. On 13 July 2017, the Claimant sent the list by email: amongst other things, she would need a four-drawer filing cabinet and was looking at office chairs to help with her leg, stating that she had found a few options which she would pass to Ms Hubbard in due course. Ms Hubbard replied the same day to say the list looked fine and with some comments about proposed armchairs for client use.

19 By the end of July 2017, the Claimant was still using an upstairs office. In the staff supervision on 24 July 2017, the Claimant and Ms Hubbard discussed whether she could use the children's therapy room as an office. We accept that the note is accurate and that its use depended upon whether the IT facilities were suitable. Ms Hubbard expressed the opinion that the Claimant should be relocated downstairs. The Claimant's evidence is that the note is not accurate on this point and that by the end of July 2017, Ms Hubbard was resistant to her repeated request to transfer to a downstairs office. We do not agree. Ms

Hubbard was a credible witness and her oral evidence about a desire to move the Claimant to a downstairs office is supported by the contemporaneous notes of meetings, her identification of the need in the Claimant's risk assessment and Ms Conlon's suggestion of a downstairs office in May 2017. We consider that the Claimant is confusing the move to the downstairs office which the Respondent was suggesting and encouraging with her own desire to move into the children's therapy room and use it as her office when not treating children. The risk assessment, meeting on 14 June 2017 and even the Claimant's email on 24 July 2017 are not consistent with the Claimant pressing and Ms Hubbard resisting a move to the downstairs office.

20 The Claimant had a hospital operation surgery booked for 1 August 2017 and was absent from work from 31 July until 14 August 2017. The intention was that she would return to the desk in the downstairs office. The Respondent's case is that this happened. The Claimant's case is that the move only took place in September. We think that little turns on this dispute. The Claimant returned on 14 August 2017 but went sick again on 21 August 2017 from which she did not return until 9 September 2017. As the Claimant worked only 16 hours per week over 1 and a half days, the difference between the parties is not significant.

21 The Claimant says that there was a discrepancy in the evidence of Ms Conlon which should cause us to doubt her credibility in so far as on 21 August 2017 she sent an email referring to standing over the Claimant whilst she made an appointment to see her GP whereas in subsequent evidence Ms Conlon said that she had telephoned the GP herself. We do not consider this discrepancy to be of any great importance. Nor do we find the email on this issue sent by Ms Conlon on 21 May 2018 and the "woe is me" quote to be material from which we can draw any inference as to the state of the employment relationship in August 2017. By May 2018, the Claimant had resigned her employment having made a number of serious allegations against Ms Conlon. Whether Ms Conlon made the call herself or urged the Claimant to make it, it is clear that the Claimant welcomed her support and thanked her in an email sent the same day. This is consistent with the positive working relationship which we find they women enjoyed at this time.

22 From her return to work on 13 September 2017, the Claimant had an allocated desk in the downstairs office. This is recorded in the note of the staff supervision held the same day which also recorded that the Claimant was to source an appropriate chair and that the Respondent was still looking into the IT facilities for the children's therapy room. Ms Hubbard explained to the Claimant that she may need to continue to use the downstairs office as there was no telephone in the children's room and due to a severe shortage of space. The Claimant said that she was "**ok to go with whatever**". This is consistent we find with the intention of the parties that the Claimant would use the room for therapy sessions and, when the room was not otherwise required, would be allowed to stay in there to conduct her administrative duties if a telephone and IT facilities could be organised. This is not, however, a promise or guarantee that the Claimant would have sole use of that room in all circumstances on the days she worked.

23 There were further supervision meetings with Ms Hubbard on 3 and 10 October 2017. At the latter, the Claimant again raised her need for a new chair as the existing chair was uncomfortable because of her leg. Ms Hubbard agreed, stating that budget was not a problem, and asked the Claimant to visit the local mobility shop as soon as possible to discuss what she needed. The Claimant did not express concern or difficulty in the occasional need to go upstairs to check adult service files until December 2017.

24 The Claimant's probationary review with Ms Hubbard took place on 14 November 2017. It was a positive review which acknowledged the disruption caused by office moves and the lack of ideal or consistent management due to the heavy workload of Ms Conlon. The Claimant referred to the need for further development of the children's therapy room to make it more comfortable for young people but not to its use by her as an office. Throughout autumn 2017, the Claimant had suffered from increased pain for which she was attending pain management and therapy sessions at a local hospital. The combined effect of the physical pain caused by the leg and knee, pressures in her personal life and health issues arising from a possible tumour on the spine for which the Claimant required medical treatment were taking their toll upon the Claimant during this period. In the probation review, Ms Hubbard referred to the personal challenges that the Claimant had dealt with and the need to be honest enough to recognise whether she was fit to practice.

25 On 4 December 2017, the Claimant sent an email to Ms Hubbard again asking for a new chair. She described finding it really hard to spend the day sitting on the existing chair, being in pain and unable to get comfortable. Ms Hubbard replied the next day suggesting that the Claimant try her own chair but stating a preference that she go to the mobility shop. The mobility shop was on the Claimant's way home and she was allowed to leave work 30 minutes early. The shop was not however able to help and the Claimant still did not have a suitable chair.

26 There is a dispute of evidence as to whether or not the Claimant sent an email on 14 December 2017 asking the Respondent to refer her to Occupational Health. The Respondent adduced evidence of IT searches which had failed to find the email; the Claimant was adamant that the email was sent. The Respondent has found another email sent by the Claimant the same day in which she thanked her colleagues for their help carrying things and making her life easier at work. The Claimant signed off with what appear to be kisses and smiley face emojis. This is consistent we find with the Claimant being happy at work and in her working relationships albeit struggling with the pain from her leg and knee as well as other personal and health related issues.

27 On balance, we accept that the disputed email was not received by the Respondent even if sent. Ms Hubbard had to this point in the employment demonstrated a willingness to discuss the Claimant's needs and to agree to appropriate action such as an office move or a new chair. If the email had been received, we consider it more than likely that she would also have agreed to an Occupational Health referral. However, even if the email was not received, by 14 December 2017 we find that Ms Hubbard was well aware of the problems faced by the Claimant, including pain with her leg and knee exacerbated by an unsuitable chair. Even without a request from the Claimant, the Respondent could reasonably be expected to know the problems suffered by the Claimant as a result of her disability and have proactively offered a referral to Occupational Health to seek external advice as to what was required to support the Claimant.

28 Over the course of the Christmas holiday, whilst the Claimant was absent, we accept Ms Conlon's evidence that she took the time to equip the children's therapy room in line with what had been discussed earlier in the autumn. This included transferring a filing cabinet into the room for the Claimant's use.

29 The Claimant returned to work on or about 4 January 2018 and provided an update with regard to the treatment she was receiving for her back and a possible future operation. By this time, Ms Conlon was able to assume line management of the Claimant

as she was no longer carrying out two roles. There was a meeting on 9 January 2018 attended by the Claimant, Ms Hubbard and Ms Conlon at which the change of line management and the Claimant's treatment for the pre-cancerous growth on her spine were discussed. They discussed cover arrangements as the treatment may involve surgery with follow up radiotherapy or chemotherapy with the Claimant likely to be absent for a lengthy period. Also discussed was a visit by the Claimant to see a client at home which the Respondent regarded as a safety risk and possible disciplinary issue if repeated. The Claimant became upset, expressing fear that she may become unable to work due to her health problems. Ms Hubbard reassured her that she would not lose her job as a result of her disability or sickness and agreed that the Claimant could have additional external counselling to help her deal with her personal issues. Ms Hubbard asked the Claimant whether she felt able to cope and able to practice given the pressure which she was under. Again, the Claimant broke down, stating that work was her only focus. There was no discussion about the Claimant's right knee and leg or suggestion that it formed part of the Claimant's concern about her ability to continue to work.

30 On 10 January 2018, the Claimant and Ms Conlon discussed the Claimant's ability to use the children's therapy room as an office. The Claimant said that she would not able to "hot desk" as she would not be able to pick up the laptop and files each time the room was needed by someone else. Ms Conlon referred to the previous agreement about the use of the room, which we take to mean that it would be for the Claimant unless required by somebody else for work reasons, and assured her that this would be only in an emergency with scheduled use a rarity. We find that it was clear to Ms Conlon and Ms Hubbard by 10 January 2018 that Claimant would find it difficult to cope with a requirement to move between the children's therapy room and the downstairs office because of her restricted physical capability arising from her knee and leg disability.

31 It is against this background that the Claimant saw a child client at a refuge on 9 January 2018. The Claimant chose the refuge as the office was inappropriate due to its proximity to the home from which the family had fled violence, although we accept Ms Conlon's evidence that there were other possible venues available. At the refuge, the Claimant contacted Ms Conlon to advise her that there was no downstairs office she could use. Ms Conlon suggested that the Claimant have a chair taken to the child's room, which the Claimant did. At a supervision meeting on 15 January 2018, the Claimant and Ms Conlon discussed the difficulty caused by her restricted mobility in seeing clients in the refuge without a dedicated space. Ms Conlon agreed to liaise with the refuge to make appropriate arrangements and intended that a downstairs back-room would be cleared. There was no discussion about a risk assessment.

32 During the client visit on 9 January 2018, the child disclosed sexual abuse which may not previously have been known. The Claimant discussed the information with the child's case worker but not Ms Conlon in her supervision meeting on 15 January 2018 nor did she raise it in refuge and team meetings on 15 and 17 January 2018. Ms Conlon only became aware of the possible new abuse allegation following a conversation with the child's mother on 18 January 2018. Ms Conlon was concerned that the Claimant's notes for the child did not include any record of actions taken and that this may be a serious safeguarding matter. On Ms Hubbard's advice, she contacted the Claimant who agreed to attend a meeting the following day although she was not told what the serious safeguarding issue was about.

33 On 19 January 2018, the Claimant met Ms Conlon with Ms Doughty also present.

Ms Doughty was responsible for managing counsellors and had greater experience in matters of ethics and professional responsibility. When asked why she had not disclosed the abuse to anyone, the Claimant made clear her belief that it was already known and that she had discussed it with the child's case worker. In the course of discussion about whether she should have also raised it in team meetings, the Claimant became upset. She had assumed that she had done what was required when she advised the case worker, she took safeguarding seriously, could see what she had done wrong but would never do anything to harm a child.

34 The Claimant was distressed and consoled by Ms Doughty who also asked whether she felt safe to practice given her health concerns and personal pressures, reminding her of her responsibility to monitor her own wellbeing and the ability to sustain the quality of her work. The Claimant said that she had no choice as she had to pay her bills. Ms Doughty empathised but reminded the Claimant that she worked with a vulnerable client group. The Claimant said that she was fit to practice; this was a one-off mistake and it would never happen again. At this point in the meeting, the Claimant was crying and saying that she could not afford not to work. The note then records Ms Doughty as saying: "**there's no shame in doing something different**" and encouraging her to reflect and discuss matters with her clinical supervisor.

35 The Claimant's case is that the meeting was conducted in a hostile, aggressive and accusatory manner where she was not allowed to explain her position but instead treated as automatically guilty without any investigation. She felt ganged up on and bullied by Ms Conlon and Ms Doughty. She was particularly upset that Ms Doughty had told her that perhaps she should find a different job and said "**there is no shame in going to work in Tesco**". She felt that the Respondent was telling her that she was not capable of work other than in Tesco.

36 Ms Conlon accepted that the Claimant had become very upset in the meeting. It was in response to the Claimant's comment about needing to work that Ms Doughty had said that there was no harm in doing something different and had mentioned Tesco as an example of jobs which carried less pressure. Ms Doughty did not give evidence at Tribunal but in a statement during the subsequent grievance process, Ms Doughty said that the Claimant had said that she had had no choice but to work as she had bills to pay. In response, Ms Doughty says that she told her that, as a single parent who needed to work, she understood how the Claimant felt. She had then said that there is a big difference between working therapeutically with vulnerable children and working at Tesco, not that there is any shame in working at Tesco but that the level of responsibility is different. Ms Doughty's evidence was that the Claimant said she understood but felt able to work with children, this was a one-off which would not happen again. She was not suggesting that the Claimant should work in Tesco, rather comparing levels of responsibility, a point that the Claimant said she understood.

37 We had regard to the contemporaneous note and the three accounts of what was said in the meeting. This was undoubtedly an upsetting meeting for the Claimant which took place a little over a week after the meeting with Ms Conlon and Ms Hubbard where the Claimant had also demonstrated distress at the prospect of being unable to continue in her position. The Claimant genuinely was upset by Ms Doughty's reference to working at Tesco. However, we found Ms Conlon to be a compelling and credible witness and we do not accept that the Claimant was told that she should in fact work at Tesco. The admitted reference to Tesco was only as an example of a job with less pressure in the

context of a general discussion of concerns about the Claimant's current fitness to practice arising from the safeguarding issue and her fear that she could not continue due to her personal issues, spine problem and its treatment. Moreover, we do not accept that the meeting was conducted in a hostile or aggressive way. The Claimant was able to explain that she had disclosed the potential further abuse to the case worker albeit she also accepted that she should have shared it more widely.

38 On 23 January 2018, Ms Conlon and Ms Hubbard discussed the safeguarding concern and the Claimant's response. They decided that there should be a disciplinary investigation and the Claimant was suspended from work. The Respondent instructed Ms Jayne Heales, an external HR Consultant, to conduct the disciplinary investigation and statements were taken from those with potentially relevant information. On 1 February 2018, the Claimant provided her own statement of issues which also included a grievance setting out an account of problems over the course of her employment which was consistent with the evidence that she was given during this hearing. In her grievance, the Claimant said that she had been grateful for the chance to get back into work after becoming disabled and had kept her head down and got on with it as she did not want to create problems. However, the cumulative and increasing effect of the pain upon her and the requirements of discharging her job had taken their toll and she felt that she was being pushed out, particularly since returning to work after the Christmas break.

39 In her grievance, the Claimant expressed concern about a request that she cover a children's group due to staff shortages. On the one occasion she had attended, children had bumped into her and she was concerned about the safety risks posed by her limited mobility. We find that this was the first time the Claimant had raised her concern with the Respondent and that it had not been discussed with Ms Conlon in the supervision meeting on 15 January 2018. It was not included in the notes of the meeting as we consider it would have been had it been discussed, as for example was the difficulty in seeing clients at the refuge.

40 Also in her grievance, the Claimant said that she had discussed safeguarding concerns with Ms Conlon about another child but that Ms Conlon had taken no action other than to discuss it with the child's case worker. The Claimant relies upon this as evidence of differential treatment, a point expanded upon in her supplementary submissions sent after close of the Tribunal hearing.

41 The Claimant attended a combined disciplinary and grievance hearing with Ms Heales on 7 February 2018. The Respondent's safeguarding concerns were discussed as were the issues raised in the Claimant's grievance. It became apparent during the hearing that the Claimant had not been given certain relevant documents, such as Ms Conlon's file note of events leading up to the meeting, statements from those interviewed or copies of her one to one supervision meetings with Ms Hubbard. The Claimant detailed her concerns about the way the meeting on 19 January 2018 had been conducted, the lack of management and supervision, her belief that she had done what was required of her by sharing the information about the child with the case worker and her belief that Ms Conlon had been treated differently when she responded in the same way in the case of the other child. The Claimant described how over the course of her employment she had found it more difficult to cope with the pain and her consultant's view that moving around the office was causing a strain on her hip. She said that she had been given insufficient assistance to find a suitable chair and the only adjustment had been the move to the downstairs office in September 2017 but even then, she had to pick up clients, take them

to the children's therapy room and go upstairs to access adult services files. The Claimant was very unhappy that long periods of time had passed without anything being done. She was particularly upset because she felt that at the meeting on 19 January she had been told that her work was not good enough and her professional practice questioned to the point where she was told to just go and work in Tesco. She felt that she had been on the receiving end of a witch hunt over a two-week period; later saying that "**up until two to three weeks ago she had been treated like "the sun shone out of my butt**". We found the Claimant's evidence in cross-examination that the deterioration in working relationship dated back to as long before as July 2017 to be unreliable as it was inconsistent with this contemporaneous account to Ms Heales. Until January 2018, we find that there were no issues in the working relationship.

42 From the above summary, the meeting with Ms Heales was an opportunity for the Claimant fully to express her disappointment that the job which she had hoped would enable her to return to the workplace had not been as positive as she had anticipated. This genuine feeling of hurt and disappointment was also evident in the Claimant's evidence to this Tribunal. It led at times, we find, to parts of her account not being reliable. For example, when shown evidence by Ms Heales that Ms Conlon had acted appropriately on the safeguarding concerns raised about the other child, the Claimant said that it had been fabricated as part of the witch-hunt and bullying. This is a very serious allegation given the importance of the accurate file notes in the work undertaken by the Respondent. It is also incorrect; we find that Ms Conlon had taken the required action and updated the file appropriately. At the meeting with Ms Heales, the Claimant did not see how she could return to work as all trust had completely gone.

43 Following the meeting, the Claimant was provided with the time line and file note regarding the disciplinary allegations. She sent an email with lengthy additional representations not limited to the new documents, again making clear that she could not return to work irrespective of the outcome of the disciplinary investigation. The Claimant's language is not measured, for example her description of the last year as "hell", having "destroyed me completely", "a horrific experience" and with repeated allegations against Ms Conlon of cover up, fabrication, bullying, harassment and a witch hunt. Based upon our findings of fact and an objective consideration of the situation, we do not consider such allegations to be well-founded. Our finding that until January 2018 there were no problems in the working relationship is not consistent with such exaggerated language. We consider that the Claimant was hurt by the Respondent's suggestion that there were safeguarding concerns arising from her practice; she regarded this as an attack on her professional reputation, at a time when she was particularly anxious to re-establish her career and need to earn money to support her family.

44 By letter dated 27 February 2018, Ms Heales communicated her decision that the appropriate disciplinary sanction was a written warning, finding that the Claimant should have taken more action on the possible further abuse disclosure but accepting that the Claimant had made a genuine error due to confusion not helped by having two managers. Ms Heales suggested further support and development, with training on internal processes upon the Claimant's return to work. As for the grievance, Ms Heales did not accept that the Claimant had been assured at interview that she would be accommodated in the children's therapy room or that this was a condition of her employment. She found that confusion over the room had led to the Claimant's perception that the Respondent was not supporting her or making adjustments, whereas she found that it had responded to the Claimant's needs as she presented them. Ms Heales accepted that Ms Doughty's

presence at the meeting on 19 January 2018 had caused confusion but found that Ms Doughty was trying to be comforting in her comments about jobs with less responsibility such as Tesco, not suggesting that the Claimant should work in a supermarket. Ms Heales nevertheless acknowledged that the Claimant had perceived the comment as belittling and humiliating. Ms Heales did not find that there had been any bullying or harassment in the meeting, nor that the disciplinary action was in any way linked to complaints raised by the Claimant. In summary, the grievance was not upheld. The decision did not address working conditions at refugee the risk working with the young children's group or the lack of risk assessments. In conclusion, the Claimant was told that the Respondent was fully willing to commit to a fresh start and would welcome her return.

45 Whilst the Claimant appreciated the patience, time and attention given by Ms Heales, she was unhappy with the outcome and resigned her employment by letter dated 30 April 2018.

## The Law

46 Section 15 of the Equality Act 2010 provides:

> **"(1) A person (A) discriminates against a disabled person (B) if –**
>
> **(a) A treats B unfavourably because of something arising in consequence of B's disability, and**
>
> **(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim."**

47 There is no need for the Claimant to show less favourable treatment than a non-disabled comparator, simply 'unfavourable' treatment caused by something which arises in consequence of the disability. It is necessary to identify the "something" and establish that it arose in consequence of the disability. We had regard to paragraph 5.8 of the EHRC Equality Act 2010 Employment Statutory Code of Practice and its guidance as to what is required. The consequences of disability include anything which is the result, effect or outcome of that disability.

48 The duty to make adjustments is defined by section 20 of the Equality Act 2010. The duty is applied to an employer by section 39(5) of the 2010 Act; and Schedule 8 contains additional provisions. Section 20(1) to (3) provide that:

> **"20 Duty to make adjustments**
>
> **(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.**
>
> **(2) The duty comprises the following three requirements.**
>
> **(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage."**

49 Where, as here, the employer is alleged to be in breach of the duty to make reasonable adjustments imposed by section 20(3) of the 2010 Act, the Tribunal should identify (1) the PCP(s) applied, (2) the identity of the persons who are not disabled in comparison with whom comparison is made, and (3) the nature and extent of the substantial disadvantage suffered by the employee, **Environment Agency v Rowan** [2008] IRLR 20 at paragraphs 26-27 (Judge Serota QC). Having done so, the Tribunal must consider and identify what (if any) step it is reasonable for the employer to have to take to avoid the disadvantage. The aim of the duty is to remove or at least ameliorate the substantial disadvantage so that the disabled person may remain in the workplace. The potential adjustment need only have *a* prospect of alleviating disadvantage and there is no need to show that it would have been completely effective or even that there was a good or real prospect of it being so.

50 The Code of Practice on Employment, at paragraph 6.28, suggests that the following factors might be taken into account when deciding what is a reasonable step for the employer to have to take:

- **whether taking any particular steps would be effective in preventing the substantial disadvantage; the practicability of the step;**
- **the financial and other costs of making the adjustment and the extent of any disruption caused;**
- **the extent of the employer's financial or other resources;**
- **the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and**
- **the type and size of the employer.**

51 In a reasonable adjustments case, where the employer has not refused to make the adjustment but has simply failed to make it due to a lack of diligence or competence, the employer is to be treated as having decided upon a deliberate omission at the time it might reasonably have been expected to have done the thing omitted and time will begin to run from that date, see **Matuszowicz v Kingston upon Hull City Council** [2009] EWCA Civ 22.

52 Harassment is defined in section 26 of the Equality Act 2010 as follows:

> **"(1) A person (A) harasses another (B) if -**
>
> **(a) A engages in unwanted conduct related to a relevant protected characteristic, and**
>
> **(b) the conduct has the purpose or effect of -**
> **(i) violating B's dignity, or**
> **(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.**
>
> **…**
>
> **(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account -**
>
> **(a) the perception of B;**
> **(b) the other circumstances of the case;**
> **(c) whether it is reasonable for the conduct to have that effect."**

53 In **Richmond Pharmacology v Dhaliwal** UKEAT/0458/08/CEA, the EAT provided guidance to the effect that an Employment Tribunal deciding harassment claims should consider in turn: (i) the alleged conduct, (ii) whether it was unwanted, (iii) its purpose or effect and (iv) whether it related to a protected characteristic. As to effect in particular, at paragraph 15, the EAT made clear the importance of the element of reasonableness in determining effect, having regard to all of the relevant circumstances, including context and in appropriate cases whether the conduct was intended to have that effect.

54 Section 27 of the Equality Act 2010 prohibits victimisation. The Claimant does not need to show a comparator but she must prove that she did a protected act and that she was subjected to a detriment because she had done that protected act. As with direct discrimination, it is not necessary for the Claimant to show conscious motivation, it is sufficient that the protected characteristic or protected act had a significant influence on the outcome.

55 In considering the burden of proof, we referred to s.136 Equality Act 2010 and the guidance set out in the case of **Igen Ltd v Wong** [2005] IRLR 258, CA as approved in **Madarassy v Nomura International Plc** [2007] IRLR 246, CA. This guidance reminds us that it is for the Claimant to prove facts from which the Tribunal could conclude, in the absence of adequate explanation, that the employer has committed an act of unlawful discrimination. The outcome at this stage of the analysis will usually depend upon what inferences it is proper to draw from the primary facts found by the Tribunal. Where the Claimant has proved such facts, the burden of proof moves and it is necessary for the employer to prove on the balance of probabilities that the treatment was in no sense whatsoever on the prohibited ground.

## Conclusions

56 This is in many respects an unfortunate case. The Respondent and the Claimant were genuinely keen for the working relationship to succeed but to a large extent each was learning what the Claimant could and could not do and the support required as employment progressed. The Respondent was genuinely keen to accommodate the Claimant but essentially put the burden upon her to identify her limitations and arrange the adjustments required. In this respect, they were not proactive but reactive. As the Claimant said in evidence, "**plenty was said but very little was ever done.**" The Claimant was discovering that for all her optimism, she was finding that the effect of her disability in her first job after the accident was more than she had initially anticipated. Her financial need to work and her desire to re-establish her career significantly increased the pressure upon her at a time when she was also encountering pressure in her personal life and non-disability related ill health. The Respondent did not seek any additional external input with regard to adjustments or occupational health. They could and should have done as they had the support not least of Ms Heales who was used when a disciplinary issue arose. We turn then to the specific issues raised in the case.

*Section 15, Equality Act 2010 - unfavourable treatment because of something arising in consequence of disability*

57 The Respondent accepted in the probationary review that the Claimant had not received ideal or consistent management support. This was undoubtedly unfavourable to the Claimant not least as it contributed to her lack of understanding of proper process in relation to safeguarding which resulted in the written warning, as Ms Heales accepted

when deciding sanction. Unfavourable treatment of itself is not enough however. It must be because of something arising in consequence of the disability. The Claimant's case was that the "something" was a developing management dislike and/or deterioration in the working relationship because she was asking for adjustments due to her disability. We do not accept that this was the case. The period from February 2017 was a busy time for the Respondent due to the TUPE transfer of many other employees. This rendered it impossible for Ms Conlon to line manage the Claimant as originally anticipated. Ms Conlon's heavy workload and the need for more ad hoc supervision with Ms Hubbard instead was entirely unrelated to the Claimant's disability or anything that arose in consequence of it. This is consistent with our finding that the supervision of colleagues was not materially different to that of the Claimant at the time. Any inadequacy in management support was entirely due to operational pressures and not because of something arising in consequence of the Claimant's disability.

58 The Claimant informed Ms Hubbard on several occasions that her chair was inadequate. This was not in dispute at the time, nor is it now. In a section 15 claim the Tribunal must consider whether the consequences of the disability were part of the cause of the unfavourable treatment, in other words was the inadequate chair provided because of something arising in consequence of the Claimant's disability? There is no suggestion that the Claimant was given an inadequate chair for some reason related to her disability, instead that the chair was inadequate because it exacerbated the Claimant's pain and discomfort caused by her disability. This is more properly a reasonable adjustments complaint.

59 The Claimant was allowed to use the children's therapy room as an office once the IT and telephone issues were resolved. Her real complaint was that she was not guaranteed its sole use and may be required to use the downstairs office if the children's therapy room were required by a colleague. We accept that the nature of the building of the work is such that in an emergency or on rare occasions, the Respondent would need other members of staff to use the room. There was limited space in the building and it needed to be used efficiently and for the benefit of clients. If a pressing operational need arose from time to time, the Respondent required her to work in an office also on the ground floor and within a short walking distance of about 7 metres. This requirement had nothing at all to do with a deteriorating working relationship or anything arising in consequence of her disability. Insofar as the Claimant's complaint is that that this caused her substantial disadvantage because of her disability and limited mobility, it is more properly considered as a reasonable adjustments claim.

60 As for the risk assessments, it is right to say that no formal risk assessment was done after May 2017. Each of the activities for which a risk assessment was said to be required in this case happened on one occasion. The Claimant was asked to cover group work due to staff shortages, she agreed, found it unsuitable and was not required to do it again on the evidence before this Tribunal. It was not a concern discussed with Ms Conlon on 15 January 2018. Furthermore, it was the Claimant who suggested seeing the client at the refuge and when it proved to be an unsuitable venue, raised the matter with Ms Conlon who agreed to make appropriate arrangements for a back-room downstairs to be cleared for any future use. Again, there was no requirement that the Claimant undertake such work. Moreover, even if there were unfavourable treatment it was not because of something arising in consequence of the Claimant's disability but due to genuine operational issues. Insofar as the effect of the work caused the Claimant a substantial disadvantage because of her disability, this is properly considered in

connection with her reasonable adjustments claim.

61 The final matter relied upon is alleged inappropriate conduct in the meeting on 19 January 2018. For the reasons set out in our findings of fact, we have not accepted that the meeting was conducted in a hostile and aggressive manner as the Claimant has asserted. The meeting was undoubtedly difficult for the Claimant who was genuinely distressed by the suggestion that she had not acted properly on a safeguarding concern. The meeting came only 10 days after the meeting with Ms Hubbard and Ms Conlon at which the Claimant had broken down when a safety risk was raised. It is evident that the Claimant was very worried about the risk of losing her job and the consequent financial pressure. It would have been a difficult and upsetting meeting for the Claimant no matter how well it was conducted.

62 It was, however, a meeting which was necessary. The safeguarding concern was a very serious matter which had to be investigated and discussed with the Claimant. Ms Conlon did so in an appropriate way although she was clearly disappointed with the Claimant's failure to act. We do not accept the Claimant's case that Ms Conlon acted in a bullying or oppressive way; she conducted the meeting in a calm and even-handed manner in which she sought the Claimant's account of what had happened. This is consistent with the measured way in which she gave evidence and the previously good working relationship with the Claimant.

63 The Claimant also relies upon the Tesco comment by Ms Doughty as part of the inappropriate conduct in the meeting. The context for the comment is important. The Claimant had become very distressed again as she feared she may lose her job and not be able to earn money if unable to practice. Ms Doughty was attempting to console the Claimant and in doing so, we have found that made the reference to Tesco only as an example of a job with less pressure. This was as part of a discussion about the Claimant's current fitness to practice in a meeting called to consider whether she had acted properly on a safeguarding issue affecting a child. In the circumstances, and accepting that the Claimant was aggrieved by the comment, we do not consider that objectively considered this was a reasonable response. It was not unfavourable treatment. Even if it were, it was not because of something arising in consequence of the Claimant's disability with her right leg and knee but because of the Claimant's becoming distressed on two occasions as a reaction to the pressure upon her due to personal issues, spine problems, likely extended absence and effect upon her ability to work caused by the treatment for the tumour on her spine.

*Section 20, Equality Act 2010 – failure to make reasonable adjustments*

64 The first of the alleged PCPs is said to be the requirement to work in an upstairs office. When the Claimant first commenced employment she was required to work upstairs and in fact continued to do so until her move to a downstairs office from September 2017 (albeit having been away from the office from 31 July until 9 September for all save one and a half days). However, we have found that on 8 May 2017, Ms Conlon offered the Claimant the opportunity to work in a downstairs office. It was the Claimant who did not consider it desirable to move downstairs at that point. An agreed action item in the May 2017 risk assessment was a move to a downstairs office. Ms Hubbard was still of the opinion in July 2017 that the Claimant should move downstairs. The Claimant was not pressing a move to a downstairs office as she has suggested. Whilst the move only took place after a desk became available due to a colleague's

departure, we consider that had the Claimant requested the move sooner, the Respondent would have accommodated it. In effect, the Claimant was content to wait pending the refurbishment of the children's therapy room with a view to using that as her office. As a result, we do not consider that the Respondent applied the PCP relied upon. Even if it did, it did not know and could not reasonably be expected to know that the Claimant was placed at a substantial disadvantage by working upstairs in circumstances where she was content to remain there and did not express any concern or difficulty in the occasional need until December 2017 to go upstairs to check adult services files.

65 The second alleged PCP is the failure to allocate an exclusive base from which to work. This relates to the use of the children's therapy room as an office rather than being required to use the downstairs office for administrative work on what would be rare occasions. Much of the dispute turned on whether the Claimant was promised at interview that she would be able to use the room as her office. We have found the fact that there was a misunderstanding as to what the Claimant and Ms Hubbard understood to be meant by a base. However, this matters little in a reasonable adjustments claim. Whether or not a promise was made, in fact the Claimant was required to use a different office on the rare occasions where the room was required by others and this was therefore a PCP which was applied to her. It placed the Claimant at a substantial disadvantage because her limited mobility meant that she struggled to carry things and therefore move her chair, laptop and papers on those occasions where she was required to vacate the children's therapy room. The Respondent was aware of this substantial disadvantage certainly by 10 January 2018 when the Claimant told Ms Conlon that she was not able to hot desk. As a result, the duty to make reasonable adjustments arose.

66 As we have found, on 10 January 2018, Ms Conlon told the Claimant that the room could be used by her to do her administrative work unless it was required by somebody else but that this would be only in an emergency or for scheduled use on rare occasions. In other words, it would not happen often and only for good operational reasons, such as an adult attending unexpectedly with a child who required use of the room, social workers or police officers who needed the room as a private place to take statements or see a child. It would not be every week and a month could pass without the room being required by somebody else. There was limited space available and the other rooms were not always appropriate in size or for the purpose for which they may be required. The Claimant accepted that she had been told that the chances of her being asked to leave were rare on days when she had a therapy session in there. In such circumstances, we do not consider it reasonable to require that the Respondent guarantee the Claimant sole use of the room and to preclude other use when the need reasonable arose. Furthermore, the substantial disadvantage to the Claimant would be minimised on such occasions by help from colleagues as had happened in her employment to date. For these reasons, we consider that the Respondent did not fail to make a reasonable adjustment in failing to guarantee the Claimant sole use of the room when working.

67 The third PCP is the requirement to undertake the full range of duties, including group work and seeing children at a refuge. As set out at paragraph 60 above, the group work happened on one occasion and it was not required again. Whilst a single requirement may in some circumstances constitute a PCP, on the facts of this case we consider that it did not and was no more than a single one-off request to provide cover due to staff shortages. This is consistent with there being no evidence of any further request to help with group work and the fact that it was not even discussed as a concern on 15 January 2018. Furthermore, it was the Claimant who suggested seeing the client at

the refuge when other suitable locations were available. When the Claimant raised the lack of a downstairs room with Ms Conlon, the latter agreed to make appropriate arrangements for a back-room downstairs to be cleared for any future use and the Claimant did not see the child in its room at the refuge again. On the evidence, we do not think that the Claimant was ever required by the Respondent to see children at a refuge as part of her duties as asserted in the PCP. Even if she had, we consider that clearing a downstairs back room was a reasonable adjustment as it would remove any need to go upstairs and enable her to have a suitable chair.

68 The final PCP is the use of standard office equipment, this refers to the suitability of the Claimant's chair. Although the Claimant had been able to find a more comfortable chair early in her employment it was not sufficient for her needs and a specialist chair was required. No such chair was in fact provided and, accordingly, the PCP relied upon was applied to the Claimant. The unsuitable chair caused the Claimant a substantial disadvantage as a disabled person. She was in pain and discomfort due to her leg and knee problems. The Respondent was aware of the problem from as early as 13 July 2017 and, to its credit, agreed that the Claimant needed and could have a more suitable chair. Budget was not a problem and the Claimant was permitted a short amount of time off work to attend the mobility shop to discuss her requirements. That was not successful, a matter of which the Respondent was made aware on 4 December 2017 when the Claimant repeated her need for a better chair as she was in pain. The duty to make reasonable adjustments therefore arose.

69 The proposed adjustment is providing a suitable chair. This was the Respondent's obligation and it was not sufficient to give the Claimant permission and time to find her own chair. Whilst it is good practice to seek the employee's input into what is required in order to ensure that the necessary steps are taken, the duty is upon the employer to take action and not simply to delegate it to the employee. The Respondent agreed to provide a chair and it would have been reasonable for it to have done so. It failed to make this adjustment. Mr Blitz raised in submission an issue about time limits. This is a case where the Respondent has failed to make a reasonable adjustment due to lack of diligence and, therefore, is to be treated as having decided upon a deliberate omission at the time when it might reasonably have been expected to have acted. That date, we find, is by the time of the Claimant's return to work after Christmas. By that date, the extent of the disadvantage was known and steps had been taken over the holiday to equip the children's therapy room in line with earlier discussions. The Claimant's list of required equipment included a suitable chair yet this was not done. For these reasons, we find that time runs from 4 January 2018. The claim form was presented on 4 April 2018 after a period of ACAS conciliation. It was in time.

70 The other step suggested as a reasonable adjustment is a risk assessment. In a reasonable adjustments claim, the only question is whether when considered objectively the employer has complied with its obligations. A risk assessment or consultation will be useful steps in enabling the employer to know what is required and are always good practice but there is no separate and distinct duty of that kind. There was an initial risk assessment by Ms Hubbard in May 2017 but no later assessment. The Tribunal considers that best practice would have been for the Respondent to have discussed further with the Claimant any needs which arose as the employment progressed rather than leave it for the Claimant to raise issues. The issues refer to risk assessments for the group and refuge work only. However, it would also have helped the Respondent to know what was required of it in providing a suitable chair. Similarly, the use of Occupational

Health or some other external advisory body would have helped the Respondent understand and then source a chair which would reduce the pain and discomfort experienced by the Claimant from her right leg and knee. Indeed, the advice may well have been to provide two chairs – one in the downstairs office and one in the children's therapy room – as this would have reduced the problems in carrying things on the rare occasions that the Claimant was required to work in the office.

71 As we set out above, the Respondent was reactive rather than proactive. This is not a situation of a bad employer refusing to do what is required of them but a well-intentioned employer seeking to do the right thing by letting the employee have what she wants but lacking the experience or diligence to understand that the duty to act falls upon them and not the employee. The section 20 claim succeeds only in respect of the failure to provide an appropriate chair.

*Section 26, Equality Act 2010 – harassment related to disability*

72 The conduct relied upon in this claim is the same as in the s.15 claim considered above. We have found that there was no requirement to undertake group work or see clients in a refuge and that the meeting on 19 January 2018 was not conducted in a hostile and aggressive manner as the Claimant has asserted. Broadly considered, however, the Claimant did want more adequate management support, an appropriate chair, guaranteed use of the children's therapy room as an office when present, not to undertake group work or see children in their rooms in refuge and was upset by the Tesco comment on 19 January 2018. For the purposes of the harassment claim, we have worked on the assumption that each of the matters relied upon was unwanted conduct.

73 It is not sufficient that conduct is unwanted, however, it must also be related to the Claimant's disability. We have considered the causal link above in the s.15 claim and have accepted that the reasons for the conduct were not because of something arising in consequence of the Claimant's disability (even if the effect may have had greater impact because of disability). By way of example, the chair provided was inadequate. The reason for the provision of that chair was because it was what the Respondent had available in the office; it did not provide that chair because the Claimant was disabled or because she would then be in greater pain as a result of her disability. The disability and its consequences caused an ordinary chair to be inappropriate rather than caused an inappropriate chair to be provided. As such it is a failure to make a reasonable adjustment and not an act of harassment. As for management support and use of the children's therapy room as an office, we rely upon our earlier conclusions that these were entirely for operational reasons and were not in any sense related to disability.

74 Whilst the meeting on 19 January 2018 was not hostile and aggressive, the Claimant also relies upon the Tesco comment as inappropriate. We accept that the Claimant was genuinely very upset and felt wounded by the reference to Tesco as she subjectively perceived it to be a suggestion that she was not capable of other work. In other words, the comment had the subjective effect of creating the consequences proscribed by s.26. However, s.26(4) requires the Tribunal to consider not only the employee's perception but also the other circumstances of the case and whether it is reasonable for the conduct to have that effect. We rely upon our findings of fact and conclusions in the s.15 claim about the context in which the comment was made. The concern about fitness to practice in such a high-pressure job arose from the earlier safety risk, the safeguarding concern and the Claimant's comments about having to work for

financial reasons when due to personal issues and the non-disability related health issues she was under great pressure. The Claimant was not told that she was not fit for counselling work or that she should in fact work at Tesco but was being reassured that other working options with less pressure could be considered. Overall, therefore, we do not consider that the Tesco comment could reasonably be regarded as having the proscribed effect on the facts of the case. In the alternative, and for the same reasons, it was not related to her disability as there was no suggestion that her fitness to practice was impaired by her disability but entirely by the other matters. The harassment claim fails and is dismissed.

*Section 27, Equality Act 2010 - victimisation*

75 The Claimant relies on protected acts on 10 January 2018, 15 January 2018, 19 January 2018 and 1 February 2018. In her discussion with Ms Conlon on 10 January 2018, the Claimant made clear that she could not hot desk because of her disability. This was in the context of her requiring guaranteed use of the children's therapy room when she was at work. We are satisfied that this was essentially a request for a reasonable adjustment and falls within the provisions of section 27(2)(c) and/or (d) of the Equality Act 2010 and is a protected act. The same applies to the conversation with Ms Conlon on 15 January 2018 about the difficulties of seeing clients at the refuge without a dedicated space. In the meeting on 19 January 2018, the Claimant did not do anything in connection with the Equality Act and it is not a protected act. However, in her grievance submitted on 1 February 2018 the Claimant expressly raised concerns about her disability, her working conditions and what she refers to as different treatment. The grievance is also a protected act within section 27.

76 The detriments relied upon are the disciplinary investigation from 19 January 2018 and the conduct of Ms Conlon and Ms Doughty on 19 January 2018. In support of this claim, the Claimant asserts that the Respondent was uncomfortable dealing with her as a disabled person raising issues about her working conditions and when she began to raise her concerns, she says, the disciplinary issue arose. We do not agree. The Respondent was aware from the date of the interview that the Claimant was disabled and had limited mobility. Ms Hubbard and Ms Conlon were supportive of the Claimant and any needs she may identify (even if they did not act as diligently as they should in connection with the chair). Ms Conlon's reaction to the Claimant's protected acts on 10 and 15 January 2018 was equally supportive: reassuring her that she would be able to use the children's therapy room as an office save for rare occasions or emergencies and instantly agreeing to arrange an appropriate space for the Claimant at the refuge.

77 The safeguarding concern in January 2018 was serious and warranted further investigation. It concerned the appropriate response to an allegation of sexual abuse by a child. We accept Mr Blitz's submission that the instigation of a genuine disciplinary process is not a detriment. The meeting on 19 January 2018 was not handled inappropriately by Ms Conlon or Ms Doughty. The Tesco comment has been considered above and had nothing whatsoever to do with the Claimant's stated inability to hot desk or see clients upstairs at the refuge. Once Ms Heales became involved in the process, the Claimant accepts that she acted properly and appreciated the time and attention given by her. Indeed, she accepted that any shortcomings in the disciplinary and grievance process by Ms Heales were not due to disability or her protected acts.

78 Contrary to the Claimant's case that there was a deterioration in the working

relationship from the summer of 2017, we have found that Ms Conlon and the Claimant enjoyed a good working relationship until January 2018. The change, we conclude, occurred *after* the Respondent raised its safeguarding concerns. The Claimant was hurt by the suggestion that concerns may arise from her practice and, at a time of considerable stress for her, made allegations of bullying, harassment and a witch hunt in response. In other words, we find that it was the disciplinary investigation which caused the deterioration in the Claimant's view of the working relationship and not the protected acts which caused the disciplinary investigation.

*Remedy*

79 A Remedy Hearing has already been listed for 14 February 2019. The Claimant has succeeded in her reasonable adjustments claim and therefore will be entitled to an award for injury to feelings. However, she must take into account the limited extent to which her claim has succeeded. It is only injury to feelings caused by failure to provide an appropriate chair for which she will be compensated and not for the parts of her claim which have not been successful, such as the disciplinary investigation which appears to have caused her resignation. Whilst we have identified matters of best practice for the Respondent from which to learn, we have not found that there was any deliberate failure or campaign of discriminatory treatment. The provisional view of the Tribunal is that the starting point will be in the bottom **Vento** band and then adjustment required to take into account the effect upon this particular Claimant. Obviously, this is a matter for the parties to address at the Remedy Hearing and we set out only our preliminary observations as they may assist any discussions between the parties in advance of the hearing.

Employment Judge Russell

28 January 2019