Case number 2301038/2016

EMPLOYMENT TRIBUNALS

Claimant: Miss T Gillett

Respondent: Bridge 86 Ltd

Heard at: Ashford, Kent **On: 9,10, 11, 12 April 2018**

And 13 April 2018 In Chambers

Before: Employment Judge Wallis
Mrs S Dengate
Mr D Newlyn

Representation
Claimant: In person
Respondent: Mr T Cordrey, counsel

RESERVED JUDGMENT

1. The claims are unsuccessful for the reasons set out below;

2. The date provisionally agreed for a possible remedy hearing is vacated.

REASONS

Issues

1 At a case management discussion on 1 December 2016 the issues were agreed as follows:-

Direct discrimination – section 13 Equality Act 2010

a) did the following incidents take place and if so was the Claimant treated less favourably than a hypothetical comparator, in the same role as the Claimant but who did not have her disability, by:

(i) Paul Simkins shouting at her when she refused to take on an extra client at the weekend at short notice in August 2015;

(ii) when she was told on 11 January 2016 that the Respondent's organisation was not the right place for her and that she did not fit the culture of the organisation;

(iii) the disciplinary allegations of 3 February 2016;

(iv) the further disciplinary allegation of 18 March 2016;

(v) the dismissal on 22 April 2016;

b) if so, was such treatment because she was a disabled person;

Discrimination arising – section 15 Equality Act 2010

c) Did the Respondent know, or could they reasonably be expected to know, that the Claimant had the disability at the time of each of the incidents set out below;

d) did the following incidents take place and if so, was the Claimant treated unfavourably in the following circumstances:

(i) Paul Simkins shouting at her when she refused to take on an extra client at the weekend at short notice in August 2015;

(ii) if so, was it because of something arising in consequence of her disability namely that she needed, and had requested, notice of changes because of her condition;

(iii) when she was told on 11 January 2016 that the Respondent's organisation was not the right place for her and that she did not fit the culture of the organisation;

(iv) if so, was it because of something arising in consequence of her disability namely her sickness absence or her request for adjustments;

(v) the disciplinary allegations of 3 February 2016;

(vi) if so, was it because of something arising in consequence of her disability namely her sickness absence or her request for adjustments or time and diary management;

(vii) the further disciplinary allegation of 18 March 2016;

(viii) if so, was it because of something arising in consequence of her disability namely her sickness absence or her request for adjustments or time and diary management;

(ix) the dismissal on 22 April 2016;

(x) if so, was it because of something arising in consequence of her disability namely her sickness absence and/or her request for adjustments and/or time and diary management and/or anxiety about lone working;

e) if any of the unfavourable treatment is proved as having taken place because of something arising in consequence of the disability, was any such treatment a proportionate means of achieving a legitimate aim;

Reasonable adjustments – section 20 Equality Act 2010

f) Did the Respondent apply any of the following PCPs:

(i) the practice of requiring lone working at weekends with male clients with a history of violence towards women;

(ii) the practice of requiring flexible support workers to take on extra clients at the weekend at short notice;

(iii) the practice of increasing a flexible support worker's caseload;

(iv) a requirement for flexible support workers to be responsible for difficult cases involving child abuse and self-harm without clinical or 1:1 support;

(v) the practice of giving autonomy of a flexible support worker's diary to their line manager;

(vi) the practice of instigating and proceeding with a disciplinary process during sickness absence;

(vii) the practice of informing flexible support workers when a client had committed murder;

(viii) dismissal for reasons related to disability;

g) If the Respondent applied any of these PCPs, did the PCP(s) put the Claimant at a substantial disadvantage compared to non-disabled persons, namely that because the Claimant was less able to cope with the requirements of the role she was therefore more likely to face disciplinary action and/or dismissal;

h) In respect of each PCP, did the Respondent know, or could they reasonably be expected to know, that the Claimant was a disabled person at the relevant time and that she was subject to that disadvantage;

i) if the duty to make reasonable adjustments arose, did the Respondent take reasonable steps to avoid the disadvantage; the Claimant suggests that reasonable adjustments would have been:-

(i) doubling-up or assigning male clients to a male worker;

(ii) providing more notice when asking the Claimant to take on extra clients at the weekend;

(iii) reducing the Claimant's workload or increasing it only by a few cases or not at all;

(iv) allow the Claimant to manage her own diary;

(v) postpone the disciplinary until the Claimant was fit for work;

(vi) not told the Claimant about the murder until she was fit for work;

(vii) consider alternatives to dismissal such as a warning or performance management;

Harassment – section 26 Equality Act 2010

j) Did the following incidents take place and if so did they amount to unwanted conduct related to disability:-

(i) Paul Simkins shouting at her when she refused to take on an extra client at the weekend at short notice in August 2015;

(ii) being told on 11 January 2016 that the Respondent's organisation was not the right place for her and that she did not fit the culture of the organisation;

(iii) instigating and proceeding with the disciplinary process from 3 February 2016;

(iv) being told whilst on sick leave that a client had committed murder;

(v) the further disciplinary action of 18 March 2016;

k) If so, did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, having regard to the perception of the Claimant, the other circumstances of the case and whether it is reasonable for the conduct to have that effect;

Victimisation – section 27 Equality Act 2010

l) Did the Claimant do the following protected acts:-

(i) the informal complaint to Mr Sheehy and Ms Towersey in August 2015 that Mr Simpkins had shouted at her despite knowing that she could not cope with last minute changes because of her condition and that he humiliated her by doing so;

(ii) her emails of 15 January 2016 and 20 January 2016 and her trade union's email of 28 January 2016;

(iii) her grievance of 12 February 2016;

m) If so, was the Claimant subjected to the following detriments:-

(i) lunch was removed from her diary on 1 October 2015 and her manager began to manage her diary and increase her caseload from 4 October 2015;

(ii) she was told on 11 January 2016 that the Respondent's organisation was not the right place for her and she did not fit the culture;

(iii) the disciplinary proceedings from 3 February 2016;

(iv) the dismissal;

Time limit – section 123 Equality Act 2010

n) Were any of the claims presented outside the time limit;

o) Is there evidence of a continuing act that would bring any claims within the time limit;

p) Would it be just and equitable to extend the time limit;

Wrongful dismissal – Extension of Jurisdiction Order 1994

q) Did the Claimant act in such a way as to justify summary dismissal or is she entitled to notice pay;

Protected disclosure – section 103A Employment Rights Act 1996

r) At the start of the hearing on 9 April 2018 the amendment application by the Claimant to add a claim of dismissal because of a protected disclosure, permitted by the Employment Appeal Tribunal on appeal by the Claimant, was defined and the issues are as follows;

s) Did the Claimant disclose information on 7 September 2016 to Mr Fahri which, in her reasonable belief, was made in the public interest and tended to show that the Respondent had failed to comply with the legal obligation of safeguarding clients;

t) If the Claimant had made a protected disclosure, was it the reason or principal reason for dismissal.

Documents & Evidence

1. The Respondent had prepared an agreed bundle. The Claimant applied to add a number of documents which had been in dispute because of relevance, but after discussion they were added to the bundle by consent. We also had some documents redacted by the Respondent as they made an application that matters relating to the without prejudice meeting on 11 January 2016 should be excluded. The Claimant relied upon unambiguous impropriety and asked us to consider what had been said.

This had been raised at the previous case management discussion and I had noted that the parties agreed at that stage that as there was a dispute about what had been said at that meeting, the Tribunal would need to hear evidence about it. We adjourned to consider the Respondent's application and decided that as there was a dispute about what was said, it would be helpful to hear evidence about the words used. The Respondent then provided copies of the unredacted documents.

2. We also had written statements from each witness who gave evidence. We had an unsigned statement from Ms Holly Marsh on behalf of the Claimant. The Claimant had expected her to attend, but she did not arrive. We had read her statement, mainly about the undisputed fact that she had a phased return to work, and considered the evidence of the Respondent about that situation.

3. We heard from the Claimant herself Ms Tammi Gillett and from her witness Ms Tina Das, a former colleague. We then heard from the Respondent's witnesses Mr Raymond Sheehy, CEO and the person who considered the Claimant's appeal against dismissal; Ms Cassandra Myer, Operations Director, and the person who decided to dismiss the Claimant; Mr Paul Simkins, Medium Support Services Manager; Mr Hasan Fahri, Flexible Community Support Service Manager; and Ms Debbie Towersey, Strategic HR and Quality Director.

4. Although the Respondent's witnesses were not apparently deliberately obstructive, they were not able to explain matters clearly and seemed to have a poor grasp of their procedures. The Claimant was adamant that her version of events was correct and refused to accept even the most obvious points raised with her in cross examination that indicated a different version, or to accept the answers given to her questions when she was cross-examining the Respondent's witnesses.

Findings of Fact

5. The Respondent is a charity providing support in the community to clients with various mental health conditions. It works mainly in South London with local authorities, clinical commissioning groups and NHS trusts. The clients are the subject of risk assessments by their clinical supervisors.

6. In May 2014 the Respondent was successful in a bid for a contract with the London Borough of Greenwich, to support a number of clients based within the borough, and so a number of support workers were recruited. The role involves visiting clients at their homes and assisting them with everyday living such as dealing with post, paying bills, visiting various agencies or medical establishments and so on. The contact with the client is recorded in a note on the client's file. The Respondent provides a psychological de-briefing for workers every two months, because some of the clients can present challenges, and the managers are available to talk through any problems or concerns.

7. The Claimant was interviewed on 24 October 2014 for the role of flexible support worker. At the time of the interview the Respondent had her CV,

but no other documentation. It was clear that she had a great deal of experience in working with adults and young people in the community. She had been introduced to the Respondent by Tony Harewood, the husband of her long-time friend; he worked for the Respondent as a support worker.

8. The Claimant has a mental impairment controlled by medication and occasional treatment (CBT) which had been found to be a disability at a previous preliminary hearing. The condition is described by the Claimant as anxiety that can lead to panic attacks.

9. The parties agreed that the Claimant had not mentioned that she had a mental health condition or a disability at the interview. Mr Sheehy's evidence was that he raised the subject of adjustments, which he said he did at each interview, to ascertain whether each candidate required any adjustments to the working week because of child care, college attendance, and, he said, disability, and that he gave examples of steps that the Respondent could take. There was no dispute that the Claimant had asked for adjustments for child care. The Claimant denied that disability had been mentioned by Mr Sheehy. She said that had it been mentioned she would have told them of her own condition. The Tribunal accepted Mr Sheehy's evidence that he had mentioned disability as part of his list of matters that could require adjustments to be made, by way of illustration. The Tribunal noted that Ms Towersey had made notes at the interview and had written 'no disabilities' which indicated that either something had been mentioned by the Respondent about disability, and that was the response, or that no adjustment was sought for disability, and thus it was assumed that there were 'no disabilities'.

10. The Claimant completed a health questionnaire after the interview. In answer to the question 'have you ever suffered from stress, anxiety, depression or any other mental health disorder' she indicated 'yes'. She also indicated yes to having taken 'tablets or other medicine in the last six months'. She indicated 'no' to the question 'are you at present having pills, tablets or medicines from a doctor'. It was clear that the Claimant's replies on these forms were inconsistent. In reply to a detailed question about disability, which set out the Equality Act definition of disability, she wrote 'no'.

11. As she had answered 'yes' to one of the questions, the form directed her to complete further questions. She described her condition as 'anxiety'. She wrote that it had started three years ago. In answer to 'how did/does it affect you' she deleted 'does' and wrote 'panic attacks'. She wrote 'n/a' to the request for dates that she was unable to attend work. In answer to what treatment she had received, she wrote 'CBT, medication pills 10mg'. She wrote that she had received the treatment from her GP and another agency. Finally, in answer to 'are you still affected by the condition and if so, how – if fully resolved please state this below' she wrote 'no. not to my knowledge'.

12. The Claimant also completed an application form after the interview. In answer to the standard question about whether the applicant had a

registered disability, she wrote 'no'. She answered 'no' to the questions about reasonable adjustments to the recruitment process and the job.

13. The Tribunal accepted that it is common for people with a disability to seek to minimise the effect of the condition on their ability to do the job for which they are applying. However, if no information is disclosed to the employer, it is difficult to then complain that they did not make adjustments or take the disability into account. The requirement that an employer should make reasonable enquiries if they are alerted to a potential disability can only be taken so far.

14. The Tribunal found that although the answers given by the Claimant were at best ambiguous in part, it was not unreasonable for the Respondent to consider that the condition that she mentioned was historical. We should add that 'the Respondent' here refers to the HR department, and Ms Towersey in particular, because we accepted that the managers themselves have no access to medical information. We accepted the evidence of Mrs Towersey that she showed the medical information to Mr Sheehy only.

15. The Respondent sent the Claimant to occupational health. The Respondent told us that this was standard practice for all candidates. The report stated 'Fit with recommendations – This new starter/applicant referenced current/ongoing health issues and reported that symptoms are controlled with treatment. No adjustments are currently advised. If you or Ms Gillett have any concerns.' The report ends rather abruptly, and it is not clear what, if any 'recommendations' are made. Ms Towersey said in evidence that she made no other enquiries of occupational health to clarify those anomalies.

16. The question for the Tribunal was firstly whether the Respondent was aware of the Claimant's disability from that report, having regard also to the replies she had given in the other forms that she had completed. The Tribunal considered that it was not unreasonable for the Respondent to consider all of the documentation relating to health, and to conclude from that that there was no indication of a disability. The 'ongoing/current health issues controlled by treatment' referred to by the occupational health doctor could, the Tribunal accepted, refer to anything from headaches to plantar fasciitis. The key point for the Respondent was that no adjustments were said to be necessary.

17. The Claimant also relied on her contention that the Respondent was aware because she had mentioned her condition to her colleagues and to her managers. She was quite adamant about that, and the Respondent's witnesses were equally adamant that she had not done so. In considering this dispute, the Tribunal has taken account of the disputed content of meetings, and the emails passing between the Claimant and her managers, in which at no time did she raise her condition as a reason for not being able to comply with certain instructions. We explore these more fully below, but having considered all of that evidence, we found that the Respondent was not aware of the Claimant's disability until her grievance in February 2016.

18. The Claimant started work on 17 November 2014. The contract of employment provides for a 37.5 hour week. The Respondent's services are provided to service users for 7 days a week; the Claimant's contract referred to hours of work between 9am and 9 pm, and support workers were expected to work for three hours on a Saturday and a Sunday, on a rota system, for which they received time off in lieu. They were expected to work around one weekend in four.

19. From the evidence of the Respondent the Tribunal found that the system was not well-documented; there were no time sheets and workers were allowed to swop weekend shifts with colleagues, but there was no record produced to us to show the changes that had been made, or the time off in lieu claimed. It was therefore difficult to resolve the dispute about the number of weekends that the Claimant had actually worked. Her name was on a number of rotas, but the Respondent thought that she had not worked them all, because she had swopped a number of them, but they were unable to say which, and the Claimant had no record either. We deal with this when we explore the events which unfolded.

20. The Respondent had agreed with the Claimant at interview that for the first three months she would not be required to work at weekends, to enable her to arrange child care. Her name appears on the rota for 21 February 2015, which was issued early in January 2015 to all staff. An amended rota issued on 24 February 2015 shows that the Claimant had swopped with Mr Simkins and her name does not appear on the rota up to 26 April 2015.

21. On 7 May 2015 the next rota was issued, for the period 9 May to 19 July. The Claimant's name appears on the weekend of 20 and 21 June on the rota in the trial bundle. Whether her name had appeared on previous rotas and she had swopped shifts is impossible to know from the documents.

22. On 5 June 2015 Mr Fahri wrote to the Claimant to confirm that she had successfully completed her six month probation period and had made 'a good start'. In the review document Mr Fahri wrote that the Claimant had made 'excellent progress'. In the section relating to areas for improvement, he suggested that the Claimant 'organise her diary better by spreading her clients timetables evenly throughout the week.' The Claimant had responded 'manager to spread clients to give more time to prevent overload of a working week'. The Tribunal noted that the workers had control of their own diaries, and had to balance the needs of the clients with the business needs. The Respondent told us that travel time was built into the time allocated to each client. Most clients were allocated an hour once or twice a week. The workers then had to allocate time for writing up records and other administrative tasks. The Tribunal found that this exchange in the review document was an indication of the growing difficulties between the Claimant and Mr Fahri her manager about her diary. He and Mr Simkins thought she had too many gaps without clients; she considered that she was becoming overloaded.

23. On 10 June 2015 the Claimant sent an email to Mr Fahri to notify him that she had swopped the 20 June visit to client A with a colleague, Mr Dean. She said that she could visit A on 21 June, but that she wanted to do so at his family home and not at his own accommodation. She said that she had 'many reservations about females lone-working with men in an isolated environment at the weekend given that (the Respondent) is closed'. Pausing there, there was no dispute that although the office was closed, managers were available on-call on the telephone at all times. The Claimant said that she did not consider this was a sufficient safeguard. It was not clear to the Tribunal that it would make any difference to the safety of a worker, if the client became violent in their own home, if it was a Saturday or a week day.

24. Mr Fahri forwarded her email to Mr Simkins, who was then his manager, and he responded in exasperated tones 'it is just one excuse after another after another'. The Tribunal found that this was an indication that the Claimant had spoken to her managers about working at the weekend and they were becoming frustrated with it. Accordingly, although the rotas themselves did not help with identifying whether the Claimant had worked weekends when required, the Tribunal found that this email was evidence that by 10 June 2015 there was concern about her commitment to carry out the full range of duties, in addition to the concern about her management of her diary expressed in the probation report.

25. The Tribunal noted that Mr Simkins suggested in his email to Mr Fahri that perhaps the Claimant would be better on a bank contract. 'Sorry if I am seeming unfair. However, I feel that she is dictating things on her terms only and it is unfair to the rest of the team'. Mr Fahri wrote to the Claimant to remind her of her contractual duties and to reassure her that client A was not assessed as a threat. He was to be seen in his own home. He added 'if you feel that lone-working with men in isolation is a major concern of yours we would need to set up a meeting with you and HR to review this against your job description and role at (the Respondent).' The Claimant suggested to the Tribunal that this amounted to a threat against her job. The Tribunal could not agree; it was part of the Claimant's job description to visit male and female clients, at their homes, and if she felt unable to do so a meeting to discuss that would have been sensible.

26. The Claimant replied to Mr Fahri by email on 12 June to say that she had visited client A with Tony Harewood, his worker and the person who had introduced the Claimant to the Respondent, in advance of her lone visit at the weekend. She explained that she had requested to visit him at his family home because she was following health and safety procedures. The Tribunal noted that what she did not say was that the requirement to visit client A was causing her stress, to which she was prone because of her disability, and which the Respondent knew. That would have been the obvious thing to say if she genuinely thought that the Respondent knew of her disability and the effect that stressful situations had on her. The Tribunal inferred from the fact that she did not mention it that she had not mentioned it to the Respondent and did not view herself as disabled at

that stage. In other words, her disability had no bearing on her reluctance to visit A in his home.

27. The Claimant drew our attention to the clinical risk assessments for A. There was also an undated handwritten note by the Claimant, which echoed some of the 2015 risk assessment, but which was incorrect in respect of some aspects. There was a dispute about whether she had seen the 2013 or 2015 assessment in A's file. The Tribunal noted that she could not have seen the 2015 one in June as it was dated 13 November. The Claimant suggested that the 2015 assessment showed the wrong date, but the Tribunal was satisfied that it did not. There was also a 2014 assessment of A when he left more sheltered accommodation to live independently. The Tribunal considered that the Claimant's handwritten note was written at a later date. It was not her role to write risk assessment; this note appeared to have been written in order to support her concerns about A.

28. In any event, the 2015 risk assessment was clear that although A had convictions for violent crime in 2008 when he was extremely unwell, he had been sectioned and then gradually had improved until he was deemed to be able to live independently. He had been a client of the Respondent for some years without any problems.

29. The Claimant had swopped her rostered weekend of 20 and 21 June with Mr Dean, a colleague. She was therefore to work the weekend of 13 and 14 June. She attended A on 13 June. Later, in her grievance, she revealed to the Respondent that she 'had to take a family member with me' to A's home because she was too stressed to drive. During the investigation it transpired that the family member was her step-brother. He wrote a statement to say that he had no idea of the address of A, he had waited in the car park and that the Claimant had asked him to wait for her and to call the police if she was not back in five or ten minutes. The Tribunal considered that it was not unreasonable for the Respondent to decide that this was not acceptable. The Claimant had apparently revealed the address of a client, confidential information, to her brother and had not provided A with the correct length of visit. She had not notified the Respondent about this at the time. We refer to this later in this judgment.

30. On 30 June 2015 the Respondent changed the weekend rotas to allow female workers to visit female clients, and male workers to visit male clients. The Claimant suggested that this was because she had complained about A. The Respondent said that it was because they had more clients and it worked better. The Tribunal accepted the Respondent's evidence about that; it was supported by contemporaneous correspondence with the workers. The new rota covered the period up to 20 December 2015.

31. On 17 July 2015 (not August as set out in the list of issues) the Claimant complained to Ms Towersey that Mr Simkins had shouted at her in front of colleagues when she refused to add a client to her rota for Saturday 18 July. One of her complaints was that he should have taken her to a

different office to discuss this; later, she complained when she was taken to a different office to discuss matters.

32. Mr Simkins told the Tribunal that he had raised his voice out of frustration, and had subsequently apologised to the Claimant. Ms Towersey investigated the complaint and noted that there had been a heated exchange and that Mr Simkins should have spoken to the Claimant in another room. The Claimant did not dispute that Mr Simkins had apologised to her, and the note records that she 'was happy to accept' it. The Tribunal noted that the Claimant should have had child care arranged to cover three hours on the Saturday; the Respondent by adding a client was not asking her to work any additional hours. He Tribunal accepted that both parties had raised their voices during that discussion, and either of them could have described that as 'shouting'.

33. The Tribunal noted that Ms Towersey's contemporaneous note recorded that the Claimant said that the last minute change was not enough notice to arrange child care; she did not say that last minute changes caused her stress and adversely affected her mental health condition. Again, the Tribunal found that the Claimant had not told the Respondent by this stage about her disability.

34. The Claimant was on the rota for the weekend of 5 and 6 September 2015. On 5 September she visited client B. B's usual worker was Kerry Warren. B told the Claimant that she did not want the Claimant to tell Ms Warren that she had not washed up as she would call her dirty, and that she had called her a 'tramp' and 'manky' in the past. The Tribunal accepted that the Claimant was concerned about that and suggested that B make a formal complaint. She provided pen and paper to do so, and B wrote a letter setting out what had been said to her. Later, B was to tell the Respondent that the Claimant had told her what to write and did not explain the formal process. The Claimant drew the Tribunal's attention to the Respondent's procedures relating to safeguarding vulnerable adults. The procedure defines 'psychological abuse' as including verbal abuse. The Claimant considered that this was what had occurred. She emailed Mr Fahri to alert him to the complaint, and then met with him on 7 September 2015 to give him B's letter and to explain what had been said.

35. The Tribunal accepted that the Claimant's actions in raising such a concern would have been reasonable had there not been the later suggestion of manipulation of the client; the Respondent had a whistle-blowing policy that made it clear that concerns should be reported. The Claimant had a fixed view of how such matters should be dealt with; she could have spoken to Mr Fahri informally, without B having to write anything, but she wanted a formal process. The Tribunal considered that there was nothing at that stage to indicate to the Respondent that she might have been motivated by a dislike of B's worker Ms Warren to escalate matters immediately to a formal process, but later other evidence emerged that indicated that she could have had an ulterior motive.

36. Mr Fahri interviewed B on 8 September. She said that she got on well with Ms Warren and would be prepared to meet her with Mr Fahri to

discuss matters. He explained that in the interim he would change her worker. B sent a text to Ms Warren to say that she had made a mistake and missed her support. Ms Warren wrote a statement denying that she had called B names. Later, for the appeal, Mr Sheehy interviewed B and she confirmed that those names had been used by Ms Warren in the past. Nevertheless, as it was what the client wanted, Ms Warren continued as her worker. The Respondent's witnesses accepted that using derogatory terms was not appropriate. It was noteworthy therefore that no action was taken against Ms Warren. The Tribunal accepted the Respondent's view, based no doubt on their experience, that vulnerable clients could be manipulated (although this argument works both ways; they could be manipulated by workers or by managers), and that comments made to encourage them to keep themselves and their flats clean and tidy should be seen in context. A jocular reference to 'put on a clean shirt, you don't want to look like a tramp' would be quite different to the word 'tramp' used aggressively as a term of abuse.

37. The Claimant was referred for a CBT course on 24 September 2015, having been assessed on that date as presenting with symptoms of panic disorder and work stress. There was no evidence that she had told the Respondent about that.

38. Over the course of the summer the Claimant had been supporting a client, SL, who was attending therapy relating to childhood abuse and self-harm. The workers were expected to accompany their clients to appointments, but to wait for them in the waiting room. There was a dispute about whether Mr Fahri knew that the Claimant was actually attending the therapy sessions with the client. She said that she told him that the client requested it and he had agreed to her attendance; he said he had no knowledge of this until June he overheard the Claimant discussing the case with another worker, when he stepped in. His evidence was that he wanted her to stop immediately, but that she said that would not help the client, so they agreed a phased withdrawal, and he arranged to meet with the Claimant after every session so that she could de-brief.

39. The Tribunal found that the documentary evidence, namely the regular meetings with Mr Fahri in the Claimant's diary from June onwards, following the appointment with SL, supported the Respondent's case about this incident.

40. On 16 September 2016 Mr Fahri met with the Claimant to discuss her workload. The Claimant's case was that she had told her managers on several occasions that last minute changes to her diary made her anxious, and so they were aware of this difficulty. The Respondent's witnesses could not recall this. The Tribunal accepted that the Claimant had commented on the effect on her of last minute changes, but if, as she says in her witness statement, she used the words 'you know I can't cope with last minute changes because it makes me anxious' then we found that those words, or similar words, demonstrated only a dislike of last minute change and what might be termed 'ordinary' stress caused by work that can be experienced by most if not all workers, whether disabled

or not. The Tribunal could not agree with the Claimant that her words to her managers alerted them to her disability.

41. We should mention that the Claimant also said in evidence that Mr Fahri had referred to her disability by saying about her arrival in the office on one occasion 'here comes the whirlwind, it must be your meds'. He denied that he had said that. The Tribunal found that there was no evidence to support the Claimant; all the Respondent's witnesses denied hearing that. The Respondent is a charity specialising in providing support to people with mental health difficulties. The Tribunal found it unlikely that he had said that.

42. The Tribunal accepted the Respondent's evidence that at the meeting on 16 September the Claimant agreed that there was time in her diary, and Mr Fahri suggested that the time be used for assisting other workers with their clients as and when required. At a further meeting on 23 September Mr Fahri asked the Claimant to take on a client, TF, on a full time basis to support Ms Das. This proposal would involve visiting TF for one hour twice a week. The Claimant was already visiting TF once a week. He proposed that the Claimant hand over one of her clients, DO, to another worker, Mr Hasan. The Claimant told Mr Fahri that she did not have room in her diary. Mr Fahri confirmed his request in an email of 23 September p248. He noted that within the Claimant's 37.5 hour week, she was visiting clients for 22 hours and had 15.5 hours for admin, travel, phone calls and lunch breaks (half an hour each day).

43. The Claimant responded by email on 24 September to say that DO did not engage with Mr Hasan when he worked with DO and that DO wanted to continue to work with the Claimant and Mr Hasan in rotation until he knew him better. She considered that DO needed more contact time each week. She suggested that Mr Fahri had said that if she did not comply he would 'take over my diary and micromanage my diary moving forwards. If you feel I am not using my working week effectively please feel free to do so. As my manager you have a standard duty of care for my health and wellbeing. In this case and other times I have informed you that I find my workload extensive, yet my workload is increasing'. With regard to requests to support other workers, she wrote 'this way of working is causing additional stress to myself inside the workplace, yet it is believed I have scope to take on another client full time'. The Tribunal noted that this was the obvious time for the Claimant to mention her mental health condition and to explain the effect of the work requests on her condition. She did not do so. The Tribunal inferred from her omission that she was not concerned about her disability at that time, but was concerned about losing control of her diary, which she saw as criticism of her work.

44. In response to the Claimant's email, Mr Fahri invited her to a meeting on 30 September to discuss the issues that she had raised. The meeting took place with Mr Fahri, Mr Simkins, Ms Towersey and the Claimant. There are handwritten notes from the Respondent and an email from the Claimant to her trade union representative. Mr Simkins produced copies of the Claimant's diaries showing where he considered gaps could be filled. There was a discussion about her clients, her smoking breaks

(which the Respondent considered were too long) and the management of the diary. There was a dispute at the Tribunal hearing as to whether the Claimant had agreed that her managers should take over her diary management for two weeks. The Tribunal found that there was a reluctant agreement by the Claimant. We accepted that the Respondent had a practice of diary management when workers were struggling. The Tribunal noted that the Claimant did not mention disability, and again noted that this was an obvious to mention it if it was affecting her performance. The Tribunal also noted that there was no record of supervision sessions with the Claimant, not were clear targets set for her; this may have been of assistance in respect of her performance.

45. The team 'away day' was on 1 October 2015. It included lunch. The Claimant had also included a lunch break in her diary. Mr Fahri and Mr Simkins spoke to the Claimant in a separate office away from colleagues to explain this to her, and she removed the lunch break from her diary. It was the Respondent's evidence that no other worker had included an additional lunch break in their diary. The Tribunal found that this was entirely reasonable conduct by the Respondent.

46. On 5 October Mr Fahri and Mr Simkins met with the Claimant to discuss her diary, and produced suggested diaries for her to consider, which involved around 18 hours with clients, leaving her sufficient time for other matters. The proposed diary involved moving some clients to different time slots. The Claimant began to telephone her clients, but felt unwell. On the way home it was her evidence that she suffered a panic attack. She was signed off work by her GP for three months for 'anxiety, panic attacks, depression and work-related stress'.

47. The Claimant suggested to the Tribunal that her diary showed that her workload was larger than her colleagues, but she gave no examples. The Tribunal found that this was not apparent. The Tribunal noted that some clients required more support than others, so the number of clients was not in itself indicative of workload.

48. The Respondent referred the Claimant to occupational health. They asked whether she was a disabled person and set out the background. In particular they wrote 'we need to understand if she has an ongoing mental health issue or general health issues which amount to a disability that may affect her returning to her current job role as there is a lot of lone working involved with very chaotic clients with serious and enduring mental health issues'. They noted that she had previously said in the health questionnaire that she had 'stated that she has suffered with anxiety three years ago but was now well'.

49. The Claimant attended the appointment on 27 December 2016. She said that she found the doctor to be unsupportive, and just wanted to get her back to work. She did not agree with some of the contents of the report that was issued.

50. The report confirmed that the Claimant's history of anxiety 'was brought under control with medication and some specialist counselling and had

settled completely before she joined the company.' The doctor reported that the Claimant had said that she was stable for the first six to nine months of employment, and that although the episodes where she attended therapy with a client had 'created some difficulties' she was 'managing effectively'. She confirmed that she had visited her GP after problems with her diary which affected her relationship with her clients, and had 'improved considerably with counselling'.

51. The report ended 'Today she presented with no standalone mental health problems. There was an element of anxiety but this was not, in my view, pathological (ie illness). She did describe, however, what seems to have been a significant level of anxiety and depression (at the onset of certification) which has now largely resolved. Her sleep pattern has been a particular issue too which is a work-in-progress and it is hoped this issue will resolve too with CBT etc.'

52. The doctor wrote that the Claimant was physically and mentally fit to undertake her job role. 'There is no standalone physical or mental health issue that would prevent this (now)'. He considered that she could return to work after a discussion with her managers. He did not in terms answer the question whether she was a disabled person, and the Respondent did not follow this up. However, the Tribunal noted that the report did not suggest that there was a long-term impairment.

53. On 5 January 2016 the Claimant's GP issued a certificate to say that she may be fit to return to work on a phased return, with amended duties, altered hours and workplace adaptations. He did not provide any details but simply ticked all of the boxes on the form.

54. Ms Towersey and Ms Myer met with the Claimant on 11 January 2016. The Claimant attended with Mr Hasan. The Tribunal was shown the Respondent's note, Mr Hasan's note, and a note prepared by the Claimant after the meeting. They discussed the occupational health report and the GP's recommendations. The Claimant suggested a phased return to work over a four week period, and then a review. The Respondent considered this proposal and in an email of 13 January declined; they said that they had found in the past that such a return was disruptive to clients, and was 'operationally and financially problematic'. The Claimant referred the Tribunal to the case of Ms Marsh, a colleague who had a phased return. The Respondent's evidence was that this had not worked well for clients. The Tribunal was satisfied that the possibility of a phased return had been considered and then rejected for reasons that were not unreasonable.

55. At that stage of the meeting Ms Towersey proposed that they enter into without prejudice discussions, and explained what this meant. She explained the concerns about the Claimant's handling of the complaint by client B and the diary management issues. There was a dispute as to whether she said that the Claimant did not fit the culture of the Respondent. The Tribunal noted that when asked about this, Ms Towersey told us that her 'mind had gone blank'. We noted that in her statement she had said that she denied that comment. We found that

words were said that gave the Claimant the impression that she was no longer working in the way that the Respondent wanted. That was clear, because they were offering her an exit package.

56. The Claimant responded to Ms Towersey's email about the phased return on 15 January. She disagreed that it would not be possible. She made no mention of the offer that had been put to her. She wrote that she considered that the Respondent was unable to provide reasonable adjustments and so she would remain off sick until her GP confirmed that she could return full time. She continued to supply medical certificates until she was dismissed.

57. Ms Towersey had some correspondence with the Claimant's union representative about the phased return, explaining the Respondent's position. He had also asked about whether the Claimant would control her diary upon her return. Ms Towersey explained that management control of the diary would continue 'as we consider that this is necessary'.

58. Ms Towersey collected statements from Mr Fahri (undated), Mr Simkins (4 February 2016), Mr Dean (undated) and Ms Warren (16 September 2015). Mr Dean suggested that the Claimant had not pulled her weight in respect of the weekend rotas and 'appeared to be energised by instigating disharmony'. Mr Fahri and Mr Simkins set out their concerns about the Claimant's conduct, and why they had taken over control of her diary. Ms Warren had already supplied a statement about the incident with client B. She denied using the words alleged by B. She suggested that the Claimant was making a personal attack on her by encouraging B to complain about her. She suggested that the Claimant had caused friction within the team. The Tribunal accepted that his had never been put to the Claimant because shortly thereafter she went on sick leave.

59. The Tribunal noted that there was no structured investigation and there was no thought given to interviewing the Claimant before deciding to embark on disciplinary action. Ms Myer's evidence indicated that she had no idea what a fair procedure would look like, and clearly had no understanding about the different roles of investigation and decision-making. Ms Towersey's evidence was not much better. The Tribunal noted the Respondent's evidence, when asked by the Claimant why other members of the team had not been interviewed, that they felt that they 'had got enough information'. It might be helpful to remind the Respondent that a full and fair investigation does not consist merely of pulling together statements, and does not cease simply because the employer considers that it has enough material to dismiss an employee. It was of particular concern to the Tribunal that no thought was given to interviewing the Claimant as part of the investigation, or to ask her for details of any witnesses that she would want the Respondent to interview. The Respondent has a disciplinary procedure; it is there to be followed.

60. The Claimant was suspended and invited to a disciplinary meeting on 10 February by letter of 3 February. The allegations were that she had (1) encouraged B to make a formal complaint without explaining it properly to her, causing her significant distress; (2) that she had done so for her own

reasons; (3) that she had refused to carry out reasonable management instructions in respect of diary management; that her diary was arranged to suit her and not her clients, including long breaks and smoking breaks; and (4) that she had been unwilling to work weekends and gave late notice of being unavailable.

61. The letter enclosed the statements and the disciplinary procedure. It confirmed that the Claimant could be accompanied and that issues 1 and 2 were regarded as gross misconduct, that trust and confidence may have broken down, and that they would have to consider whether her employment could continue.

62. The Claimant presented a grievance on 12 February 2016. She wrote that she suffered from a condition 'known as panic and anxiety disorder' which she said had been set out in the 'medical document' at the start of her employment. She said that she had been made anxious by various tasks such as visiting client A, attending therapy with another client, being given additional clients, and control of her diary being taken from her. She gave the details about a family member attending client A with her. (in fact, he stayed in the car, but she did not say that in the grievance). She said that a phased return was refused and an offer made, which was unexpected and confused her, leading to another attack. She wrote in some detail about reasonable adjustments and the 'exaggerated' disciplinary charges.

63. The disciplinary meeting was postponed. The Respondent added a further disciplinary allegation to the list, about taking a family member to a client and revealing confidential client information. The Respondent decided that Ms Myer could consider the grievance and the disciplinary together, as there was a fair amount of overlap.

64. On 23 February 2016 the Respondent contacted the Claimant to let her know that one of her clients had been accused of murder. The Tribunal accepted that it was reasonable for the Respondent to ensure that the Claimant heard this distressing news from them, rather than through the media, or, which could have been worse, a journalist arriving on her doorstep.

65. The Claimant remained signed off work and ultimately agreed that as she was unable to attend the disciplinary hearing, she would provide written representations, which she did. The hearing took place on 12 April 2016. The Tribunal accepted that Ms Myer considered all of the material that she had, and decided to dismiss the Claimant. There was a dispute about whether the Claimant had seen Mr Fahri's note of his meeting with client B in September 2016. It was not clear whether the decision-makers had seen that note, and in any event nothing turned on it.

66. Ms Myer set out her reasons in a detailed letter of 22 April 2016. She considered that the way the Claimant handled B's allegation had caused B distress and the Claimant had not explained the process to B. She considered that gross misconduct. She considered that the Claimant had encouraged B 'for her own reasons' and she referred to the statements

about the Claimant affecting the team, and the suggestion that there was a dispute between the Claimant and Ms Warren.

67. Mr Myer considered that the Claimant had refused to carry out reasonable management instructions in respect of her diary, which she found to be misconduct.

68. She also considered that it had been gross misconduct to permit a family member to accompany the Claimant to the home of a client. She did not accept that the client's address had not been divulged. She questioned how the brother could have called the police of he did not know where the Claimant was visiting the client.

69. The Claimant appealed by letter of 26 April 2016. She suggested that there was no evidence to support the conclusions and she referred to her disability.

70. Mr Sheehy considered the appeal on 13 May 2016. Again, the Claimant was unable to attend and agreed to provide written representations, which she did. Mr Sheehy visited client B and she confimed that Ms Warren had used the words that she alleged, although she wanted to continue with Ms Warren as her support worker. The Tribunal noted that here was no evidence of any action taken against Ms Warren about this, even though the Respondent's witnesses confirmed that the language used was inappropriate.

71. The appeal was dismissed by a detailed letter of 31 May 2016, which responded to each of the Claimant's grounds of appeal.

Brief Summary of the Law

Direct discrimination

71 Section 13 deals with direct discrimination and provides that A discriminates against B if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

72 Section 23 refers to comparators and says that there must be no material difference between the circumstances relating to each case. The circumstances include a person's abilities if the protected characteristic is disability.

Discrimination arising from Disability

73 Section 15 of the Act provides that A discriminates against a disabled person B if A treats B unfavourably because of something arising in consequence of B's disability and A cannot show that the treatment is a proportionate means of achieving a legitimate aim. This section does not apply if A can show that he did not know and could not reasonably have been expected to know that B had the disability.

74 Assessing proportionality involves the tribunal in conducting a balancing exercise to evaluate whether the business needs relied upon by the employer are sufficient to outweigh the impact of the measures in question on the protected group generally and on the Claimant in particular. It requires an objective balance between the discriminatory effects of the employer's actions, and the reasonable needs of the employer: Allonby v Accrington & Rossendale College and others [2001] IRLR 364.

Harassment Claim

75 Section 26 of the Act provides that A harasses B if A engages in unwanted conduct related to a relevant protected characteristic and the conduct has the purpose or effect of violating B's dignity or creating an intimidating etc environment for B.

Victimisation claim

76 Section 27 of the Equality Act refers to victimisation. A victimises B if A subjects B to a detriment because B does a protected act or A believes that B has done or may do a protected act.

77 Protected acts include bringing proceedings under this Act; giving evidence or information in connection with proceedings under this Act; and making an allegation that A or another has contravened this Act.

Time Limits

78 Section 123 of the Act provides that proceedings may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates, or such other period as the Employment Tribunal thinks just and equitable.

79 For the purposes of this section, conduct extending over a period is to be treated as done at the end of the period.

Burden of proof

80 The burden of proof in respect of these provisions is contained in section 136. That provides that if there are facts from which the court could decide, in the absence of any other explanation, that A contravened the provision concerned, the court must hold that the contravention occurred. However, it also provides that that provision does not apply if A shows that A did not contravene the provision. It is therefore for the Claimant to prove facts from which the Tribunal could, apart from the relevant section, conclude in the absence of an adequate explanation that the Respondent has committed a discriminatory act. If the Claimant does that, the Tribunal shall uphold the complaint unless the Respondent proves that he did not commit that act.

81 It is recognised that it is unusual for there to be clear evidence of discrimination and that the Tribunal should expect to consider matters in accordance with the relevant provisions in respect of the burden of proof

and the guidance in respect thereof set out in Igen Ltd v Wong and Others [2005] IRLR 258, confirmed in the cases of Madarassy v Nomura International PLC [2007] IRLR 246; Laing v Manchester City Council [2006] IRLR 748; and in Hewage v Grampian Health Board [2012] UKSC 37.

82 According to these cases, at the first stage, the Tribunal has to make findings of primary fact. It is for the Claimant to prove on the balance of probabilities facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the Respondent has committed an act of discrimination. At this stage of the analysis by the Tribunal the outcome will usually depend on what inferences it is proper to draw from the primary facts bound by the Tribunal. The Court of Appeal reminded Tribunals that it was important to note the word "could" in respect of the test to be applied. At this stage, the Tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. The Tribunal must assume that there is no adequate explanation for those facts. It is appropriate to make findings based on the evidence from both the Claimant and the Respondent, save for any evidence that would constitute evidence of an explanation for the treatment.

83 If the burden of proof shifts, then the Respondent must show that the act complained of had nothing whatever to do with the protected characteristic, otherwise the claim must be upheld.

84 In Efobi v Royal Mail Group Ltd (EAT/0203/16) the Employment Appeal Tribunal decided that section 136 (2) did not require a Claimant to prove facts, in the way that previous legislation had. It was for the Tribunal to consider all the evidence at the end of the hearing, not just from the Claimant but from other sources, to decide whether or not there are facts from which it could conclude that discrimination has occurred. Where it so concludes, the Respondent bears the burden of proving that it did not discriminate.

85 Accordingly, it appeared that although the burden at the primary stage was neutral, a finding that there is a prima facie case of discrimination will at that point continue to shift the burden onto the Respondent to disprove the claim.

86 However, in Ayodele v Citylink Ltd and anor, EWCA/Civ/2017/1913, the Court of Appeal held that the burden of proof remains on the Claimant, and that section 136 made no substantive change to the law. Efobi was wrongly decided and the decisions in Igen and Hewage were confirmed.

Protected Disclosure dismissal claim

87 Section 43A of the Employment Rights Act 1996 provides that a protected disclosure means a qualifying disclosure as defined by Section 43B which is made by a worker in accordance with any of the Sections 43C to 43H.

88 Section 43B defines a qualifying disclosure as a disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following matters. The matter relied upon by the Claimant is that the Respondent failed to comply with a legal obligation to which they were subject, relating to safeguarding clients.

89 Section 43C covers disclosure to an employer or other responsible person.

90 Section 103A of the Act provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

91 In Cavendish Munro Professional Risks Management Ltd v Geduld 2010 ICR 325, the EAT distinguished between 'information' and 'allegation'. Information is conveying facts, and not merely expressing an opinion. It may be new information, or matters already known. However, in Kilraine v London Borough of Wandsworth 0260/15 the EAT sounded a note of caution and noted that 'reality and experience suggest that very often information and allegation are intertwined'.

92 In order to prove a causal link between a disclosure and a detriment, the Court of Appeal in Fecitt v NHS Manchester 2012 ICR 372 considered that section 47B would be infringed if the protected disclosure materially (in the sense of more than trivially) influenced the employer's treatment of the whistle blower.

93 The burden of proof is applied by considering firstly whether the employer has established a potentially fair reason for dismissal. If they fail to do so, this does not automatically mean that a dismissal under section 103A has been proved by the Claimant. If the Claimant has shown a prima facie case that the reason was a protected disclosure, the Tribunal may infer on the evidence that the disclosure was the true reason.

94 The employer may still be able to show that the disclosure was not the reason, even if the Tribunal has found that the reason for dismissal was not the reason suggested by the employer.

95 If the Claimant has the relevant amount of qualifying service, he does not have to prove that the disclosure was the reason for the dismissal. In this case the Claimant does not have qualifying service, and so she has to show a prima facie case that she was dismissed for an automatically unfair reason.

96 With regard to the public interest component, the Court of Appeal in Chesterton Global Ltd v Nurmohamed 2017 EWCA Civ 979 considered

that a Tribunal should decide whether the worker subjectively believed at the time that the disclosure was in the public interest; and if so, whether that belief was objectively reasonable. The belief does not have to be the predominant motive, or even form part of the motivation for making the disclosure.

97 The factors to be considered include the numbers in the group whose interests the disclosure served; the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed; the nature of the alleged wrongdoing; the identity of the alleged wrongdoer.

98 With regard to legal obligation, in Eiger Securities LLP v Korshunova 2017 IRLR 115, it was decided that 'the identification of the obligation does not have to be detailed or precise, but it must be more than a belief that certain actions are wrong. Actions may be considered wrong because they are immoral, undesirable or in breach of guidance without being in breach of a legal obligation'. The nature of the legal obligation is a precursor to the decision as to the reasonableness of the belief itself.

99 In Babula v Waltham Forest College 2007 IRLR 346 it was noted that the purpose of the statute was to encourage responsible whistle-blowing and so a mistaken belief that there was a breach may still be reasonable. The fact that the whistle-blower is wrong is not relevant, provided his belief is reasonable.

Submissions

100 Mr Cordrey on behalf of the Respondent produced written submissions. We adjourned to read them and to give the Claimant the opportunity to read them. Mr Cordrey than addressed us in respect of the evidence we had heard and the tests to be applied.

101 On her behalf, Ms Gillett thanked the Tribunal for hearing the case and suggested that she had presented sufficient evidence to support her case. She said that she followed procedures in respect of client B and that she had not breached client A's confidentiality.

Conclusions

102 Having made the findings of fact set out above, and having considered the relevant law, we returned to the list of issues to draw these conclusions.

103 The first issue that the Tribunal considered was whether the Respondent knew, or could reasonably have been expected to know, that the Claimant was a disabled person.

104 Having regard to the facts of the matter, and the information supplied to the Respondent by the Claimant, we concluded that they did not know until they received her grievance on 15 February 2016. Before that date, all they knew was that there had been a previous

episode of anxiety that was resolved by the time the Claimant began work for the Respondent.

105 Notwithstanding that this decision would rule out many of the claims, we continued to address the issues and draw conclusions.

106 Turning to the section 13 claim, we accepted that there had been raised voices by both Mr Simkins and the Claimant. This did not happen because of any disability, but because he was frustrated by her attitude to her workload and her apparent lack of flexibility.

107 We accepted that words were said on 11 January 2016 that led the Claimant to understand that she was no longer wanted by the Respondent. We concluded that this was not because of any disability, but because of her conduct. We further concluded that there was no evidence of unambiguous impropriety at that meeting.

108 We concluded that the disciplinary allegations were the result of the Claimant's conduct and nothing to do with any disability.

109 The further disciplinary allegation was added at a time when the Respondent was aware of the Claimant's disability. We concluded that the disability had nothing to do with that allegation; it was related to the Claimant's own admission that she had been accompanied to client A by a family member.

110 We concluded that although the Respondent was aware of the disability by the time of dismissal, it had no bearing on the decision. The dismissal was because the Respondent had grave concerns about a number of aspects of the Claimant's conduct.

111 We should mention here that the Respondent had drawn our attention to the documentary evidence that showed that the Claimant had sent various emails about work to her private email address. The Claimant accepted that she had done so, and denied that she was aware that she could access work emails from her telephone. It was clear that she was aware of that capability, and we found her denial disingenuous. Had the Respondent discovered this at the time, we accepted that this could have provided further reasons for dismissal.

112 The claim of direct discrimination was unsuccessful

113 Turning to the section 15 claim, the same matters are pleaded, and we have set out above our conclusions about the reasons that those incidents occurred. We concluded that none of those incidents occurred because of something arising in consequence of the disability. None of the Claimant's conduct arose in consequence of her disability.

114 Mr Simkins did not shout or raise his voice because she required notice of changes because of her disability; she wanted notice for child care purposes and he was frustrated at her inflexibility.

115 The Claimant was not told that she did not fit in, but in any event the words used were not used because of her sickness absence or because of her request for adjustments, but because she had been disruptive and inflexible about her diary and her workload, and the Respondent was seeking an amicable end to employment.

116 The disciplinary allegations, and the further allegation, were not put because of her absence or request for adjustments, but because of her conduct as set out in the decision letter.

117 The dismissal was not because of any of the matters relied upon by the Claimant, but for the reasons set out in the decision letter. That claim was unsuccessful.

118 With regard to the claim under section 20, the Tribunal concluded that there was no practice of requiring lone working at weekends with male clients with a history of violence towards women. Client A did not have a history of violence towards women. There was no evidence of any clients having such a history. Most of the visits carried out by support workers were 'lone visits' to clients who had been risk assessed.

119 The Tribunal concluded that there was no practice requiring workers to take on clients at short notice; this happened occasionally in response to circumstances, but did not happen so frequently or regularly as to amount to a practice. In any event, it happened once to the Claimant; it was not short notice as she was told on a Thursday, for the Saturday; and she refused, so there was no disadvantage to her.

120 The Tribunal concluded that there was no practice of increasing a worker's caseload. There was evidence that caseloads were increased or decreased according to client needs and with regard to the worker's workload. When the Respondent discussed with the Claimant adding a client to her caseload, they offered to allocate another client to another worker to balance the load. We were unable to see any disadvantage there.

121 The Tribunal concluded that there was no requirement to be responsible for difficult cases without clinical or 1:1 support. The evidence demonstrated that the opposite occurred. Workers were provided with psychological de-briefings every two months, and the managers were always available for informal de-briefings. Workers were not supposed to attend sessions with clients; when the Claimant did so with SL, she was provided with regular support as soon as the Respondent became aware of what she had done.

122 The Tribunal concluded that there was a practice of a line manager taking over management of a worker's diary if they were seen to be struggling. The Tribunal concluded that there was no disadvantage to the Claimant compared to a worker who did not have her disability; it was a supportive measure.

123 The Tribunal noted that sickness absence does not preclude disciplinary action. We were unable to identify any practice about disciplinary action during sickness absence. In this case, the Respondent waited a reasonable length of time before deciding to proceed.

124 The Tribunal concluded that if it could be said that informing a worker about a client being charged with murder amounted to a PCP, then it did not place the client at a disadvantage compared to others. It was a sensible step to ensure that the worker was not confronted with unpleasant information from a third party.

125 The Tribunal concluded that there was no evidence to show that the Respondent had a practice of dismissing workers for reasons related to disability. The Respondent is a charity dealing with disabled clients. The evidence was that a number of their workers have disabilities. In any event, the Claimant was not dismissed for a reason related to her disability or because she was disabled.

126 That claim was unsuccessful.

127 Turning to the claim of harassment, the Tribunal has already explored the incidents relied upon under this head of claim. We concluded that none of the incidents related to the protected characteristic of disability. They were probably unwanted conduct, but the reasons for them were not related to disability, for the reasons set out above.

128 The claim of harassment was unsuccessful.

129 With regard to the claim of victimisation, the Tribunal concluded that the informal complaint to Mr Sheehy was not a protected act; disability or discrimination was not mentioned by the Claimant in the course of that complaint.

130 The email of 15 January 2016 could perhaps have been a protected act; it refers to a failure to make reasonable adjustments, although it does not couple this with any suggestion of disability. The email of 20 January 2016 could perhaps have been a protected act in that it refers to being made ill because of management actions. However, on balance, we concluded that they did not contain enough material to amount to a protected act.

131 The email from the Claimant's trade union was not a protected act. There was nothing in it to suggest that it should be read as such.

132 The Claimant's grievance was a protected act; she refers in terms to breaches of the Equality Act.

133 The next question is whether the Claimant was subject to the detriments upon which she relies. The first is the removal of lunch from her diary. We concluded that that was not a detriment; lunch was to be

provided at the team day. As far as management of her diary was concerned, that began because she was not making the best use of her time; it had nothing to do with any protected act.

134 The next detriment was about the words used at the meeting on 11 January 2016. Only the informal complaint had been made before this meeting occurred, and we had found that the complaint was not a protected act. In any event, the words used at the meeting had nothing to do with that complaint which had been dealt with some months earlier.

135 The next detriment was said to be the disciplinary proceedings. The Tribunal concluded that those proceedings had nothing to do with any protected act, but came about because of the Claimant's conduct.

136 The last detriment relied upon is the dismissal. The Tribunal concluded that the reasons for the dismissal related to the Claimant's conduct, and were not linked in any way to any protected act.

137 The claim of victimisation was also unsuccessful.

138 The Tribunal has not considered the issue about time limits as none of the claims brought under the Equality Act were successful.

139 The Tribunal considered the claim of wrongful dismissal. We concluded that the Claimant had behaved in such a way as to justify summary dismissal. There was evidence to suggest that she had breached client confidentiality by taking a family member to a client's address. The family member may not have visited the client, but it was not credible that the Claimant had not revealed the address, particularly as she left instructions to call the police if she did not return within a short time; there would be no point in doing so unless the address was known to the family member.

140 That claim was unsuccessful.

141 The Tribunal considered the claim of dismissal for making a protected disclosure. The first issue was whether a protected disclosure had been made. The Tribunal noted that the Claimant's previous representative had not described the basis of the disclosure in any detail. The Claimant herself made vague references to 'the Care Act' but did not provide any details. The Tribunal had been referred to the Respondent's safeguarding rules, which were based on various requirements for operations of the nature run by the Respondent. There was clear reference within the rules to psychological abuse, which included verbal abuse.

142 The Tribunal concluded that the Claimant had reasonably believed that the Respondent's safeguarding rules were based on statute, and that she was following those rules when she reported the comments of client B to Mr Fahri on 7 September 2016.

143 The Tribunal accepted that the Claimant reasonably believed that it was in the public interest to disclose that information so as to ensure the proper care of vulnerable adults by a charity that worked in that specialised field.

144 The next question was whether the reason or principal reason for the dismissal of the Claimant was the protected disclosure. The Tribunal concluded that it was not. The disclosure had been made some months before the dismissal, but it clearly formed part of the information upon which the decision was made, because the Respondent had decided that the Claimant had made the report about client B for her own reasons. We considered that carefully; was the dismissal because of the disclosure or because of the way it was done? We noted that the question of 'good faith' only arises in remedy considerations.

145 The Respondent had relied upon the statements of Ms Warren and Mr Dean about the Claimant's relationship with Ms Warren. Those statements provided some basis for the Respondent's conclusion that the Claimant was motivated by a dislike of Ms Warren. On the other hand, there was the evidence of client B to Mr Sheehy, that Ms Warren had in fact said those words, even though Ms Warren denied it. Despite the use of those words, client B continued to want Ms Warren as her worker. The Tribunal concluded that in those circumstances it was not unreasonable for the Respondent to conclude that the words used by Ms Warren should be taken in context, that the words had not upset client B, and that the Claimant had exaggerated the seriousness of the situation and had manipulated client B by providing the pen and paper, telling her what to write, and failing to explain the formal process to her; and that she had done so in order to damage Ms Warren. It was clear that this was not a client who was upset by the words and was demanding a change of worker; quite the contrary, she was adamant about keeping Ms Warren as her support worker.

146 The Tribunal concluded that the disclosure itself was not the reason or principal reason for dismissal, it provided the context for one of the reasons for the dismissal, because the Respondent had concluded that it was exaggerated and manipulative. In any event, the Tribunal concluded that even if there had been no disclosure, or if the exaggeration and manipulation of the situation did not merit dismissal, or indeed if there had been no exaggeration and manipulation, the Claimant would still have been dismissed because of the breach of client A's confidential information. In all the circumstances we could not say that the protected disclosure was the reason or principal reason for dismissal.

147 Accordingly, that claim was also unsuccessful.

148 The Tribunal has made a number of criticisms of the Respondent's practices in the course of this judgment. While considering all of the evidence, we considered whether we should draw any adverse inferences from what appeared to be instances of incompetence. We

found no evidence to suggest that there was any hidden agenda to dismiss the Claimant, either because of her disability or because of a protected act or disclosure. The Claimant had been well-regarded and passed her probation, albeit with some concern expressed about her diary management. Those concerns grew as time went on, and then other issues arose, none of which were linked to her disability or protected disclosure. The Tribunal concluded that there were no grounds for drawing any adverse inferences; however, our comments may assist the Respondent to ensure better practice on another occasion.

Employment Judge **Wallis**

Date 20 April 2018

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.