EMPLOYMENT TRIBUNALS

Claimant: Ms C Stott

Respondent: Ralli Ltd

HELD AT: Manchester **ON:** 13 – 17 May 2019

BEFORE: Employment Judge Batten
Ms C Bowman
Mrs S J Ensell

REPRESENTATION:

Claimant: In person
Respondent: Mr G Mahmood, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claimant's claim of disability discrimination fails and is dismissed.

2. The claimant's claim for holiday pay is dismissed upon withdrawal by the claimant.

REASONS

1. At a preliminary hearing held on 6 June 2018, the parties agreed that the final hearing of this case would be listed for 5 days, with the expectation that evidence and submissions would be concluded by the end of the fourth day. It was agreed by the parties, and the Employment Judge who conducted the preliminary hearing on 6 June 2018, that the fifth hearing day would be allocated for Tribunal deliberations and judgment. This Judgment is therefore given with reasons because the evidence of the parties and submissions were completed on the fourth day of the five-day listed hearing. Accordingly, on the fifth hearing day, 17 May 2019, the Tribunal met in chambers to consider its decision and therefore provides its Judgment with reasons.

The claims

2. In her ET1, presented on 15 February 2018, the claimant claimed disability discrimination, age discrimination, religion or belief discrimination, holiday pay and also a personal injury claim for stress and injury caused by the respondent.

3. At the preliminary hearing, held on 6 June 2018, the Tribunal considered the claims as presented. The claimant confirmed to the Judge that she was not pursuing any form of whistle-blowing claim. The claimant also indicated that she had, in error, included complaints of age discrimination and religion/belief discrimination in her claim form. Those complaints were therefore withdrawn by the claimant at the preliminary hearing and were dismissed, on withdrawal, by a Judgment dated 11 June 2018.

4. Also at the preliminary hearing on 6 June 2018, the claimant confirmed the details of the acts which comprised her complaints of disability discrimination and these were set out in Annex A to the preliminary hearing Case Management Orders, as follows: -

    4.1 In November 2017, Lisa Harris repeatedly asking for information with which she had already been supplied; and the claimant confirmed that this was direct discrimination because of her mental health and/or a heart condition;

    4.2 From 11 November 2017 to 8 January 2018, a PCP of workload and tight deadlines, the perpetrator being Sajida Chaudry, and the claimant confirmed that this was a failure to make reasonable adjustments because of her mental health;

    4.3 From 11 November 2017 to 8 January 2018, the claimant complained about Sajida Chaudry returning work saying it was incorrect when it was correct, and the type of discrimination the claimant relied on was harassment and/or direct discrimination because of the claimant's mental health;

    4.4 From 11 November 2017 to 8 January 2018, the claimant complained of overloading her with work and imposing tight deadlines, the perpetrator being Sajida Chaudry, and the claimant said that this was harassment and/or direct discrimination because of the claimant's mental health;

    4.5 From December 2017 to 8 January 2018, the claimant complained that Sarah Anyon was openly criticising the claimant's performance to a partner of the respondent, James Reilly, with the door wide open (the claimant contended that the work in question was that of Gemma Harris whose case load had been inherited by the claimant), and the claimant said that this was harassment and/or direct discrimination because of the claimant's mental health;

4.6 On 8 January 2018, the claimant contended that her dismissal was an act of direct disability discrimination and/or discrimination arising from her disability because of her mental health and/or a heart condition.

5. At a second preliminary hearing, held on 9 October 2018, the claimant confirmed that she withdrew her complaints relating to her alleged physical impairment of a heart condition and confirmed that she continued to pursue all 6 complaints above on the basis of having a mental impairment at the material time.

6. A third preliminary hearing was held on 15 March 2019, to address issues raised by the claimant in correspondence with the Tribunal and to set additional case management Orders, if required, to prepare the case for final hearing. In the course of the third preliminary hearing, the claimant disclosed details of issues which she had had with a firm of solicitors, Clifford Johnson Solicitors, and details of several complaints which the claimant had made to third parties and to regulatory bodies about that firm of solicitors. However, the claimant confirmed to the Tribunal that she did not wish to amend her ET1 or to submit further claims in relation to such issues or complaints.

7. At the commencement of the final hearing, the Tribunal asked the claimant to confirm whether her complaints related only to disability discrimination and she agreed that this was the case. There was an outstanding complaint of holiday pay which the claimant had been asked, by Employment Judge Slater at the first Preliminary Hearing, to clarify. The claimant confirmed to the Tribunal that she no longer pursued any claim about holiday pay. That claim is therefore dismissed upon withdrawal by the claimant.

The claimant's disability

8. The claimant confirmed to the Tribunal that she has mental health issues. The Tribunal noted from the hearing bundle (pages 1-3) that, in December 2015, whilst the claimant was working for AIG, she was assessed by WorkAbility Limited, an occupational health assessment service. WorkAbility Limited reported that it had seen a 'hospital anxiety and depression questionnaire' which indicated that the claimant has significant anxiety with borderline depression. At the first preliminary hearing on 6 June 2018, the claimant also told the Tribunal that she had a suspected heart condition.

9. The respondent denies knowledge of any disability at the material time and contends that it was not aware of any disability until the claimant raised such after she was dismissed. In its amended response form ET3, the respondent conceded that the claimant suffers from a mental health condition amounting to a disability (albeit that the respondent maintained that it did not know of that disability at the material time) but it denied that the claimant suffered a heart condition. Subsequently, at the second preliminary hearing, on 9 October 2018, the claimant confirmed that allegations relating to a heart condition were not pursued and these were subsequently dismissed upon withdrawal by a Judgment dated 18 October 2018.

10. In the circumstances, the claimant's disability discrimination complaint was understood to be pursued at the final hearing only in relation to her mental health disability.

Reasonable adjustments

11. In the course of discussions on the first day of the final hearing, the claimant raised the issue of her mental impairment, and the anxiety from which she suffers, and in particular the anxiety she had experienced and would experience as a result of conducting these proceedings, including attendances at the Tribunal and conducting the final hearing. As a result, and in order to afford the claimant time to compile her supplementary statement, the Tribunal decided that it would use the afternoon of the first hearing day to read all the witness statements and the bundles of documents, so that oral evidence and cross examination would commence on the second morning, Tuesday 14 May 2019. This allowed the claimant sufficient time to consider the respondent's additional documents and to draw up her supplemental witness statement as she desired. It also allowed the Tribunal sufficient time to read all the evidence. The claimant agreed with this course of action and the respondent raised no objection.

12. At the beginning of the second hearing day, Tuesday 14 May 2019, the Tribunal returned to the issue of the claimant's anxiety and the stress that she was feeling. The potential for breaks to be taken, in the course of the hearing and during the evidence where appropriate, was discussed with the claimant, who decided that she would indicate as and when she needed to take a break at any time. The Tribunal confirmed that it was happy to take a break as and when required by either party and specifically in order to allow the claimant to collect her thoughts and to manage / alleviate her levels of stress. Indeed, throughout the course of the hearing and the evidence, a number of breaks were taken at the request of the parties.

Prior to the final hearing

13. In the week immediately prior to the final hearing of this case, the claimant wrote to the Tribunal to raise issues regarding the respondent's choice of Counsel. Regional Employment Judge Parkin responded to the claimant, pointing out that the choice of a party's representative normally lies with that party alone, and that professional representatives would have regard to their own professional standards and obligations in relation to any professional engagement.

14. On Friday 10 May 2019, the claimant wrote to the Tribunal to object to the respondent apparently adding further documents to the bundle at a late stage. The claimant also wrote to the Tribunal to object to the respondent's skeleton argument, which had been served on her that day. The claimant requested that consideration be given, at the start of the hearing on Monday 13 May 2019, to striking out the respondent's defence in light of its conduct.

15. On Saturday 11 May 2019, the claimant emailed the Tribunal and the respondent, complaining that the respondent's Counsel had made what the claimant described as 'false statements' in his skeleton argument.

16. Also on Saturday 11 May 2019, the claimant produced an additional document that she wished to be added to the bundle.

17. Later on Saturday 11 May 2019, the claimant wrote to the Tribunal to inform it that she had given the respondent until 5pm on the Friday before that weekend to respond to her application to strike out and that, because the respondent did not reply in such time frame, she sought a strike out of the respondent's defence. The claimant further confirmed that she had submitted a complaint to the Greater Manchester Police, requesting them to investigate a hate crime by the respondent's Counsel in his skeleton argument. The claimant contended that the respondent's Counsel was guilty of discriminatory behaviour by making what the claimant considered to be false allegations in his skeleton argument and the claimant also contended that the respondent's Counsel had made fun of the claimant's law degree, thereby undermining her qualifications.

18. On the morning of the first Tribunal hearing day, Monday 13 May 2019, the claimant again emailed the Employment Tribunal to point out that she considered that the respondent had failed to comply with various Orders in relation to the hearing bundle, including not inserting the claimant's recent Schedule of Loss.

The claimant's applications

19. At the beginning of the final hearing, the Tribunal dealt with the matters identified in paragraphs 14 – 18 above and the claimant's applications which were contained in her emails to the Tribunal from Friday 10 May 2019 through to Monday 13 May 2019.

20. The respondent's additional documents were confirmed to be documents relating to the claimant's grievance appeal and a copy of the respondent's grievance procedure. It was agreed that the claimant should be allowed time overnight to consider those documents. The claimant confirmed that she would be in a position, on Tuesday morning, 14 May 2019, to serve a supplementary witness statement containing all and any evidence that she wished to give in relation to the additional documents produced by the respondent. The claimant did, in fact serve a supplementary statement and adduced further documents in support.

21. The claimant also objected to certain of the documents which the respondent had included in the hearing bundle: pages 116, 117 and 118 which were served in October 2018; and pages 118A and B which were served on 15 April 2019. Following discussion as to the nature and purpose of these documents, the claimant withdrew her objections and all these documents remained in the bundle.

22. The Tribunal heard submissions from both parties on the claimant's applications to strike out the respondent's defence in light of statements made in the respondent's skeleton argument to which she objected. The claimant pointed out what she considered to be a number of errors in the respondent's skeleton argument and consequently she repeated her request for the respondent's case/defence to be struck out. The Tribunal considered the claimant's views. The Employment Judge explained that a skeleton argument was a summary of a party's case, put in the best way possible, and therefore it would be surprising if the claimant agreed with everything that was said. The Tribunal did not consider that the contents of the respondent's skeleton constituted grounds to strike out the respondent's defence and the claimant's application was refused.

23. The claimant was informed that it was open to her to provide a skeleton argument of her case, in response and that, arguably, she was at an advantage because she had sight of the respondent's skeleton argument prior to preparing for the hearing whereas the respondent did not have sight of a skeleton argument from her. The claimant therefore agreed that she would address matters set out in the respondent's skeleton argument in her submissions at the end of the evidence.

24. In the claimant's email to the Tribunal on Saturday 11 May 2019, timed at 21:56, the claimant referred to an additional document which she wanted to be included in the bundle. Unfortunately, the email contained a hyperlink to a website. The Tribunal office staff had been unable to access and/or print the document in any legible form due to its size. The claimant therefore told the Tribunal that she would bring copies to the hearing on the following day, Tuesday 14 May 2019. However, on 14 May 2019 the claimant did not produce such copies and instead confirmed to the Tribunal that she no longer relied on the document.

25. The Tribunal explained to the claimant that it had no power to strike out the defence because the respondent had failed to comply with a deadline which the claimant had unilaterally imposed upon it in the previous week.

26. The claimant asked the Tribunal to note the position in relation to her report to the Greater Manchester Police and her complaints to them. The claimant explained that she considered she was under personal attack and felt it appropriate to report such matters. In addition, the claimant's complaint to Counsel's clerk about the respondent was set out in an email into which the Tribunal had been copied and so a copy was on the Tribunal's file. However, it was confirmed to the claimant that the Tribunal had no power to intervene in such a complaint and the Tribunal did not consider that any further action was required. At the conclusion of discussions, the claimant was asked if she objected to the Tribunal's decisions on her applications and she confirmed that she was content with the outcomes and the decisions made.

Evidence

27. After the discussions about documents, the contents of the hearing bundle were agreed by the parties. The Tribunal therefore had before it 2 folders, being: a small bundle containing the pleadings and relevant case management Orders made in the course of the proceedings prior to the final hearing; and a larger lever-arch bundle containing all the documents on liability which had been disclosed by the parties. References in this Judgment to page numbers relate to the contents of the document bundle.

28. The Tribunal was provided with witness statements which were taken as read after having been read by the Tribunal before the oral evidence commencing. The claimant had served a witness statement and also relied upon her supplementary witness statement which she served on the morning of Tuesday 14 May 2019, as described in paragraph 20 above. The claimant gave oral evidence by reference to these statements and was cross examined on her evidence and the documents in the bundles.

29. For the respondent, the Tribunal was provided with witness statements from the following witnesses:

    Lisa Harris, the respondent's HR Manager;

    Stephen Fox, a Solicitor and director of the respondent – on the third hearing day, Mr Fox produced an additional statement, dated 15 March 2019, which had previously been served on the claimant some time ago;

    Sarah Anyon, a Solicitor working for the respondent,

    Sajida Chaudry, a Solicitor working for the respondent;

    Farhanah Ismail, a Solicitor and Director of the respondent;

    James Reilly, a Solicitor and Director of the respondent.

30. All the respondent's witnesses gave evidence in relation to their witness statements and were subject to cross examination by the claimant. In addition, the Tribunal was given a witness statement from Michelle Glass, a Paralegal with the respondent. However, the respondent did not call Michelle Glass to give oral evidence and therefore the Tribunal paid no regard to her witness statement.

31. The Tribunal was provided with a chronology which had been drawn up by the respondent. The claimant sought to make 2 changes to the chronology in relation to events on 11 and 12 October 2017 and 8 January 2018. The respondent did not object in principle to the claimant making changes. However, the respondent contended that the claimant's insertion of an event on 12 October 2017, to suggest there had been a meeting between herself and Lisa Harris to inform Ms Harris of the claimant's disabilities, was disputed by the respondent. The claimant agreed that she would deal with this aspect in cross examination of Ms Harris.

32. Copies of the claimant's updated Schedule of Loss were served at the hearing.

33. In the course of giving evidence on the second hearing day, the claimant raised a flexible working application that she said she had made. The claimant also referred to her CV that she sent the respondent when she applied for work. The claimant suggested that a number of matters were either contained in her CV, which was not in the bundle or, alternatively, the claimant suggested that the respondent should have gathered, from her CV, that there had been gaps in her employment history. On the third hearing day, Wednesday 15 May 2019, the respondent disclosed a copy of the claimant's CV and the covering letter, dated 19 September 2017, from when she applied for work with the respondent. The letter and CV were included in the hearing bundle as pages 15a, 15b, 15c and 15d.

34. As a result of evidence given by the claimant on the third hearing day, Wednesday 15 May 2019, and her cross examination of the respondent's witnesses, an issue arose as to the content of the respondent's letter confirming the termination of the claimant's employment, which was not in the hearing bundle, and also the whereabouts of the flexible working application which the claimant alleged she had made. On the morning of Thursday 16 May 2019, the respondent produced a copy of its letter of 9 January 2018, confirming termination of the claimant's employment. This was inserted in the bundle as page 144a.

35. The respondent was unable to find any application for flexible working although it found emails between the claimant and Lisa Harris indicating that the claimant may be interested in such. These emails were inserted in the bundle as pages 64i to 64l. The claimant was then asked if she wanted time to consider the documents or to recall any witnesses. The claimant confirmed that she wished for Ms Harris to be recalled for further cross-examination on the new documents. Accordingly, Ms Harris was recalled to give further evidence on the fourth hearing day, Thursday 16 May 2019, and to be cross-examined by the claimant on the question of whether the claimant had applied for flexible working.

The issues

36. The issues which the Tribunal has identified as being relevant to the claim pursued, namely a claim of disability discrimination, were discussed and agreed at the first preliminary hearing, held on 6 June 2018. The list of issues agreed with the parties appears at Annex B to the case management Orders promulgated from that hearing and are as follows: -

<u>Direct Discrimination</u>

37. In relation to the matters listed as numbers 1, 3, 4 and 5 in the list of complaints [see paragraph 4 above], did the respondent subject the claimant to a detriment?

38. By reason of the claimant's dismissal and/or by reason of subjecting the claimant to a detriment, did the respondent treat the claimant less favourably than it treated or would have treated others in the same material circumstances?

39. If so, was this less favourable treatment because of the protected characteristic of disability?

Discrimination arising from disability

40. In relation to the claimant's dismissal, was the claimant treated unfavourably because of something arising in consequence of her disability?

41. If so, can the respondent show that the treatment was a proportionate means of achieving a legitimate aim?

42. Did the respondent know or could they reasonably be expected to know that the claimant had the disability?

Harassment

43. In relation to the matters listed as numbers 3, 4 and 5 in the list of complaints [see paragraph 4 above] did the respondent engage in unwanted conduct?

44. If so, was this conduct related to disability?

45. 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?

Failure to make reasonable adjustments

46. Did a PCP of the respondent's (being workload and tight deadlines) put the claimant at a substantial disadvantage in comparison with persons who are not disabled?

47. Could the respondent reasonably be expected to know that the claimant had a disability and was likely to be placed at the disadvantage?

48. If so, did the respondent fail to take such steps as it would have been reasonable to take to avoid that disadvantage?

Findings of Fact

49. The Tribunal has made findings of fact on the basis of the material before it taking into account contemporaneous documents where they exist and the conduct of those concerned at the time. The Tribunal resolved such conflicts of evidence as arose on a balance of probabilities. In doing so, the Tribunal has taken into account its assessment of the credibility of witnesses and the consistency of their evidence with surrounding facts.

50. Having made findings of primary fact, the Tribunal considered what inferences it should draw from them for the purpose of making further findings of fact. The Tribunal has not simply considered each particular allegation, but has also stood back to look at the totality of the circumstances, to consider whether, taken together, they may represent an ongoing regime of discrimination.

51. The Tribunal's findings of fact relevant to the issues which have been determined are as follows.

52. On 19 September 2017 the claimant wrote to the respondent by letter, enclosing her CV, to apply for employment as a Paralegal. The claimant's letter of application [Bundle page 15a] includes a statement to the effect that, after reviewing the person specification, the claimant considered she had some knowledge and many of the skills expected and that she hoped to start being productive very quickly and would require little in the way of additional training. From her CV the claimant appeared to be very well qualified for the position. The claimant also stated in her CV that she was exceptionally well organised. Her employment history consisted of working for Plexus for 18 months as a Litigation Assistant, from March 2016 to September 2017 and, previous to that, working for AIG as a Legal Secretary/Paralegal for a year, from February 2015 to March 2016.

53. On 25 September 2017, the claimant was interviewed by the respondent for the Paralegal position. In the interview notes, which appear in the bundle at pages 16 to 19, it was recorded that the claimant appeared to be "v v nervous" and that she had struggled with case studies but the respondent thought that this was down to nerves at interview. The respondent therefore decided to take the claimant on as a Paralegal.

54. On 28 September 2017, the claimant was sent a letter offering her employment with the respondent as a Paralegal, which letter appears in the bundle at page 20.

55. On 4 October 2017, the claimant emailed the respondent's HR manager, Ms Harris with details of her referees at AIG and at the Manchester CAB [Bundle page 21A]. The claimant said that she would forward the remaining reference, from Plexus, as soon as she got a reply from them. However, the claimant never supplied the respondent with any referee at Plexus and it does not appear that the respondent followed this omission up.

56. On 9 October 2017, the claimant started working for the respondent as a Paralegal. She was supplied with a contract of employment which she signed that day and an induction meeting took place.

57. On 5 October 2017, Ms Harris wrote to AIG for a reference.

58. On 11 October 2017, the claimant took a day off work in order to attend a court hearing regarding a personal matter, unrelated to the respondent's work.

The respondent had, however, planned some training for the claimant on that day, which was therefore cancelled.

59. The claimant alleges that a meeting took place, on 12 October 2017, at which she informed Ms Harris of her disability. Ms Harris's evidence was that there was no meeting on 12 October 2017, and that she had only had an induction meeting with the claimant on her first day, 9 October 2017. Ms Harris' evidence was that the claimant had not raised any issue about a disability at the induction meeting. Ms Harris's evidence was not challenged by the claimant and therefore the Tribunal accepts Ms Harris' evidence that no meeting took place between herself and the claimant, on 12 October 2017, and also that the claimant never told Ms Harris of her disability or of any mental health issues.

60. On 13 October 2017, the respondent wrote to the Manchester CAB, to an email address given by the claimant for a reference. That email bounced back with a delivery failure notice. Ms Harris therefore asked the claimant for an alternative contact at the CAB and the claimant made enquiries as to the whereabouts of her proposed CAB referee. The claimant provided an alternative contact at the CAB the following day and Ms Harris wrote for a reference to the new contact on 16 October 2017.

61. In the meantime, the claimant was working as a Paralegal, dealing with tasks on files, mainly for Sajida Chaudry but also on some files under the conduct of Sarah Anyon. Ms Chaudry and Ms Anyon gave the claimant guidance and training on how to write witness statements for the purpose of personal injury claims and also how to compile Schedules of Loss for personal injury claims. A further solicitor, Ms Penny, gave the claimant training on the assessment of quantum for personal injury claims. From the outset, the respondent's supervising solicitors noticed numerous errors in the claimant's work, which had to be referred back for corrections, and referred back again, a second time because amendments to the work which were required, had not in fact been done by the claimant.

62. Meanwhile, Ms Harris was trying to obtain references from the claimant's appointed referees. A number of emails of enquiry were sent in the period from 27 October to 9 November 2017. Eventually, on 6 November 2017, AIG provided a very short, factual reference on the claimant. However, no such reference was forthcoming from the Manchester CAB, and it appears that no reference was ever obtained from that organisation regarding the claimant. This was because the claimant's referee had since moved on. The CAB contact was unable to provide a reference for the claimant because it had been a significant time since the claimant had worked or volunteered with the CAB and the contact felt unable to provide a reference.

63. On 7 November 2017 Sajida Chaudry emailed the claimant [Bundle page 73]. The email was about transferring the work of another Paralegal, Gemma Harris, to the claimant. The purpose of the claimant's appointment had been to replace Gemma Harris in any event. The claimant's evidence was that she was working 25% for Sajida Chaudry and 25% for Ms Anyon, and spending up to 50% of her time sorting out her references. On the basis of that

evidence, the claimant had capacity to take on further work. Ms Chaudry's evidence, which the Tribunal accepted, was that the effect of transferring Gemma Harris's work to the claimant was to increase the claimant's work up to the level normally expected of a Paralegal. The claimant was not, therefore, overloaded.

64. Around 11 November 2017, the claimant had a conversation with Ms Chaudry about errors in her work. The claimant explained that she was "having trouble sleeping". No more detail was given by the claimant and Ms Chaudry was not alerted to anything further. Ms Chaudry took it as a passing comment.

65. On 9 November 2017, Michelle Glass sent an email to the claimant and another employee inviting them to go out, one night after work, to go round the Christmas market in Manchester. The email appears in the bundle at page 77. The claimant accompanied her work colleagues on the night out, on 16 November 2017. Pictures in the bundle at page 78 suggest that all of them, including the claimant, had a happy time.

66. On 24 November 2017, it was the claimant's birthday. When she returned to work on 27 November 2017, she found that her colleagues had bought her a card and a present [Bundle page 91]. The claimant thanked her colleagues and said it was a very pleasant surprise.

67. At this time, the respondent was still trying to obtain a reference on the claimant from the Manchester CAB. However, by 28 November 2017, it was apparent that CAB personnel had moved on and no reference was forthcoming.

68. In late November/early December 2017, Ms Chaudry raised concerns about the claimant's work, informally, with Mr Reilly, her line manager. The claimant was, at this time, still in her probationary period. Mr Reilly therefore asked Ms Chaudry to monitor the claimant's work.

69. Mr Reilly also asked Ms Anyon about work done by the claimant on Ms Anyon's files and Ms Anyon relayed similar concerns.

70. During this period, the respondent's supervising solicitors sought to assign the claimant tasks which were of an administrative nature and more straightforward tasks than she had previously been assigned. On 13 December 2017, the claimant was asked to photocopy a number of documents to be sent as enclosures with instructions to Counsel. Ms Chaudry, who assigned the task, had selected the enclosures from the files and had left them in order for the claimant to copy. At the end of the day on 14 December 2017, the claimant put the papers back on Ms Chaudry's desk but they were not in the original order and had not been re-stapled in order. Ms Chaudry returned to the office on 15 December 2017 to find the file and the papers on her desk. Ms Chaudry needed to check the file and the enclosures before sending them off but, finding the papers in a mess, she had to assign the job to another Paralegal to sort out, re-order and collate the enclosures. Ms Chaudry gave the task to another Paralegal because she did

not have confidence that the claimant would sort out the papers and she reported the situation and her concerns to Mr Reilly.

71. In December 2017, the respondent was notified that Lexcel would be visiting to audit the respondent's files. On 5 December 2017, Farhanah Ismail emailed all members of the Personal Injury Team, asking them to check all files to ensure that conflict checks had been completed and that risk assessments had been completed and signed off and that the files were up to date. The claimant was asked to check for conflict checks on Ms Chaudry's files. However, on 11 December 2017, Ms Chaudry had cause to email the claimant because conflict checks were outstanding on eight of the files and the claimant had not appeared to have spotted them.

72. At this time, Ms Harris chased the claimant on 13 December 2017 about a further reference, in the absence of a reference from the CAB. In response, on 15 December 2017, the claimant sent the respondent the name of a referee at 'Job Wise', a recruitment agency. The respondent wrote to Job Wise on 15 December 2017, requesting a reference. Job Wise returned promptly saying that the claimant had worked for them for a short period at the end of 2014 but gave no further details. The claimant did not supply a referee from Plexus.

73. On 21 December 2017, a routine HR meeting took place. The claimant's performance was raised and discussed. As a result of numerous and continuing concerns, the respondent decided to terminate the claimant's employment. However, it was decided that the respondent would wait until after Christmas to do so.

74. On 3 January 2018, the claimant spoke to Ms Harris about Michelle Glass and alleged that Ms Glass had thrown a chocolate at her, in the period after Christmas. The chocolate was either a Celebrations or Heroes chocolate. Ms Harris spoke to Ms Glass who denied any intention to hurt the claimant or to be aggressive towards her. Ms Harris therefore went back to speak to the claimant, who then mentioned her heart condition and said that she was probably more jumpy than usual [Bundle page 133]. The claimant thanked Ms Harris for her time in dealing with the matter.

75. In the first working week of the new year, 2018, the claimant took 2 days' holiday.

76. On 8 January 2018, the claimant had sent an email to the respondent to request a transfer to the 'portal' team. That afternoon, at 2.20pm, the claimant was invited to a meeting with Mr Riley and Ms Harris at which she was told that the portal team positions had been filled and that the meeting was about the poor quality of the claimant's work and feedback which the respondent had received from Ms Anyon and Ms Chaudry. Mr Reilly then told the claimant that he was terminating her employment that day and that the respondent would pay her notice in lieu. The notes of this meeting appear in the bundle at page 135, where it is recorded that the claimant said, in response to the termination of her employment, that she understood but that in her defence she "... has been distracted having a recent bereavement".

77. At 2.40 pm on 8 January 2018, the claimant sent an email to Ms Harris to make a complaint of discrimination in relation to her mental health issues and heart condition and about her dismissal [Bundle page 141]. The claimant alleged that she had told Ms Harris "by several communications" of these disabilities. The claimant also alleged that the performance of her work was caused by her illness. Ms Harris specifically denies the claimant had ever mentioned any disabilities to her before this email and and denies that the claimant had raised disability in relation to her dismissal during the meeting on 8 January 2018.

78. Within half an hour of the claimant's email to Ms Harris, the claimant emailed the respondent's Managing Partner, twice, to complain that she was dismissed on grounds of discrimination [Bundle page 139]. The respondent's Managing Partner replied to acknowledge the claimant's emails and confirmed that Ms Harris and Ms Ismail would review her correspondence and deal with the matters raised. Ms Harris then wrote to the claimant to acknowledge her grievance and to send her a copy of the respondent's grievance procedure.

79. That same day, at 9.17 pm, the claimant emailed Ms Ismail, in an email headed "notice of proceedings" [Bundle page 142] complaining that she was the cause of further distress to the claimant. In that email the claimant said:

"*I have received no request for Disclosure of the said recordings, therefore, I will assume that there is no intention to review my grievance*".

The claimant also stated in her email that a "legal process" had begun and that she had instructed solicitors.

80. On 9 January 2018, the respondent sent the claimant a letter confirming the termination of her employment. The letter gave no reason for her dismissal.

81. On 9 January 2018, the claimant sent the respondent a grievance letter which appears in the bundle at pages 235 - 238. The letter mentions a digital recording of the claimant's meeting on 8 January 2018 with James Reilly and Lisa Harris. The claimant alleged that there was no evidence to prove any allegations of poor performance against her, and that she had been assaulted with a piece of chocolate by Michelle Glass, whom the claimant said had intended to cause injury to her. The claimant said that she had been persistently harassed and the issue had been ignored and that she had also been subject to verbal abuse for which she had recordings of Ms Glass and Rachel Connor which she had sent to the Police and to Personal Injury lawyers. In addition, the claimant alleged that, from 9 October 2017 onwards, she had been ordered by Sajida Chaudry to produce untrue documents, that Lisa Harris had begun a campaign of harassment over references, that she had been misled by the respondent into signing a contract of employment which did not say that she would be case-handling and that she was dismissed because of her disability. The claimant also said in her letter that she had behaved as "a model employee" to the respondent [Bundle page 238].

82. On 16 January 2018 a grievance meeting took place [Bundle pages 147 – 160]. The meeting was conducted by Ms Ismail, and Mr Reilly was in attendance. In the course of the meeting the claimant said that her disabilities were mental health issues, anxiety, depression and a heart condition. The claimant suggested that her performance was affected by her mental health. The claimant also stated that she "sort of mentioned her disability" at her job interview. The claimant contended that she had told Sajida Chaudry that she was not sleeping well and not feeling herself and the claimant further contended that this amounted to a disclosure of depression. The claimant said that she had recordings (plural) which would corroborate her treatment. At the end of the meeting Ms Ismail requested an opportunity to listen to the recordings of the meeting of 8 January 2018, and also of the alleged verbal abuse. The claimant said that she had sent the recordings to the Police, although in evidence to the Tribunal she contended that she had in fact lost her phone and for that reason was unable to provide the recordings. In addition, the claimant suggested that she had been out of work for 5 years because of her mental health issues but that, at interview, nobody asked her about this even though it was apparently set out in her CV.

83. Shortly after the meeting, on 16 January 2018, the claimant emailed the respondent to submit an appeal on the basis that she considered the grievance hearing had been an opportunity for the respondent to belittle her and she also mentioned that she had recorded the meeting. Ms Ismail requested a copy of the recording that the claimant had mentioned by the end of the week. At 10 pm that evening, the claimant replied to say that she had made the recordings for her "professional protection" [Bundle page 161].

84. On 22 January 2018, Ms Ismail wrote to the claimant to confirm the grievance outcome. The letter covered each complaint the claimant had raised. The respondent said the claimant had never told the respondent about her disabilities [bundle page 162] and that it had made enquiries about her other points of dispute and harassment but was not able to uphold any of the claimant's complaints. The letter also noted that the claimant had still not produced the recordings which she had agreed to disclose in support of her grievance.

85. On 24 January 2018, the claimant wrote to the respondent to appeal the grievance outcome [Bundle page 170]. The claimant's email contained a statement to the effect that there were no secret recordings.

86. On 24 January 2018, the claimant also wrote to the respondent's Managing Partner, to raise a complaint about Ms Ismail [Bundle pages 168 – 169]. The claimant said that Ms Ismail had been recorded throughout the meeting on the 16 January 2018. The claimant also requested her personal file. The respondent sent copies of the documents in the claimant's file, to the claimant on 24 January 2018.

87. On 6 February 2018, an appeal hearing took place to consider the claimant's appeal against the grievance outcome. The appeal was conducted by Mr Fox. The minutes of the appeal hearing appear in the bundle at page 173c to 173r. Mr Fox dealt with the claimant patiently, covering all the issues she raised and

asked the claimant questions about her issues. In relation to those aspects of the claimant's work where concerns had been raised, the claimant said that she had never been told why her work was not up to standard and she suggested that the respondent had taken her on knowing that she did not have the experience or skills required, and that she was expected to learn everything in 3 months when she was new to the Paralegal role. The claimant further contended that her previous roles were PA roles and that she had not worked as a Paralegal (bundle page 173n). In the course of the meeting, the claimant also confirmed that she had not produced the recordings despite being asked for them.

88. Following the meeting, on 13 February 2018, the claimant wrote to Mr Fox asking for the resolution of her issues by way of reinstatement into her position.

89. On 14 February 2018, Mr Fox replied, sending the claimant a letter containing his decision, in which he turned down her grievance appeal. The grievance appeal decision appears in the bundle at page 175 to 181 and is lengthy and detailed and covers all of the claimant's complaints.

The applicable law

90. A concise statement of the applicable law is as follows: -

Direct discrimination

91. Section 13 of the Equality Act 2010 (EqA) provides that a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. The relevant protected characteristics include disability.

92. Section 23 EqA provides that on a comparison for the purposes of section 13 there must be no material difference between the circumstances relating to each case, and that the circumstances relating to a case includes that person's abilities if the protected characteristic is disability.

93. The effect of section 23 EqA as a whole is to ensure that any comparison made must be between situations which are genuinely comparable. The case law, however, makes it clear that it is not necessary for a claimant to have an actual comparator to succeed. The comparison can be with a hypothetical person without a disability.

94. Further, as the Employment Appeal Tribunal and appellate courts have emphasised in a number of cases, including Amnesty International v Ahmed [2009] IRLR 884, that in most cases where the conduct in question is not overtly related to disability, the real question is the "reason why" the decision maker acted as he or she did. Answering that question involves consideration of the mental processes (whether conscious or subconscious) of the alleged discriminator, and it may be possible for the Tribunal to make a finding as to the reason why a person acted as he or she did without the need to concern

itself with constructing a hypothetical comparator. If the protected characteristic (in this case, disability) had any material influence on the decision, the treatment is "because of" that characteristic

Discrimination arising from disability

95. Section 15 EqA provides that 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.

The above does not apply, however, if (A) shows that (A) did not know, and could not reasonably have been expected to know, that (B) had the disability.

96. The proper approach to causation under section 15 was explained by the Employment Appeal Tribunal in paragraph 31 of Pnaiser v NHS England and Coventry City Council EAT /0137/15 as follows:

"(a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

(b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant …...

(d) The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is "something arising in consequence of B's disability". That expression 'arising in consequence of' could describe a range of causal links …[and] may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

(e) ….. However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(g) …..

(h) Moreover, the statutory language of section 15(2) makes clear …. that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so."

97. In City of York Council v Grosset [2018] WLR(D) 296 the Court of Appeal confirmed the point made in paragraph (h) in the above extract from Pnaiser: there is no requirement in section 15(1)(a) that the alleged discriminator be aware that the "something" arises in consequence of the disability. That is an objective test.

98. The Equality and Human Rights Commission Code of Practice in Employment ("the Code") contains some provisions of relevance to the justification defence. In paragraph 4.27 the Code considers the phrase "a proportionate means of achieving a legitimate aim" (albeit in the context of justification of indirect discrimination) and suggests that the question should be approached in two stages: -

- is the aim legal and non-discriminatory, and one that represents a real, objective consideration?

- if so, is the means of achieving it proportionate – that is, appropriate and necessary in all the circumstances?

99. As to that second question, the Code goes on in paragraphs 4.30 – 4.32 to explain that this involves a balancing exercise between the discriminatory effect of the decision as against the reasons for applying it, taking into account all relevant facts. It goes on to say the following at paragraph 4.31: -

"although not defined by the Act, the term "proportionate" is taken from EU directives and its meaning has been clarified by decisions of the CJEU (formerly the ECJ). EU law views treatment as proportionate if it is an "appropriate and necessary" means of achieving a legitimate aim. But "necessary" does not mean that the [unfavourable treatment] is the only possible way of achieving a legitimate aim; it is sufficient that the same aim could not be achieved by less discriminatory means."

Harassment

100. Section 26 EqA provides that a person A harasses another B if-

(a) A engages in unwanted conduct related to a relevant protected characteristic; and

(b) the conduct has the purpose or effect of:

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, humiliating or offensive environment for B

101. In deciding whether the conduct has the effect referred to above, the Tribunal must take into account each of the following:

(a) the perception of B;

(b) the other circumstances of the case; and

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

102. The concept of harassment under the previous equality legislation was the subject of judicial interpretation and guidance by Mr Justice Underhill in Richmond Pharmacology and Dhaliwal 2009 IRLR 336. The Tribunal has applied that guidance, namely:

"*There are three elements of liability (i) whether the employer engaged in unwanted conduct; (ii) whether the conduct either had (a) the purpose or (b) the effect of either violating the claimant's dignity or creating an adverse environment for her; and (iii) whether the conduct was on the grounds of the claimant's [protected characteristic]*.

Failure to make reasonable adjustments

103. The duty to make reasonable adjustments, in section 20 EqA, arises where:

(a) the employer applies a provision criterion or practice which places a disabled employee at a substantial disadvantage in comparison with persons who are not disabled; and

(b) the employer knows or could reasonably be expected to know of the disabled person's disability and that it has the effect in question.

104. As to whether a "provision, criterion or practice" ("PCP") can be identified, the Code paragraph 6.10 says the phrase is not defined by EqA but "*should be construed widely so as to include for example any formal or informal policy, rules, practices, arrangements or qualifications including one-off decisions and actions*".

105. As to whether a disadvantage resulting from a provision, criterion or practice is substantial, section 212(1) EqA defines substantial as being "*more than minor or trivial*".

106. Even where a PCP gives rise to a substantial disadvantage, however, the duty does not arise if the employer did not know, and could not reasonably be expected to know that the employee had a disability and was likely to be placed at the disadvantage in question by the PCP (EqA Schedule 8, paragraph 20). This is considered by the Code in paragraphs 5.13 – 5.19 and 6.19 - 6.22.

107. The importance of a Tribunal going through each of the constituent parts of that provision was emphasised by the EAT in Environment Agency –v- Rowan [2008] IRLR 20.

108. The duty is to take such steps as it is reasonable, in all the circumstances, to take to avoid the provision criterion or practice having that effect. The duty is considered in the Code. A list of factors which might be taken into account appears at paragraph 6.28, but (as paragraph 6.29 makes clear) ultimately the test of reasonableness of any step is an objective one depending on the circumstances of the case.

Submissions of the Parties

109. Counsel for the respondent tendered a written skeleton argument which he sent to the claimant before the hearing. Briefly, his submissions were that the respondent was unaware of the claimant's disability at the material time and had no knowledge until after her dismissal, that the claimant was dismissed because of capability and poor performance, and that the various allegations made by the claimant were misconceived and largely unsubstantiated by any evidence. Counsel also contended that there was no cogent evidence to link the claimant's failings to her mental health and that the respondent's handling of the claimant and her work was reasonable and proportionate in the course of supervision in a professional legal practice, and in no way amounted to harassment of the claimant, whilst the decision to dismiss being a proportionate means of achieving the legitimate aim of acting in the best interests of its clients by preparing litigation properly and efficiently.

110. Briefly, he claimant submitted that any failings that she may have had during her employment with the respondent were attributable to her mental health and that she had been failed by the respondent which had not supported her to do a good job. The claimant drew comparisons with her current employers. The claimant contended that the respondent had not trained her in conflict checks, and therefore had set her up to fail and she said that the evidence showed that her dismissal was being engineered. The claimant also contended that the respondent had created a hostile working environment in which she was humiliated by her dismissal and so was compelled to bring proceedings against the respondent; that they had had 3 opportunities to reinstate her but had refused even to contemplate this and that it was the respondent that wanted a trial of the case - the claimant submitted that the

respondent's conduct of the proceedings was a continuation of the discrimination that she had suffered.

Conclusions

111. The Tribunal has applied its relevant findings of fact and the applicable law to determine the issues in the following way.

Direct Discrimination

112. The Tribunal considered allegations 1, 3, 4 and 5 in relation to this head of claim.

113. The Tribunal did not find that Ms Harris had repeatedly or unreasonably asked for information from the claimant which Ms Harris already had. Ms Harris was required by the respondent to check references and she therefore asked the claimant for the names of referees in order to take up references on the claimant. Ms Harris' enquiries of the claimant about referees were repeated because Ms Harris found that she was unable to obtain any references on the claimant with ease or speed from the names which the claimant supplied. Whilst the claimant had initially supplied the names of 2 potential referees and had said that she would forward a reference/referee from Plexus, the references sought by Ms Harris from the 2 names given were not immediately forthcoming. It was therefore reasonable for Ms Harris to revert to the claimant to appraise the claimant of the difficulties and to seek further information and/or the names of alternative referees. In the case of Plexus, the claimant did not provide any contact name for a reference. However, Ms Harris did not chase the claimant either repeatedly or at all for a contact at Plexus.

114. When pressed on this aspect of her claim, in cross examination the claimant said that she in fact complained only about the content of 2 of Ms Harris' emails. They appear firstly in the bundle at page 64E: which is an email sent by Ms Harris to the claimant which states:

"*FYI Celina. Never had so many problems getting a reference. I think you have to notify them as well, although I thought you had!"*

115. This was a comment by Ms Harris because AIG were requesting further/verbal verification from the claimant before they would release any information on her. Ms Harris was clearly frustrated. When the claimant was pressed in cross-examination as to what it was about this email that she did not like, she said it was the phrase "FYI" in the email - the claimant objected to the use of the expression "FYI". In her evidence the claimant explained that she considered "FYI" to be a term which indicated that the respondent was agitated with her and she said that she had never met an HR Manager who used that term.

116. The second email appears in the bundle at page 78C and is an email from Ms Harris to the claimant which says: -

"*The last letter was addressed to Lyn Ryan. Am I now addressing it to Alicia Craythorne?*
Thanks
Lisa Harris"

117. The Tribunal did not understand to what the claimant was objecting in these emails or how the contents amounted to less favourable treatment. The Tribunal considered that it was reasonable for Ms Harris, as the respondent's HR Manager, to report back to the claimant on difficulties with references, to seek further information and to clarify the destination of requests for references, particularly when she was getting no answer from the claimant's nominated referees. The Tribunal considered that any HR Manager would likely have adopted that approach with a new employee who had given names of referees who were then not responding to requests for references. In those circumstances, the Tribunal concluded that the conduct of Ms Harris was not detrimental and that it did not amount to less favourable treatment.

118. In relation to allegation 3, about returning work saying it was incorrect when the claimant contended that it was correct, the Tribunal considered that this allegation was based on a false premise. The claimant's case had been that her work was correct. However, in the course of the hearing, the claimant changed her position, to contend that the respondent had produced no evidence to prove that any allegation about incorrect work was true. Further, the claimant contended that, if support had been put in place for her, she would have been a model employee. This conflicted with Ms Chaudry's evidence and what was said in meetings. The respondent's case was that there had been supportive supervision, guidance and training given to the claimant. In those circumstances, the Tribunal resolved the conflict of evidence on a balance of probabilities by preferring the evidence of Ms Chaudry and other employees of the respondent as to the supervision required, which had become onerous because of the claimant's poor performance and the amount of incorrect work.

119. In relation to allegation 4, about overloading the claimant with work and imposing tight deadlines, the Tribunal concluded that the claimant had not become overloaded with work. She had been recruited to take on the caseload of an employee who was due to transfer to another department. In her own evidence, the claimant accepted that she was working at 50% capacity and, in those circumstances, the Tribunal did not consider it inappropriate for the respondent to give the claimant more work in due course. The Tribunal also considered that the amount of work given to the claimant by the respondent's supervising Solicitors was not excessive.

120. In relation to deadlines, the Tribunal noted that the claimant at no time asked for any extensions to the deadlines set, which were clearly set out in emails sent to her by Ms Chaudry. The claimant was usually asked to complete a task within 7 days, and occasionally within 14 days. The claimant was working on personal injury claims pursued in the county court and such deadlines are not, in the Tribunal's experience, "tight" nor unusual in the context of the court rules and timescales for directions which impose such deadlines on the parties to litigation. Further, when cross examined on a

number of the tasks in issue, the claimant's evidence was that these tasks would take her half an hour to do or in some cases, 20 minutes. She did not assert that any tasks took inordinate amounts of time.

121. Mr Fox's evidence was that, on his assessment of the claimant's workload at the appeal against her grievance, he considered that she was not fully occupied. This assertion went unchallenged by the claimant. The Tribunal also took into account the fact that the claimant had described, in her own evidence, that she was working 25% of the time for Ms Chaudry and 25% for Ms Anyon and that around 50% of her time was spent on chasing up references. From the documents in the bundle, it is not apparent that the claimant spent so much time on seeking information/contacts for references over a period of several weeks and, therefore, the Tribunal took the claimant's evidence as confirmation that the claimant in fact had time available to take on more work.

122. In relation to allegation 5, regarding Mr Reilly and Ms Anyon talking about the claimant "with the door wide open", the Tribunal did not find that this conversation happened in a situation where a door was left wide open. The Tribunal accepted that the claimant may have overheard comments about her and it noted that the claimant had acknowledged in evidence that the respondent's management was entitled to discuss her performance from time to time. It remains unclear, despite all the evidence, how or when the claimant overheard whatever she heard. No detail was provided; not even the gist of the conversation alleged to have taken place. In any event, Mr Reilly and Ms Anyon denied that such a conversation took place with the door wide open and the Tribunal accepts those denials, which are contained in Mr Reilly's witness statement, at paragraph 6, and Ms Anyon's statement, at paragraph 16. The claimant brought no evidence about what work the discussion involved and/or who had done the work in question if not the claimant, nor was it established that any criticism of the claimant was, in fact, unfair because she was being criticised for another person's work. The claimant has failed to prove the substance of this allegation.

123. In respect of the claimant's dismissal, the Tribunal concluded that any employee performing routine litigation tasks with the support and training which was afforded to the claimant by the respondent, and who had produced the number of errors and incorrect work that the claimant did within a probationary period of 3 months, would have been subject to criticism, commented upon at an HR meeting and probably would have had their probationary period terminated as the claimant had. The Tribunal had no hesitation in concluding that the claimant's employment was terminated because the claimant was simply not performing at the standard expected of her. The Tribunal was mindful of the assertions that the claimant had made about her performance, in her letter of application and CV, and the experience that she set out in that CV. The Tribunal therefore concluded that the claimant was not dismissed for any reason related to her disability.

<u>Discrimination arising from disability</u>

124. The Tribunal noted that dismissal can be unfavourable treatment. The Tribunal found above that the claimant was dismissed for performance. The cause of the claimant's dismissal was her poor work performance.

125. In respect of the 'something' arising from the claimant's disability, the claimant had contended that her lack of concentration and her confused thinking were something(s) arising from her disability. However, in her evidence at the hearing, and for the first time in these proceedings, the claimant contended that she was dyslexic and appeared to suggest that this was a reason for her errors and performance. The Tribunal noted that dyslexia had not been raised before as a disability nor as an aspect of the claimant's mental health impairment. The claimant had produced no evidence to support her assertion of dyslexia nor had the claimant previously contended that it was the 'something' arising from her disability.

126. In any event, the Tribunal considered that the respondent had demonstrated that it had a legitimate aim, namely that of maintaining a high standard of and accuracy in English language in written communications with clients and with the courts, as would be expected of a professional solicitors' firm. The treatment of the claimant in terms of supervision, efforts to correct her work and ultimately dismissal, were a proportionate means of achieving that legitimate aim. The respondent had made efforts to train the claimant and to correct her mistakes but to no avail. The claimant failed to follow the supervision and guidance given to her. The only alternative outcome therefore was that the claimant's employment be terminated for her performance.

127. In relation to the question of whether the respondent could know or reasonably be expected to know that the claimant had a disability, the Tribunal has found as a fact that at no time prior to her dismissal did the claimant disclose her impairment to the respondent. The Tribunal noted that the respondent had asked questions of the claimant concerning her performance and why that may be, from time to time in supervision and in the probationary review meeting on 8 January 2018. Despite the claimant's contention, an examination of her CV does not disclose a 5-year gap in activities/employment nor is there anything within the CV to suggest that periods of unemployment were as a result of ill-health, mental impairment or disability, nor does the CV contain any suggestion that the claimant had issues which might amount to a disability.

<u>Harassment</u>

128. In relation to harassment, the Tribunal considered items 3, 4 and 5 in the list of complaints. It is clearly unwanted conduct to have one's work criticised. However, the Tribunal considered carefully the circumstances and reasons for the respondent raising such criticism of the claimant's work. The Tribunal did not conclude, in the circumstances of this case, that the criticism of the claimant had the purpose or effect of violating the claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant to work in. Indeed, the Tribunal considered that the matters about which the claimant complained simply did not amount to any form of harassment.

129. The claimant was asked in cross-examination for specific examples of the harassment that she contended for but was unable to give any examples and instead, in her evidence, the claimant acknowledged that Ms Chaudry and Ms Anyon had the right to come back to her if there was something wrong with her work. In light of the evidence, the Tribunal considered that the respondent's actions, in returning work for amendment was done in the usual course of supervision and with the aim of improving the quality of the claimant's work. The Tribunal has found that the claimant was not overloaded with work and not subject to tight deadlines as she alleges [see above, under Direct discrimination] and the Tribunal has also found that the conversation alleged, between Mr Reilly and Ms Anyon talking about the claimant "with the door wide open", did not happen in a situation where a door was left wide open. The claimant had also acknowledged, in her evidence, that the respondent's management was entitled to discuss her performance from time to time [see above, under Direct discrimination].

Failure to make reasonable adjustments

130. The PCPs that the claimant contended for were workloads and deadlines. However, the claimant brought no evidence to show that she had struggled with deadlines save that, when her work was not correct, it went backwards and forwards between the claimant and her supervisor in an effort to ensure that the claimant made all the corrections required of her. There was no evidence put before the Tribunal by the claimant that she had ever missed a deadline.

131. The claimant contended that the respondent should have been expected to know that the claimant had a disability and therefore that she was likely to be placed at a disadvantage. However, the Tribunal concluded, in the circumstances of this case, that the respondent did not know and could not in fact be expected to know of any disability, and certainly would not be expected to know that the claimant would be placed at a particular disadvantage. Indeed, beyond the claimant's assertion that she had told the respondent about her disabilities and the difficulties that she would face as a result of her mental health issues, the Tribunal noted that she was unable to point to any evidence to support that assertion. When pressed, in cross-examination, the claimant continued to assert that the respondent must have known she had mental health issues which meant she was not working as would be expected or to the required standard. The claimant pointed to the fact that her CV had gaps in it, and also relied on the fact that she had told Ms Chaudry that she was having trouble sleeping. In respect of the latter, the claimant contended that trouble sleeping can be a symptom of depression and therefore Ms Chaudry should have concluded that the claimant was suffering from depression and therefore was disabled. The Tribunal rejected the claimant's submissions on this point and did not agree that the respondent was on notice that the claimant was disabled as she alleges or at all.

132. In light of all the above conclusions, the tribunal considered that the claimant's claim of disability discrimination, comprising direct discrimination,

discrimination arising from disability, harassment and a failure to make reasonable adjustments, must all fail.

The claimant's evidence

133. The Tribunal records its concern that on a number of occasions the claimant said, whilst under oath and subject to cross examination, that she sometimes said things that were not correct, that she "mis-informed herself" and that she "said things which she believed to be true" and that she sometimes "says things that may not be correct". By the claimant's own admissions in evidence, the Tribunal considered that many things that she contended for were not accurate and were not representative of what actually happened. The Tribunal accepted the claimant's evidence on this aspect, particularly where her recollection of events was at odds with contemporaneous documents.

134. Further, the Tribunal had concerns about the claimant's evidence as to the existence, or not, of recordings of meetings. The claimant's evidence to the Tribunal and also statements in contemporaneous documents and correspondence with the respondent varied between there being recordings, there not being recordings, that she had kept the recordings herself somewhere else, that she had not kept the recordings, that she had sent them to the Police, that they were on one of her two phones (both of which had been lost and/or broken) and that in any event she could not work her phone so as to retrieve the recordings. It was apparent that one recording existed, because a transcript was made of a recording of the 3-hour meeting between the claimant and Ms Ismail, on 16 January 2018. However, no further recordings had been tendered as evidence to this Tribunal by the claimant. In those circumstances, the Tribunal considered that no further recordings existed, despite the claimant having asserted that they did in correspondence with the respondent from time to time, for reasons which were never explained.

135. In addition, the Tribunal was concerned that the claimant's CV and qualifications were not explicitly set out or evidenced. There were a number of inconsistencies between events set out in the claimant's CV and those recorded in the medical records she produced (which were redacted in a number of places without explanation) and also between those documents and the claimant's oral evidence. The claimant contended from time to time that she had a BTEC qualification, also an LLB or "Qualifying Law Degree" and that she also had a BA and BSc. In an email of 9 January 2018 timed at 21:17, at page 142 of the Bundle, the claimant signed herself off as "Miss Stott BSC [Hons] BA [Hons] LLB CILEX A.INSTU.PA". Despite the mention of a "CILEX" qualification in the email, the claimant did not put that in her CV, did not mention it in evidence about her qualifications and never asserted that she had such. The Tribunal therefore found the claimant's evidence as to her qualifications and experience to be inconsistent and unreliable.

136. The claimant's medical records appeared in the bundle from page 1 through to page 14. However, those medical records are incomplete and redacted in places. They do not extend beyond 24 October 2017 and the Tribunal has

therefore assumed that the records disclosed were obtained by the claimant in 2017 and for some other purpose. Whilst the respondent did not take issue with the redaction of the claimant's medical records, the Tribunal was concerned that the redactions may in fact have produced an incomplete picture of the claimant's mental health issues. In this regard, the Tribunal also found that the claimant's witness statement(s) were very difficult to read and follow. The written style was not clear but it did appear to be consistent with how the respondent described the errors and inaccuracies which it found in the claimant's work. In giving oral evidence and in submission, the claimant sometimes struggled to explain herself. The Tribunal gave her extra time and breaks particularly when she became distressed, as she sometimes did, in the course of giving evidence herself and also in the course of cross-examining the respondent's witnesses. The Tribunal regularly allowed the claimant time to collect her thoughts. On occasions, the Employment Judge assisted the claimant by re-phrasing and simplifying her questions, where appropriate, so that the witness could understand the question and respond. The Tribunal noted that the claimant thanked the Judge for assisting her with such.

137. The Tribunal was at all times conscious of the fact that the claimant was acting as a litigant in person, presenting a complex claim and at times struggling with her mental health and her emotions. The pursuit of Employment Tribunal proceedings is stressful and demanding. Under those circumstances, the Tribunal considered that the claimant coped very well and appeared, for the majority of the hearing time, to retain her composure whilst dealing with a number of obviously upsetting matters.

138. In particular, the Tribunal were concerned about the content of Mr Stephen Fox's second witness statement which was introduced during the hearing. The Tribunal had noted that the claimant became distressed when the statement was produced and did not proceed to highlight any matters in it or to cross examine Mr Fox on the contents of that statement. The Tribunal does not criticise the claimant for so doing. The matters set out in Mr Fox's second statement were largely irrelevant to the issues to be decided by the Tribunal in this case. In the circumstances, the Tribunal took no account of the content of that statement in its deliberations on the issues.

<u>The respondent's practices</u>

139. The Tribunal also wishes to record its concern about a number of the practices of the respondent, which is a regulated firm of solicitors. It was apparent to the Tribunal that the recruitment of the claimant had not been handled appropriately and that a number of checks had simply not been undertaken with diligence, whilst assumptions had been made. Mr Fox, in his evidence, candidly acknowledged that matters had not been handled properly and he confirmed that the respondent's recruitment would not be handled in such a manner in the future. From this, the Tribunal understood that Mr Fox was referring to the appointment of the claimant without obtaining prior evidence of her qualifications and without having satisfactory references in place before she started work.

<u>The respondent's additional submissions</u>

140. In the course of submissions, Mr Mahmood asked the Tribunal to record the fact that the claimant had withdrawn her complaint about Employment Judge Slater which had been made in the course of these proceedings and prior to the final hearing. The Tribunal therefore notes that withdrawal herein, for the record.

141. In addition, Mr Mahmood asked the Tribunal to formally record the fact that the claimant had withdrawn her criticisms of him in relation to his skeleton argument which was served on the claimant on the Friday before the formal hearing commenced. Accordingly, we make that note for the record as requested.

_____
Employment Judge Batten

Date: 20 June 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

25 June 2019

FOR THE TRIBUNAL OFFICE