Case Number: 2200328/2016

Reserved Judgment

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**and**	**Respondents**
Miss F Grabe		**(1) Synod of German-speaking Lutheran, Reformed and United Congregations in Great Britain** **(2) Mr A Köstlin-Büürma**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central **ON: 22-29 July; 30-31 July 2019 (in chambers)**

BEFORE: Employment Judge A M Snelson **MEMBERS: Mr D Kendall, Ms Y Batchelor**

On hearing the Claimant in person (assisted by Mr C Kennedy, counsel, on 25 July 2019 only) and Mr L Davidson, counsel, on behalf of the Respondents, the Tribunal unanimously adjudges that:

(1) To the extent that they were brought outside the applicable time limit (as extended, where applicable, by the early conciliation provisions), the Claimant's claims were presented out of time and the Tribunal has no jurisdiction to consider them.
(2) The Claimant's claims are in any event not well-founded.
(3) Accordingly, the proceedings are dismissed.

REASONS

Introduction

1 The First Respondent, to which we will refer as the Synod or the Church as appropriate, describes itself as a legally constituted church community of congregations, which unites 18 congregations in the Lutheran, Reformed and United tradition, predominantly of German language, in six parochial areas or ministries.

2 The Second Respondent, Mr Albrecht Köstlin-Büürma, was, between April 2015 and April 2018 the Senior Pastor and Chair of the Synod.

3 The Claimant, Miss Felicitas Grabe, a German woman now 54 years of age, was brought up in the German Lutheran tradition and has devoted much of her life in diverse ways to furthering the Christian message in Germany, the United Kingdom, France and elsewhere. She is a person of conspicuous learning and intelligence and her English language skills are excellent. It is common ground that she has the misfortune to suffer from PTSD, fibromyalgia and a range of other conditions, and that the combined effect of these is that she is a disabled person within the meaning of the Equality Act 2010 ('the 2010 Act').

4 Miss Grabe was employed by the Synod as a Pastoral Assistant to Mr Köstlin-Büürma from 1 July to 31 October 2015, when her employment ended on the stated ground of redundancy.

5 By her claim form which appears to have been first presented on 24 February 2016 following a period of ACAS conciliation of one month's duration ending on 27 January 2016, Miss Grabe brought a large number of claims which Employment Judge (hereafter 'EJ') Auerbach in his commentary following a preliminary hearing for case management on 20 April 2016 (para 7) summarised as follows:

> **(a) Unfair dismissal by reason of having made protected disclosures …;**
> **(b) Wrongful dismissal;**
> **(c) Other breaches of contract;**
> **(d) Detrimental treatment because of the protected disclosures;**
> **(e) Complaints that the Claimant was paid less than Mr Radacz because of the difference of sex, and/or because she is part-time and he is full-time;**
> **(f) Other complaints of direct sex discrimination and/or less favourable treatment because she is part-time;**
> **(g) Victimisation by a number of acts of detrimental treatment during employment;**
> **(h) Disability discrimination taking the form of direct discrimination, indirect discrimination, discrimination arising from disability and failure to comply with the duty of reasonable adjustment.**

6 At the same hearing, EJ Auerbach directed Miss Grabe to provide further particulars of her alleged protected disclosures, which she did in a document dated 11 May 2016.

7 The case was listed for trial in January and May 2018 and, on both occasions, postponed. In preparation for the May hearing, EJ Wade directed the Respondents to prepare a skeleton argument with a view to ensuring that Miss Grabe fully understood the legal case which would be presented in answer to her claims. The result was that, although the May hearing was not effective, Miss Grabe and the Tribunal had the benefit of an excellent document prepared by Mr Simon Forshaw, counsel then instructed on behalf of the Respondents.

8 Management of this case and separate proceedings brought by Miss Grabe against the United Reform Church ('URC') in 2012 then passed to the judge who

chairs this Tribunal, EJ Snelson. The two matters were listed together before him for case management purposes on 13 December 2018. For reasons that do not need to be mentioned here, he decided that this case must be heard in the summer of 2019 with a view to the URC proceedings being listed for a convenient date in 2020. Accordingly, he gave largely conventional directions and fixed a final hearing in this case for eight days commencing on 22 July 2019. Miss Grabe was not happy with the judge's procedural management and sought to challenge it on appeal but was unsuccessful.

9 The enormous delay in both cases is mainly attributable to the fact that extended stays were required on account of Miss Grabe's severe ill-health. Fortunately, she eventually recovered to the extent that she was able to resume work on her claims, although it was and remains necessary to make careful allowances for her disabilities, particularly as she has throughout acted in person (albeit on occasions she has benefited from professional *pro bono* assistance).

10 The case came before us on 22 July 2019 for a final hearing on liability only, with eight days allowed. Miss Grabe was unrepresented save that, for part of day four (25 July), she had the assistance of Mr Conor Kennedy, counsel, who, to his considerable credit, was attending the Tribunal as a volunteer under the auspices of ELIPS, the *pro bono* litigants in person assistance scheme. He conducted some cross-examination of Mr Köstlin-Büürma. In addition, he made a valuable contribution to Miss Grabe's written closing submissions. The Respondents were represented by Mr Leo Davidson, counsel.

11 At the outset we discussed procedural adjustments with Miss Grabe and it was agreed that as a minimum we would take breaks mid-morning and mid-afternoon. We also stressed that she should feel free to request additional breaks at any time. In addition, we offered frequent assistance to clarify legal points or explain matters of procedure.

12 One subject discussed more than once was the principle of proportionality. We encouraged Miss Grabe to focus on her strongest points and not to allow them to be buried in small detail and side-issues. She took this guidance on board but said that her condition made it impossible (or very difficult) for her to "let things go". Although in closing she laid particular emphasis on what she saw as the key issues, she made it clear that she looks to the Tribunal to treat all her pleaded case as 'live' and requiring adjudication.

13 We also explained to Miss Grabe the distinction between evidence and argument and the need to keep the two separate. To the extent that (quite understandably) she overlooked the point when drafting her closing submissions, we disregarded the fresh evidentiary material which she included.

14 In accordance with the trial timetable agreed with the parties, closing submissions were presented on day six (29 July), after which we reserved judgment. The remainder of the allocation was devoted to our deliberations in private. On 31 July (day eight), a one-page document in the name of Miss Grabe was handed to us. It sought to make some further representations in support of her case. We had not given permission for any argument or document to be delivered

after the adjournment on 29 July. Both sides had had ample opportunity to make their submissions on day six. In the circumstances, the message was left unread on the Tribunal file.

The Legal Framework

The 2010 Act claims

15 The 2010 Act protects employees and applicants for employment from discrimination based on a number of 'protected characteristics', including sex and disability, and from victimisation.

16 Direct discrimination is defined by s13 in (so far as material) these terms:

> **(1) 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.**

By s23(1) and (2)(a) it is provided that there must be no material difference between the circumstances of the claimant's case and that of his or her comparator and that (for these purposes) the 'circumstances' include the claimant's and comparator's abilities.

17 In *Nagarajan* v-*London Regional Transport* [1999] IRLR 572 Lord Nicholls construed the phrase 'on racial grounds' in the Race Relations Act 1976, s1(1)(a), in these words:

> **If racial grounds … had a significant influence on the outcome, discrimination is made out.**

In line with *Onu v Akwiwu* [2014] EWCA Civ 279, we proceed on the footing that introduction of the 'because of' formulation under the 2010 Act (replacing 'on racial grounds', 'on grounds of age' etc in the pre-2010 legislation) effected no material change to the law.

18 Discrimination arising from disability is covered by the 2010 Act, s15, which, so far as material, provides as follows:

> **(1) A person (A) discriminates against a disabled person (B) if –**
> **(a) A treats B unfavourably because of something arising in consequence of B's disability …**
>
> **(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.**

19 The concept of indirect discrimination is defined by the 2010 Act, s19 in, so far as relevant, these terms:

> **(1) A person (A) discriminates against another (B) if a applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.**
>
> **(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if –**

> **(a) A applies, or would apply, it to persons with whom B does not share the characteristic;**
> **(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it;**
> **(c) it puts, or would put, B to that disadvantage, and**
> **(d) A cannot show it to be a proportionate means of achieving a legitimate aim.**

20 The duty to make reasonable adjustments for disabled persons is covered by the 2010 Act, s20, the material parts of which state:

> **(2) The duty comprises the following three requirements.**
>
> **(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.**

Failure to comply with a duty to make reasonable adjustments amounts to unlawful discrimination (s21(2)). The duty does not apply "if 'A' does not know, and could not reasonably be expected to know that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first requirement" (sch 8, para 20(1).

21 By the 2010 Act, s27, victimisation is defined thus:

> **(1) A person (A) victimises another person (B) if A subjects B to a detriment because –**
>
> **(a) B does a protected act, or**
> **(b) A believes that B has done, or may do, a protected act.**
>
> **(2) Each of the following is a protected act –**
> **…**
> **(c) doing any other thing for the purposes of or in connection with this Act;**
> **(d) making an allegation (whether or not express) that A or another person has contravened this Act.**
>
> **(3) … making a false allegation … is not a protected act if … the allegation is made … in bad faith.**

22 When considering whether a claimant has been subjected to particular treatment 'because' he has done a protected act, the Tribunal must focus on "the real reason, the core reason" for the treatment; a 'but for' causal test is not appropriate: *Chief Constable of West Yorkshire v Khan* [2001] ICR 1065 HL, para 77 (*per* Lord Scott of Foscote). On the other hand, the fact of the protected act need not be the sole reason: it is enough if it contributed materially to the outcome (see *Nagarajan*, cited above).

23 Discrimination is prohibited in the employment field by s39 which, so far as relevant, states:

> **(2) An employer (A) must not discriminate against an employee of A's (B) –**
>
> **…**

> **(c) by dismissing B;**
> **(d) by subjecting B to any other detriment.**

24 A 'detriment' arises in the employment law context where, by reason of the act(s) complained of a reasonable worker would or might take the view that he or she has been disadvantaged in the workplace. An unjustified sense of grievance cannot amount to a detriment: see *Shamoon v Chief Constable of the RUC* [2003] IRLR 285 HL.

25 Employees are protected against victimisation by the 2010 Act, s39(4) in terms, for present purposes, identical to s39(2).

26 Under the 2010 Act, provision is made for equality of terms as between persons of the opposite sex. The protection arises where the complainant ('A') and the comparator of different sex ('B') are employed in 'equal work', which may be 'like work', work rated as equivalent or 'work of equal value'. Where a valid comparison is set up, the complainant is entitled to be treated as if his/her contract was modified so as to contain a term entitling him/her to the benefit of the more favourable relevant term(s) (see generally ss64-66). This right (to the benefit of what is called a 'sex equality clause') is subject to the 'material factor defence' under s69, the material parts of which read as follows:

> **(1) The sex equality clause in A's terms has no effect in relation to a difference between A's terms and B's terms if the responsible person shows that the difference is because of a material factor reliance on which –**
> **(a) does not involve treating A less favourably because of A's sex than the responsible person treats B …**

27 2010 Act, by s136, provides:

> **(1) This section applies to any proceedings relating to a contravention of this Act.**
>
> **(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.**
>
> **(3) But subsection (2) does not apply if A shows that A did not contravene the provision.**

28 On the reversal of the burden of proof we have reminded ourselves of the case-law decided under the pre-2010 legislation (from which we do not understand the 2010 Act to depart in any material way), including *Igen Ltd v Wong* [2005] IRLR 258 CA, *Villalba v Merrill Lynch & Co Inc* [2006] IRLR 437 EAT, *Laing v Manchester City Council* [2006] IRLR 748 EAT, *Madarassy v Nomura International plc* [2007] IRLR 246 CA and *Hewage v Grampian Health Board* [2012] IRLR 870 SC. In the last of these, Lord Hope warned (as other distinguished judges had done before him) that it is possible to exaggerate the importance of the burden of proof provisions, observing (judgment, para 32) that they have "nothing to offer" where the Tribunal is in a position to make positive findings on the evidence. But if and in so far as it is necessary to have recourse to the burden of proof, we take as our principal guide the straightforward language of s136. Where there are facts capable, absent any other explanation, of supporting an inference of unlawful

discrimination, the onus shifts formally to the employer to disprove discrimination. All relevant material, other than the employer's explanation relied upon at the hearing, must be considered.

29 Time limits are jurisdictional in the Employment Tribunal. For the purposes of the claims under the 2010 Act other than those for equal pay, the time limit expires three months less one day after the date of the event complained of plus, where applicable, any additional time to be added under the 'early conciliation' provisions (s123(1)(a)). In the case of 'conduct extending over a period' runs from the end of the period (s123(3)(a)). A case presented outside the primary three-month period may nonetheless be entertained if the Tribunal considers it 'just and equitable' to substitute a longer period. It is for a claimant to persuade the Tribunal to exercise the discretion to extend time. Separate rules apply in the case of equal pay claims, providing for a primary six-month limitation period.

The 'whistle-blowing' claims

30 By the Employment Rights Act 1996 ('the 1996 Act'), s43B, it is stipulated that:

> **(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is in the public interest and tends to show one or more of the following –**
>
> **(a) …**
> **(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject …**

31 Qualifying disclosures are protected if made in accordance with ss43C to 43H (see s43A). By s43C, it is provided that:

> **(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure –**
>
> **(a) to his employer …**

32 By s47B(1) a worker has the right not to suffer a detriment (which may take the form of an act or a deliberate failure to act) done on the ground that he has made a protected disclosure. A 'whistle-blowing' detriment claim is made out if the disclosure was a material influence on the treatment complained of: see *NHS Manchester & others v Fecitt* [2012] ICR 372 CA.

33 A dismissal is 'automatically' unfair if the reason or principal reason is that the person dismissed has made a protected disclosure (s103A).

34 The time limit for presenting a complaint of detrimental treatment or unfair dismissal expires three months less one day after the relevant event or, if there is a series of related events, the last of them (s48(3)(a)).[1] Where it was 'not reasonably practicable' to meet the primary deadline, the Tribunal has power to substitute a further 'reasonable' period.

[1] The period may be extended under the 'early conciliation' provisions.

Wrongful dismissal

35 Pursuant to the Employment Tribunals Extension of Jurisdiction Order 1994, a complaint of wrongful dismissal may be presented to an Employment Tribunal. A dismissal is wrongful where the employer dismisses the employee in breach of the employment contract. Typically, this arises where the dismissal infringes the employee's right to notice.

Part-time workers discrimination

36 Under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 ('the 2000 Regulations'), reg 5(1) a part-time worker has the right not to be treated less favourably than his employer treats a 'comparable full-time worker' as regards the terms of his or her contract or by being subjected to any other detriment. However, reg 5(2) qualifies the right, limiting it to cases where the treatment complained of is 'on the ground that the worker is a part-time worker' and the treatment is not justified on objective grounds.

Oral Evidence and Documents

37 We heard oral evidence from Miss Grabe and, on behalf of the Respondents, Mr Albrecht Köstlin-Büürma (already mentioned) and Ms Diemut Cramer, formerly Pastor and since April 2018 Senior Pastor. All witnesses gave evidence by means of witness statements. At the start of the hearing, Miss Grabe produced a four-page document dated 22 July 2019, which we treated as a supplemental statement of hers, commenting on Mr Köstlin-Büürma's witness statement. We also gave permission for Mr Köstlin-Büürma to produce a supplemental statement.

38 Besides the testimony of witnesses we read the documents to which we were referred in the main two-volume bundle produced by the Respondents and the supplemental two-volume bundle produced by Miss Grabe.

39 We also had the benefit of loose documents handed up during the hearing: a proposed pre-reading list, a proposed trial timetable (revised) a cast list and a chronology. (A much fuller chronology was contained in Miss Grabe's bundle.) The written closing submissions from Miss Grabe and brief outline from Mr Davidson completed the paperwork put before us.

The Facts

40 The evidence was extensive and wide-ranging. We have had regard to all of it. Nonetheless, it is not our function to recite an exhaustive history or to resolve every evidential conflict. The facts which it is necessary to record, either agreed or proved on a balance of probabilities, we find as follows. Quotations from email and text communications are of uncontroversial translations from the original German.

Setting the scene

41 As we have stated, the Church consists of 18 congregations. It is divided into six geographical areas, known as Pastoral Regions. One of these is South and West England and Wales. Two others are confined to the London area: London East and London West.

42 Mr Köstlin-Büürma was the Chair of the First Respondent as well as being its Senior Pastor from April 2015 to April 2018. He operated principally in the South and West England and Wales Pastoral Region. The role for which Miss Grabe was employed was to assist him in the performance of his pastoral duties given the extra responsibilities of his temporary function as Senior Pastor and Chair.

The main narrative

43 Miss Grabe came into contact with Mr Köstlin-Büürma as a consequence of her acquaintance with Pastor Michael Mehl, his immediate predecessor. She told us that he encouraged her to apply to join the Church because he admired her abilities and hoped that doing so would assist her "healing". From this we infer that Pastor Mehl had some knowledge of her unhappy association with the URC and was aware that the experience had affected her badly.

44 Contrary to Miss Grabe's evidence, Mr Mehl did not "offer" her the position of Pastoral Assistant to Mr Köstlin-Büürma, or any other position. Plainly, it was not his place to do so. Nor did he state the terms on which any such position might be offered. He may, as she states, have volunteered a view as to the likely number of working hours attached to any appointment, but he could certainly go no further than that.

45 Miss Grabe and Mr Köstlin-Büürma were introduced in April 2015. He expressed interest in working with her and invited her to share details of her background. In an email of 1 May 2015 she summarised her relevant experience. She stated that her "deepest longing" was to work "somehow" as a priest, adding that she did not have "proper" ordination. Mr Köstlin-Büürma replied that full ordination was much less important for his purposes than her experience.

46 Pausing there, we note that the reference to Miss Grabe not having "full ordination" was debated at some length before us. She told us that she held a qualification which could in some sense stand as equivalent to ordination. The evidence on behalf of the Respondents was that, in the absence of formal, full ordination, administration of sacraments was not possible without specific licences having been granted by the Church. This was, in our view, something of a side-issue. Mr Köstlin-Büürma did not require an ordained Pastoral Assistant and did not envisage Miss Grabe performing sacramental duties in her role supporting him. It is also right to say that, however the niceties of church rules are interpreted, she herself regarded the fact that she was not fully ordained as a matter of regret and something to overcome. Hence her gratitude when Mr Köstlin-Büürma remarked that it might be possible to encourage the URC (or perhaps another church) to grant her full ordination.

47 Miss Grabe and Mr Köstlin-Büürma met on 9 May 2015 to discuss her possible appointment. The meeting was positive and optimistic, although it proceeded throughout on the footing that it was for the Synod, which was to meet on 16 June, to decide whether or not to make an offer. Subject to that, the employment would commence on 1 July. In the meantime, it was agreed that Miss Grabe would attend congregations with Mr Köstlin-Büürma to officiate with him at services and deliver sermons. Some dates were agreed. Either then or soon thereafter it was also agreed that following commencement of the employment she would be compensated for working time spent pre-contract in the shape of additional leave. The only work required of her before 1 July 2015 was to prepare for services, attend services and write a newsletter piece introducing herself to the congregations. Besides these practical matters, Mr Köstlin-Büürma touched again on the possibility of the Synod approaching the URC (or another church) to request her ordination.

48 An email of 10 May 2015 from Mr Köstlin-Büürma faithfully records the main points discussed.

49 In her evidence before us Miss Grabe contended that it was agreed at an early stage that she would work an 18-hour week. We note, however, her email to Mr Köstlin-Büürma of 20 April 2015 in which she refers to “my 20 hours a week”. We find as a fact that the question of hours was not agreed at the meeting of 9 May or at any earlier stage.

50 On most weekends following the 9 May meeting Miss Grabe attended services at various locations within the West of England and Wales Region, participating in and preaching at services and meeting congregations. As agreed, Mr Köstlin-Büürma accompanied her. As also agreed, she delivered the same sermon on each occasion. She also duly prepared the introductory piece for the newsletter. Her travel expenses were met by the relevant congregations.

51 Miss Grabe later complained that she had carried out a great deal of additional work for which she had not been paid. That work was neither required nor authorised and there was no agreement (on the part of Mr Köstlin-Büürma or anyone else) that she should undertake it or be paid for doing so.

52 Mr Köstlin-Büürma gave Miss Grabe feedback and advice following the services. The examples shown to us appear supportive, constructive and helpful.

53 The Claimant claimed in evidence that her working hours and pay were “again confirmed” over the weekend of 30/31 May 2015 (witness statement, para 62). We reject this evidence if it is intended to mean that terms on those subjects were settled on or before that weekend. As had been made clear on 9 May, any offer of employment was to come from the Synod after its meeting of 16 June. There was no question of any concluded agreement about hours or pay (or anything else) in April or May, although those matters were certainly discussed.

54 At the Synod meeting on 16 June the decision was taken to confirm Miss Grabe’s appointment as Pastoral Assistant. In a letter of the same date, Mr Köstlin-Büürma passed on the news and reproduced the relevant resolution, which stated

that she would take on 50% of the Pastor's ministry and receive a salary of 50% of the current rate for Pastoral Assistants. As Miss Grabe appeared ultimately to accept, the resolution did not purport to tie her salary to that of any particular Pastoral Assistant but to the rate of pay appropriate to Pastoral Assistants generally. Mr Köstlin-Büürma added that a contractual document would be prepared.

55 Miss Grabe's inauguration was fixed for Sunday, 28 June, at Coventry. Mr Köstlin-Büürma spent the two nights immediately preceding the event staying with his daughter. She was and is a minister in the URC.

56 On 28 June Mr Köstlin-Büürma collected Miss Grabe and they travelled together to the inauguration service. In evidence, she described his behaviour towards her on that day as "confrontational" and referred to an "atmosphere of aggression". She said that he omitted to bless her and that he attempted in public to talk down her sermons. There is no contemporary evidence to support this part of Miss Grabe's case. We find that there was no hostile or negative behaviour on his part and that, to all outward appearances at least, the ceremony was a happy and successful occasion. In an email to her of 29 June 2015 Mr Köstlin-Büürma referred to the "beautiful" services of the day before and offered feedback on her sermons, containing, as before, a mixture of praise and some constructive criticism.

57 It is evident from emails passing between Mr Köstlin-Büürma and members of the Synod and Synod staff between 27 and 29 June 2015 that the organisation's thinking about the terms on which Miss Grabe was to work developed over those days. Mr Köstlin-Büürma began with the assumption that she would work half the hours worked by Mr Radacz, the full-time Pastoral Assistant assigned to the London East Region, and receive half his pay, but rapidly moved to recognising that he had a different "qualification" to her (he had full ordination). This led to research into YMCA pay tables (the connection with the YMCA was not explained) and an exercise was done to upgrade the latest figures in those tables to allow for inflation. In addition, it was agreed that a (tax-free) rent subsidy would be payable. (Here again there was a difference between Ms Grabe's and Mr Radacz's cases in that it was not necessary for her to live in London whereas he did need to be a London resident.)

58 In an email of 29 June 2015 to a member of the Synod office staff, Mr Köstlin-Büürma also made this significant remark:

> **PS: it won't be so easy to provide sufficient work for Miss Grabe. So far I only add together two working days a week. I hope that this can be expanded. It depends very much on what I can really assign to her.**

59 Between 8 and 13 July 2015 Miss Grabe and Mr Köstlin-Büürma exchanged emails, mainly on the subject of pay hours and pay. She cited the case of Mr Radacz and politely made the point that the rate of pay being contemplated for her was lower than his and that treating her proposed weekly hours (24) as amounting to a 50% appointment was not in proportion with his full-time commitment of 36 hours per week. Mr Köstlin-Büürma responded explaining that the terms under which Mr Radacz worked had been agreed with the London East parishes and

were not in accordance with Synod terms. That was an error which would not be repeated. Under Synod rulings, the full-time Parish Assistant role involved a 48-hour week, which explained her proposed 24-hour week. He went on to explain the method for ascertaining the appropriate salary (based on YMCA rates). He also stated that the contract was still under preparation. Miss Grabe wrote to him on 13 July thanking him for the information and stating that everything was a lot clearer.

60 In an email of 17 July 2015 Mr Köstlin-Büürma apologised to Miss Grabe for the fact that the contract had not yet been completed, explaining that it was with the Treasurer and Legal Committee. He did, however, point out (rightly, we find) that the basic terms of her employment had been specified, and took the opportunity to confirm them as follows:

> **Start 1 July**
> **6 weeks (three days each) paid holiday per year, that is 3 weeks this year**
> **Working hours per week average 24 hours and three days**
> **Sundays are regular working days**
> **Compensation according to the last valid YMCA table with annual adjustment …**
> **Reimbursement of half the rent**
> **Mobile phone with Internet**
> **Travel expenses according to the guidelines of the Synod …**

61 In the same email, Mr Köstlin-Büürma advised Miss Grabe that she was free to take her summer holiday between that date and the end of August (as she had asked to do) but added that she must deliver a completed holiday form to the Synod office. Some exchanges followed. Mr Köstlin-Büürma explained that she would be compensated with paid leave of four weeks in respect of the four pre-contract weeks in which she had prepared for and attended services. She complained that in those weeks she had worked 152 hours and, in effect, that she should be allowed compensatory leave to the end of August without taking up any part of her contractual annual leave entitlement. He replied that there had been no warrant for working so many hours. Noting that she had still not presented a holiday request form, he confirmed that she had permission to take leave over the 30th to 35th calendar weeks, on the basis that four of those six weeks would be treated as compensatory leave. She then wrote a text message saying that her plans had changed and she wished to take leave from 19 to 26 July and then from 2 to 23 August. He refused the request, remarking:

> **Sorry, it doesn't work like that. I have informed the Synod's Office already of your holiday …**

62 The tone of Mr Köstlin-Büürma's correspondence with Miss Grabe on 17-18 July became increasingly curt and testy. On 18 July he wrote to Ms Sabine Seidel, the Synod's Financial Administrator:

> **For your information,**
>
> **Miss Grabe wanted to re-plan her holidays by text. I am not quite happy about this back and forth, also … about the working hours she is calculating. I not sure any more whether this collaboration will work out well.**

63 Accordingly, Miss Grabe was away on holiday from 20 July to 30 August or thereabouts.

64 Miss Grabe complained about a delay in making salary payments. It seems that this is explained by her failure to provide information requested of her including her NI number and a copy of her rental agreement. At all events there is no evidence linking Mr Köstlin-Büürma with the delay.

65 A draft contract of employment in the name of Miss Grabe was completed on 13 August 2015. It included provision for a probationary period of one year, a term which had not been mentioned to her at any point.

66 It seems that the draft was attached to an email from Mr Köstlin-Büürma to Miss Grabe of the same date.

67 Mr Köstlin-Büürma sent a further email to Miss Grabe on 28 August 2015 in which he reiterated the need for holiday request forms to be completed and drew attention to the need for correspondence from the Synod office to be responded to without delay. In that regard, he reminded her of prior requests to supply several documents, including items relating to her theological experience and training. He proposed a meeting on 1 September.

68 On 31 August Miss Grabe sent a text message to Mr Köstlin-Büürma informing him that she was not available for the proposed meeting the following day. Mr Köstlin-Büürma replied mooting alternative arrangements. As a postscript he added:

> **I am surprised that you did not answer my emails of 19.7, 13.8 and 28.8. It would have been appropriate to at least give me notice that you would not be available. If our communication does not improve I cannot work with you.**

Eventually, following tense text message exchanges it was agreed that the meeting would, after all, take place on the morning of 1 September 2015, at Miss Grabe's flat. In one message he commented that the style of collaboration between the two had caused him a sleepless night and that he saw it (the collaboration) as not so much a relief as a burden.

69 Despite its unpromising antecedents, the meeting on 1 September was productive. Mr Köstlin-Büürma set out a number of standards and requirements to do with mutual communication. He also raised for the first time with Miss Grabe his concerns (already mentioned above) about how much work she could be assigned. Some other matters were also discussed. She raised no challenge and he left the meeting believing that the air had been cleared and a new understanding achieved. In an attachment to an email of 5 September 2015 he summarised the main points covered at the meeting. His document, the content of which she did not dispute or question at the time, included the remark that preparation and officiating at church services did not account fully for her three-day working week and that she would be required to undertake further duties, which would be assigned on a monthly basis. He then continued:

> **Until the end of the year it has to be clarified whether it is possible at all to transfer 50% of the ministry to the Pastoral Assistant.**

At the meeting, in the context of discussion about the sorts of tasks that Miss Grabe might undertake, the subject of visiting members of congregations was raised. Mr Köstlin-Büürma told us (witness statement, para 99):

> **I explained during our meeting that there were not many housebound members, and such visits would have had to be combined with other appointments in order to limit the time and cost of travelling from London to the Congregations. It would not have been efficient to spend four hours travelling in order to attend only one appointment. It would have been different if visits could have been combined with administrative work and an overnight stay, as was often the case for me. However, it was not possible to delegate administrative work to the Claimant because she was not able to carry out the administrative tasks, which included advising the Treasurer or the Congregations' Council, planning the Church work or producing the newsletter and the website, because she was not trained for these tasks.**

70 Following the meeting of 1 September 2015 communication between Miss Grabe and Mr Köstlin-Büürma improved and the working relationship became less strained.

71 On 10 September 2015 Mr Köstlin-Büürma held a one-day meeting at his home with representatives of the congregations in his region. Such meetings take place twice-yearly for the purpose of planning future work and activities. Under the Church's rules, it is for the congregations to decide what work they want the Pastor(s) to undertake. Mr Köstlin-Büürma proposed increasing the number of church services offered provided that he was assured of adequate Pastoral Assistant support. The representatives of the congregations disagreed. They considered that increasing the workload would make it difficult to find a successor at the end of Mr Köstlin-Büürma's tenure of the Senior Pastor role. They also determined that he must personally lead church services at least every other month.[2]

72 The effect of the parish representatives' decisions was that, unless some separate project or other source of work could be found for her, Miss Grabe's employment under a 50% contract could not be justified. She had been employed on the footing that she would be preparing and officiating at services on a monthly basis but would now only be required in alternate months. The new circumstances argued for the substitution of a 25% contract.

73 Mr Köstlin-Büürma turned his mind the possibility of finding additional work for Miss Grabe. On 11 September 2015 he sent her a text message asking if she would be interested in working on a youth project in Birmingham, which might have involved 12 hours work most Saturdays. Unfortunately, she was unable to consider it, owing to other church-related commitments on Saturdays.

74 On 17 September 2015 there was a meeting of the Synod Council. Such gatherings take place five times a year. Among other business, the Council approved Miss Grabe's draft contract (it had still not been executed) save for the provision relating to a rent allowance (which was reserved for further

[2] The minute of the meeting states: "The budget of the pastoral ministry for services and discussion groups must be limited to 50%. The other time should be available for administration and counselling."

consideration) but also approved a proposal by Mr Köstlin-Büürma for the contract to be terminated on 31 October 2015 with a view to a new 25% contract being agreed. It is apparent from the minute of the resolution that the Council's reasoning was based on the decision of the regional representatives taken on 10 September.

75 By a long email of 20 September Mr Köstlin-Büürma advised Miss Grabe of the outcome of the Synod Council meeting, including its decision to end her employment on 31 October and offer her a 25% contract commencing on 1 November, explaining the reasoning behind the decision (namely that she was employed to perform half of his pastoral duties, which themselves represented half of his 100% role, and that that role was not going to be expanded beyond 100%) and setting out his thoughts about what the 25% contract would involve. In particular, he envisaged her conducting church services in February, April, June, September and November as well as incidental services in Advent. As an alternative, he also touched on the possibility, which the Synod Council was willing to contemplate, of the 25% role being performed on a fee-paid basis rather than as salaried employment.

76 By an email sent on 22 September 2015 addressed to "Friends in the Synod Council" and others, Miss Grabe stated, apparently in reliance upon advice received from ACAS, that the Church's proposal to terminate her contract was for various reasons unlawful, as were a number of the terms in the draft (50%) contract. On the latter aspect, she revived earlier points (already mentioned) about her hours and her rate of pay. She then proposed that if, after taking legal advice, the intention was still to reduce her to a 25% contract, it should be on the following terms:

(1) The five "worship service months" per annum must be consecutive.
(2) At least three of the seven consecutive "service-free months" must be in summer.
(3) She must be permitted to celebrate Holy Communion "at least one service month" each year.
(4) The Synod must otherwise in all respects comply with UK law.
(5) The Synod must offer the next three "potential vacancies" for Pastoral Assistant jobs to her before advertising them.
(6) The Synod must "instruct" the URC, the Evangelical Church of Germany or some other denomination to ordain her.

77 Mr Köstlin-Büürma forwarded Miss Grabe's email the same day to the members of the Synod with the observation that her response had made it clear to him that he could not work with her. Accordingly, he proposed that her contract be terminated on 31 October 2015 and that she be released from performing any further with work with effect from 1 October 2015. The Synod members agreed. One, Mrs Cramer, remarked in an email to her colleagues that Miss Grabe's message had set all her alarm bells ringing. Others expressed similar sentiments.

78 On 28 September 2015 Mr Köstlin-Büürma contacted Miss Grabe with a view to arranging a time for them to speak by telephone but a mutually convenient slot could not be found. He then sent her a text message stating that he had decided to do without any Pastoral Assistant support and that she would

thenceforth be free to plan her time accordingly. He told us, and we accept, that he sent the text message because he was anxious for her to have advance notice of the formal letter which was to follow.

79 That letter was dated 28 September 2015 and appears to have been drafted on that day but sent two days later as an attachment to an email. It confirmed the message already conveyed in the email of 20 September that Miss Grabe's employment by the Church would end on 31 October 2015, stated that no further payment was due in respect of annual leave entitlement (two weeks' leave having been taken) asked her (again) to provide the necessary documentation relating to her accommodation so that she could be compensated for half of her rental costs as agreed, invited her to submit a claim for her travel expenses, requested the return of hymn books and a satellite navigation device and ended by thanking her for her work and wishing her well in her future employment.

80 By a notice sent on 6 November 2015, Miss Grabe sought to appeal against the termination of her employment. The matter was considered at a meeting of the Synod on 21 November and, by letter of 9 December, Ms Cramer, in her capacity as Secretary, informed her that the appeal had failed. She referred to the letter of 28 September and specified the reason for dismissal as redundancy. It seems to us that this was the first occasion on which that ground was explicitly referred to. She also repeated the prior request for any outstanding expenses request to be submitted and for the return of the hymn books and navigation device.

81 Following Miss Grabe's departure, Mr Köstlin-Büürma served the remainder of his three-year term as Senior Pastor without the support of a Pastoral Assistant.

Disability – knowledge

82 Before us it was Miss Grabe's position that the Respondents were made abundantly aware of her medical conditions and of her status as a disabled person. We are not able to accept her evidence on those matters. We find that she never said or did anything to convey information about her PTSD or fibromyalgia or any other relevant condition. There was no reference to medication or suggestion of any dependence on medication. She performed her duties without giving any sign that she was affected in doing so by any impairment or hindrance. As far as we can recall there was no reference in the evidence to any sickness absence. There was certainly no significant sickness absence during the few months of the association between the parties. In conversations with Mr Köstlin-Büürma and others Miss Grabe did refer to her unhappy time with the URC and the upset and distress which she felt as a consequence of that failed relationship, but there was nothing in what she said to suggest that any clinical condition had resulted, let alone a serious disorder capable of amounting to a disability. And we read in her pleaded case (grounds of claim, para 4.5.2), "… and it seems to be nothing unusual in PTSD, that because being a Minister is so deeply rooted in my soul, this part of my life stayed utterly unharmed." In all the circumstances, we find that the Respondents were not at any material time made aware of her disability or disabilities, or of any fact which could have put them on notice that she might have a disability.

Alleged protected acts/disclosures

83 Miss Grabe told us, and we accept, that, in early July 2015, she shared with Mr Mehl her concerns about the terms of employment which were being proposed for her. She also said, and again we accept, that she communicated with Mr Mehl and other senior members or former members of the Synod, Mr Ulrich Lincoln and Mr Georg Amann, in September after being made aware of the decision to terminate her 50% contract. These communications, or some of them, may well have questioned the legality of things being done in the name of the Church.

84 Miss Grabe also relied on her email of 8 July 2015, to which we have already referred. This message did not contain a complaint of unlawful treatment but did point to what she saw as a discrepancy between the terms being offered to her and those enjoyed by Mr Radacz in London East.

85 Next, Miss Grabe cites her email of 22 September 2015 as containing protected acts/disclosures. The document certainly does make allegations of unlawful treatment.

86 In particulars dated 11 May 2016 Miss Grabe identified certain other categories of alleged protected acts or disclosures. Some are obviously untenable. In view of the way in which we have decided the case, none has any bearing on the outcome. It would not be proportionate to explore them one by one. We will mention only two: an email of 17 July 2015 which might be seen as complaining that she had not yet been supplied with her terms of employment and a further email of 28 July 2015 which might be seen as an implicit complaint of delay in paying wages.

87 On paper, Miss Grabe also pleads reliance on an email of hers of 29 September 2015, the day after she was notified of the decision to abandon the pursuit of a new 25% contract.

Alleged detriments

88 The pleaded case appears to complain of numerous detriments. We will address individually what we understand to be the main allegations. We have made many findings on these in our general narrative. To the extent that further primary findings are necessary, we add the following.

89 Contrary to Miss Grabe's case, she was not "demoted" by being denied the right or opportunity to administer the sacraments – in particular baptism and the Eucharist. Mr Köstlin-Büürma was clear from the outset that he was not appointing her with a view to sacramental ministry and that remained his stance throughout. He told us without challenge that Eucharistic services were held only on three special occasions in the year and that he always conducted them. Miss Grabe emphasised to us the particular importance to her of the Eucharist and we have no doubt that she would have hoped to be involved in administering that sacrament and for it to be celebrated more often, but the theological difference between them is not for us. Moreover, the Respondents' position (right or wrong) was that in any

event she would not have been able to perform Eucharistic services without a licence, which she did not hold.

90 There was no "demotion" of Miss Grabe on 28 June 2015 (the date of her inauguration). We refer to our findings above.

91 There was no withdrawal of any extra holiday weeks. The leave taken in July and August comprised Miss Grabe's annual leave entitlement (two weeks for the half-year) plus four weeks' allowance in respect of the pre-contract work.

92 There was no "change" to Miss Grabe's contract. Her error was to treat the initial discussions as if they had crystallised into binding terms of the contract. The understanding always was that the written contract would be the definitive statement of the terms on which the employment would proceed. She was certainly most unhappy on reading the draft contract to see the provision for a probationary period. But that concern went no further. The contract could not be finalised until she supplied necessary documents and in a short space of time completion was no longer in question because the Respondents realised that they were not, after all, in a position to offer a 50% appointment.

93 Miss Grabe complained about the way in which Mr Köstlin-Büürma managed her. We have noted some examples of the instructions, directions, feedback and advice which he gave to her from time to time. These extended to the scope of her duties and the way in which she performed them, as well as to more mundane matters. He was her superior and it was his function to communicate to her the way in which she was to assist him. We do not accept that he added new conditions, let alone "horribly controlling" ones.

94 Miss Grabe is right to say that the assurance that she would receive a work mobile phone was not honoured. The intention was that other Pastoral Assistants would likewise be supplied with a phone and that intention also was not fulfilled. It seems that the reason was that approval was required from the Synod Council, which did not meet until 17 September 2015.

95 As to the complaints of delaying and withholding pay, we have noted Miss Grabe's tardiness in supplying documents requested by the Synod office. That resulted in a delay in calculating the appropriate pay (which depended in part on the terms of her domestic tenancy). The Church's payroll was handled by external providers. As we have found, she also failed to supply her National Insurance number until September. It seems that she received the pay to which she was entitled in the September payroll and that an uncalculated advance was made to her in August pending delivery of the necessary documents. It is not shown that any pay remained owing to her after her departure (subject to what follows below in relation to expenses).

96 It was said that Mr Köstlin-Büürma "sabotaged" Miss Grabe's work. He did not do so. Nor did he withhold any information to which she was entitled.

97 In her written case, Miss Grabe appeared to make a complaint about work locations. The congregations in the West of England and Wales Region were

located in the places explained to her. Those locations did not change. (As we have noted, mention was made of a possible work opportunity in Birmingham in addition to the proposed 25% contract, but that was not of interest to Miss Grabe because, unfortunately, it clashed with pre-existing commitments of hers.)

98 It is not true that Miss Grabe was kept in the dark about proposed changes to her work. As we have recorded, she was made aware of them in September 2015, soon after it became apparent that the 50% contract would not be appropriate.

99 It is not true that Mr Köstlin-Büürma or anyone else on behalf of the Church told lies about Miss Grabe.

100 It is not that true that an "alternative contract" was "withdrawn". As we have recorded, the members of the Synod agreed with Mr Köstlin-Büürma's recommendation to call a halt on the negotiations which Miss Grabe was seeking to initiate on the terms of the proposed 25% contract. The reasons behind that decision will be considered in our secondary findings and conclusions below.

101 It seems that, some time shortly after her employment ended, Miss Grabe became aware that the position of Pastoral Assistant at the London East Region was vacant or would be becoming vacant, and made an application. That application was unsuccessful. She suspected that the reason was that Mr Köstlin-Büürma or someone else had spoken ill of her. He denied the suggestion and there is no evidence to substantiate it. We reject it. It seems to us much more likely that the true explanation is that offered by the Respondents, namely that Miss Grabe's application could not be considered because the vacancy was for an ordained pastor and she did not have full ordination.

Equal pay

102 The parties are agreed that Mr Radacz was paid at a higher rate than Miss Grabe.

103 Mr Radacz was employed in or about 2013 as a Pastoral Assistant in East London under terms agreed locally with the London East region parishes. This was irregular and ought not to have happened. Miss Grabe was not employed under local terms but through the Synod.

104 Mr Radacz was employed full-time; Miss Grabe was part-time.

105 It was a necessary condition of Mr Radacz's appointment that he be fully ordained. He was fully ordained. No such requirement applied to Miss Grabe and she did not hold full ordination.

106 Mr Radacz's duties included administering the sacraments; Miss Grabe's did not.

107 It was a requirement for the London East Pastoral Assistant to be resident in London. As a consequence Mr Radacz was entitled (under his terms) to a rent

subsidy and a London weighting allowance. That requirement did not apply to Miss Grabe. Accordingly, under Synod terms, she was not entitled to a rent subsidy or a London weighting allowance. (In the event, the Synod took the decision in September 2015 to pay her a rent subsidy nonetheless.)

Expenses

108 The claim in respect of expenses was neither withdrawn nor substantiated. Mr Köstlin-Büürma gave unchallenged evidence (statement, para 139) that Miss Grabe has failed to supply documentation in support of her last claim for expenses. We accept that evidence.

Miscellaneous facts

109 Miss Grabe admits to having retained property of the Respondents following her departure, namely hymn books and a satellite navigation device.

Secondary Findings and Conclusions

Rationale for primary findings

110 We have not attempted to resolve all of the many conflicts of evidence. We have been guided by the cardinal principle of proportionality. Our focus has been on what we understand to be the core issues. In addressing those conflicts which we have judged it necessary to resolve, we have had regard to context, inherent plausibility and the availability (or not) of contemporary documentary evidence. We have found the contemporary email correspondence particularly valuable.

111 Turning to the witnesses, we have found in the main that the evidence given by Mr Köstlin-Büürma and Mrs Cramer was of better quality than that of Miss Grabe. We think that they were able to bring a greater degree of objectivity and detachment to their evidence than she was. They were careful to be accurate. And for the most part their evidence tended to be supported by contemporary correspondence. It also seemed to us to accord better with the overall context and with common sense. Miss Grabe is plainly a person of considerable ability and she has undoubtedly invested immense time and effort in mastering the documentary material. Our concern, however, is that she is so utterly sure of the rightness of her cause and the wickedness of the Respondents' behaviour towards her that she tends to view all events and communications only through the prism of her own unshakeable convictions. The resulting lack of objectivity has on occasions impaired our ability to place confidence in her evidence.

The contract

112 Miss Grabe's case before us was that she was employed under a fixed-term contract of three years', or possibly six years', duration. We do not agree. The intention on both sides was that she would perform the Pastoral Assistant role for so long as Mr Köstlin-Büürma remained the Senior Pastor, which was expected to be a period of three years, but that expectation did not render this a fixed-term contract. It was, like any contract, in principle terminable on notice. In any event,

the understanding and agreement between the parties was that the terms binding between them would be those set out in due course in a written agreement. As we have noted, the draft of 13 August 2015 (which made provision for one month's notice on each side) was never signed by the Claimant. In the circumstances, it seems to us that the relationship between the parties from 1 July onwards was governed by an interim oral contract pending completion of a written agreement. Whatever the precise terms of the oral contract, we are satisfied that there was no meeting of minds that she was to be employed for a fixed term.

113 As we understood her, Miss Grabe also persisted in her contention that the contract commenced in May 2015. Again, we disagree. It is entirely clear that the contract came into effect on 1 July 2015. It was agreed that, prior to that date, she would visit congregations and participate in services over four weekends and that, after the commencement of the employment, she would be compensated for the time spent in the form of additional annual leave.

Wrongful dismissal/breach of contract

114 On any view, the complaint of wrongful dismissal is unsustainable. Miss Grabe's contract was ended on 31 October 2015, much more than one month after she was given notice. Even if, in her favour, we treat her implied notice entitlement under the oral contract as one month (corresponding with the draft of 13 August), the dismissal was not wrongful.[3] There is no arguable basis for implying a notice entitlement of more than one month.

115 The further pleaded complaints of breach of contract necessarily fail. They largely repeat her allegations of detrimental treatment (to which we will shortly come) but such complaints cannot be maintained as allegations of breach of contract. In any event, for reasons which will be explained, they fail on the facts. Moreover, even if they did not, they could not attract any remedy open to the Tribunal, which has no power to award damages for personal injury or injury to feelings, or a declaration. In circumstances where the contract has been lawfully terminated by notice, Miss Grabe cannot point to any financial loss attributable to any alleged breach of contract.

The dismissal - statutory claims

116 In our judgment, the explanation for the termination of the 50% contract offered on behalf of the Respondents is true. There was a doubt before the meetings of 10 and 17 September 2015 as to whether the contract could be sustained. After those meetings it was plain that it could not. Miss Grabe's contention that the circumstances said to justify termination of the contract were convenient inventions does not withstand scrutiny of the contemporary documents. It is also in itself enormously implausible.

117 We are satisfied to a high standard that the dismissal was not materially influenced to any extent by unlawful considerations. It was nothing to do with Miss Grabe's gender or the fact that she had raised questions about equality of

[3] It might be argued that, since the draft contract was never executed, her right was limited to one week under the Employment Rights Act 1996, s86.

treatment. There is simply no background material on which to attempt to construct a theory of sex discrimination. The fact that, in July, she had questioned certain proposed terms of her employment had not resulted in any conflict and there is no basis for supposing that it had caused Mr Köstlin-Büürma (or anyone else) to resent or mistrust her. We leave to one side the cogent arguments on behalf of the Respondents that the alleged protected acts and/or protected disclosures were outside the relevant statutory protections because it would not be proportionate to analyse them one by one in circumstances where we are quite clear that they are simply irrelevant, having figured not at all in the decision to end the contract. This disposes of the dismissal-based victimisation and automatically-unfair dismissal claims.

118 The reasoning above applies equally to the complaint of disability discrimination, however formulated. But here any complaint falls at an even earlier stage. The question whether Miss Grabe's disability was a material influence upon the dismissal cannot arise in circumstances where the fact of the disability was entirely unknown to the Respondents and it cannot be said that they ought reasonably to have known of it. Absence of knowledge is fatal to the direct discrimination claim under the 2010 Act, s13 because one cannot do something 'because of' a fact of which one is unaware. As for discrimination arising from disability, we are satisfied that there was nothing whatsoever to put the Respondents on enquiry as to whether Miss Grabe had any relevant medical condition, let alone one which constituted, or might constitute, a disability. Accordingly, they have established, under s15(2), that they had no constructive knowledge of the disability and the claim under that section necessarily fails. The same goes any complaint of failure to make reasonable adjustments (see sch8, para 20(1)(b)).

Detriments

119 As a result of our primary findings, there is very little left of the detriment claims. Most of the matters relied on as detriments either did not happen or, properly understood, were incapable of constituting detriments. We focus our attention here on the few arguable matters that survive.

120 The disagreement over summer holiday dates has been recorded. There was no detriment to Miss Grabe in Mr Köstlin-Büürma refusing at the eleventh hour to permit another change to her arrangements. He simply made a reasonable managerial decision.

121 We have found that on rare occasions Mr Köstlin-Büürma wrote to Miss Grabe in a somewhat abrupt style. This happened particularly in the exchanges about summer holiday dates and arrangements to meet immediately following the summer break. In giving mild expression to his feelings of irritation or frustration over what he felt was her uncooperative behaviour, he came nowhere close to subjecting her to an actionable detriment capable of supporting a claim for discrimination and entitling her to a legal remedy.

122 Likewise, in offering feedback on her performance when officiating or participating in church services, Mr Köstlin-Büürma subjected Miss Grabe to no

detriment whatever. His remarks were constructive and supportive. In so far as they included gentle criticism and suggestions for improvement, they were unobjectionable. The pleaded reference to "foul-language" feedback[4] is an allusion to an alleged comment by Mr Köstlin-Büürma on a doctrinal matter which Miss Grabe told us she found offensive. It was not directed at her. The point was raised as an instance of direct sex discrimination but the comparison with a "male colleague", presumably Mr Radacz, is obviously unsustainable. He was not Mr Köstlin-Büürma's Pastoral Assistant.

123 If Miss Grabe's complaint of "abuse of power" was intended as a wider allegation, we find for the avoidance of doubt that there was no abuse of power by Mr Köstlin-Büürma or anyone else.

124 The decision to abandon the proposal to substitute a 25% contract could be seen as part of the process of dismissal, but we prefer to analyse it as a free-standing detriment. Nothing turns on the distinction. In our judgment it is plain and obvious that Mr Köstlin-Büürma, having read Miss Grabe's long email of 22 September 2015 with its copious references to her understanding of the law, revival of points (to do with the 50% contract) already debated and apparently abandoned, and list of impossible conditions proposed to be attached to any new 25% contract, rapidly concluded that he could no longer consider working with Miss Grabe. He had a busy ministry to manage and the prospect of attempting to do so alongside a Pastoral Assistant apparently bent on conflict and determined to hold out for fresh terms which were entirely unreasonable, was intolerable. He understood, rightly, that it was open to the Church to disengage from her quickly and at little cost. His Synod colleagues shared his view. It is no surprise to us that they read Miss Grabe's correspondence with consternation and saw an immediate parting of the ways as the only answer. We are satisfied that the fact that she had raised issues about the terms of the 50% contract (including raising a comparison between the Church's treatment of her on the one hand and a male full-time Pastoral Assistant on the other) played no material part in the Synod's decision or in Mr Köstlin-Büürma's instigation of it. The tenor of her email was not to argue afresh for parity with Mr Radacz but rather to pray the comparison in aid as part of a general attack on the Church for failing (as she saw it) to adhere to its legal obligations. That attack was relied upon as a means of applying pressure with a view to persuading the Church to attach to the 25% appointment the remarkable conditions which she proposed. The key points for the Synod were that those conditions could not be entertained and that, in any event, any attempt to prolong the working relationship between Miss Grabe and Mr Köstlin-Büürma would be fraught with danger.

125 It is true that Miss Grabe did not received the promised mobile phone. If that was a detriment, it was nothing to do with any personal characteristic, protected act or protected disclosure. As we have noted, she was treated the same as other Pastoral Assistants in that regard.

126 Our primary findings also dispose of any detriment claim based on delay in payment of remuneration. Unfortunately, Miss Grabe overlooked advice given to

[4] Grounds of claim, para 4.5.1(b)

her more than once about the need to deliver relevant documents to the Synod office. It was this which resulted in the delay.

127 Stepping back and reviewing the entire picture, we find no basis for any other complaint of detrimental treatment. We have no doubt that Miss Grabe feels aggrieved, but we cannot accept that those sincere feelings are justified.

128 In summary, to the extent that any detrimental treatment is established, we are satisfied that it was not unlawful on any of the grounds advanced by Miss Grabe.

Equal pay

129 As we have noted, Miss Grabe was paid at a lower rate than Mr Radacz. In the first place, it seems to us that the two were not employed in 'like work', largely because he was required to be fully ordained and his duties included administering the sacraments of baptism and the Eucharist. We are not in a position to address the separate question whether they were employed in work of 'equal value'.

130 In this case, however, the threshold questions (of 'like work' and 'work of equal value') do not need to be determined because we are satisfied that in any event the Respondents make out a 'material factor' defence under the 2010 Act, s69. The defence rests on three matters. First, in error, Mr Radacz's terms were agreed and authorised by the London East congregations, rather than by the Synod. Second, it was a requirement of the London East appointment that the incumbent be a fully ordained pastor, whereas that requirement did not apply in Miss Grabe's case. Third, the Pastoral Assistant in East London was required to live in London and it was this requirement which attracted the London supplement paid to Mr Radacz. For obvious reasons there was no such requirement in Miss Grabe's case. These factors are genuine, explain the difference in pay and are not in themselves discriminatory.

131 It follows that the equal pay claim fails.

Part-time worker discrimination

132 We are uncertain whether any claim under the 2000 Regulations was intended. For the avoidance of doubt, we find that the difference in the pay rates of Miss Grabe and Mr Radacz had nothing to do with the hours they worked. Nor was the dismissal or any detriment that may be established anything to do with the fact that she worked part-time and he full-time. There is no possible reason to infer any such link. In the circumstances, the question whether Mr Radacz was a 'comparable full-time worker' under the 2000 Regulations, reg 5 does not need to be addressed.

Expenses

133 Miss Grabe has adduced no evidence in support of her pleaded claim for reimbursement of expenses. Accordingly, since the burden is upon her, we must hold that that claim is not made out.

Outcome and Postscript

134. For the reasons stated, all claims fail on their merits and the entire proceedings, sincere as they are, must be dismissed.

135. Having reached this conclusion, we further hold that all claims brought outside the applicable primary time limit also fail on jurisdictional grounds. There was no unlawful treatment, and accordingly the provisions which treat acts which form a succession of connected events as happening on the date of the last of them[5] are inapplicable. In addition, Miss Grabe has not put before us any good reason for extending time and it would in any event be idle to do so in circumstances where we have found that no claim has any merit.

EMPLOYMENT JUDGE – Snelson
01st Oct 2019

Judgment sent to the parties on 01/10/2019

For Office of the Tribunals

[5] Such as the 2010 Act, s123(3)(a) and the 1996 Act, s48(3)(a) and (4)