



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss S Asghar

**Respondent:** Talentyard Limited

**Heard at:** London Central

**On:** 14, 15, 16 and 17 October 2019

**Before:** Employment Judge A James  
Mr P Secher  
Ms L Jones

## Representation

**For the Claimant:** In person

**For the Respondent:** Mr N Caiden, counsel

## JUDGMENT

- (1) It is the unanimous decision of the tribunal that the claims for disability discrimination (S.15 and S.39 Equality Act 2010) are not well founded and are dismissed.

## REASONS

### The claims

1. The claimant complains of disability discrimination contrary to S.15 of the Equality Act 2010. She has disability, which by the time of the hearing had been admitted by the respondent, namely Borderline Personality Disorder and Bipolar Affective Disorder. The issues were identified at a case management preliminary hearing on 4 January 2019 as follows:

1.1 Issue 1: did the claimant suffer the following unfavourable treatment/detriment?

- 1.1.1 On or around 22 March 2018, Susie Hughes not arranging an interview between the claimant and the respondent's client, who had a vacancy for a part-time Patient Care Coordinator role (PCCR) as initially discussed on 21 March 2018.
  - 1.1.2 On or around 22 March 2018, Susie Hughes not sending the claimant's CV to the client for consideration, in relation to the PCCR.
  - 1.1.3 On 5 April 2018, Marion Barry by email telling the claimant that she was not suitable for the PCCR vacancy due to her preference to work part-time.
  - 1.1.4 On 25 April 2018 Marion Barry by email stating the claimant was not suitable for the PCCR, with no further explanation why.
- 1.2 Issue 2: in relation to any of the four alleged acts of unfavourable treatment/detriments, were they because of something arising in consequence of her disability, namely:
- 1.2.1 Previous absences from work due to ill health
  - 1.2.2 Requirement to have treatment/therapy (meaning that she could not work full-time)
- 1.3 Issue 3: if the claimant was treated unfavourably by the respondent because of something arising in consequence of her disability, can the respondent show that such treatment was a proportionate means of achieving a legitimate aim? The respondent alleges that the relevant legitimate aim is ensuring candidates fulfil the specific requirements of its clients (which in the present case included a good telephone manner and a preference for experience in the private medical sector)?
- 1.4 Issue 4: in any event, in relation to the alleged unfavourable treatment, can the respondent show that at the relevant time it did not know, and could not be reasonably expected to know, the claimant suffered from the disability?

### **The hearing - preliminary issues/applications/reasonable adjustments**

- 2 The hearing took place over 4 days. Evidence and submissions on liability were dealt with on the first three days. It was arranged that on the fourth day, the tribunal would make its decision. The decision was reserved. Dates were taken from the parties for January February and March 2020, in case it was necessary to list a remedy hearing, in order to avoid any further delays in the case being resolved, were the claimant to be successful. Due to the tribunal's decision, it is not necessary to list a remedy hearing.
- 3 Throughout the hearing, several applications were made upon which the tribunal was asked to rule. First, on day one, we were asked to admit two documents put forward by the respondent, namely an email chain from the client of the respondent company, and the attached job description. Mr Caiden apologised for their late disclosure on his client's behalf. We agreed to admit those documents,

on the basis that they were relevant, they were short, and the claimant would not be disadvantaged by their inclusion at this late stage because she would be able to consider them. It is noted that the claimant, as well as the respondent, referred to the job description and accompanying email during cross-examination of the respective parties' witnesses and they are referred to below. So indeed they are relevant.

- 4 Second, the claimant asked us to listen to the telephone calls that she had recorded, between her and the respondent's witnesses. We agreed to do so. There was no objection from the respondent to that application.
- 5 The claimant had asked at the preliminary hearing on 4 January to be allowed to take frequent breaks, as necessary (adjustment 1). In the end, it was only necessary for her to ask for one extra break on the third day, which the panel readily granted.
- 6 On day one we were asked to make a further reasonable adjustment (the third application on which we were asked to rule), namely, to allow the claimant to record the proceedings as a reasonable adjustment for her dyslexia (adjustment 2). We agreed to allow that, subject to strict conditions. It is the subject of a separate case management order which was handed to the parties on day two, in writing, the verbal order having been given on day one.
- 7 Fourth, on the conclusion of the claimant's cross-examination on day two, we gave the claimant the opportunity for "re-examination". She said that she was not sure what to do and wanted to listen to the recording of her cross-examination, so that she could decide what she needed to say, if anything (adjustment 3). Although this was far from the usual practice in tribunals, there was no objection from Mr Caiden to the claimant being given the opportunity for re-examination on day three, following the conclusion of the respondent's witness evidence. We agreed to allow the claimant the opportunity to do so, limited to 15 minutes. We suggested that the claimant observe whether Mr Caiden re-examined the two witnesses called by the respondent, and if so, what questions were asked. In the event, there was no re-examination by Mr Caiden of those witnesses.
- 8 Fifth, also on day two, the claimant applied to exclude one of the witnesses, Ms Hughes from the tribunal room, whilst the other witness Ms Barry was giving her evidence. Rule 43 gives the power to exclude witnesses if the interests of justice require it. Having considered that application, we refused it, on the basis that the interests of justice did not require the exclusion of witnesses. Further, Mr Caiden did not have an instructing solicitor present at the hearing and required the other witness to be present in case he needed to take instructions. We did however reiterate that all those observing needed to be silent and respectful whilst the case was being heard.
- 9 Sixth, at the beginning of day three, there was an application by the claimant to admit two further documents. These were a letter to her from O2 her telephone provider dated 4 February 2019 and an extract from Companies House about Talentyard Limited. The respondent took a pragmatic view to the inclusion of the documents, having taken instructions on them. Whilst we were concerned about

the late disclosure of those documents, we also decided to take a pragmatic view and allow them to be admitted.

- 10 Seventh, on day three, the claimant made an application to, in effect, be allowed to cross-examine the respondent's witnesses, for as long as she wanted. We were not willing to allow open-ended cross-examination, given the importance of ensuring that claims are dealt with without undue delay and in a proportionate manner, in terms of both time and costs. We considered that the time estimate of four days had been reasonably allocated to the hearing at the case management PH. Indeed, that seemed at the outset to be quite a generous time estimate although the evidence, for reasons which we will come onto in due course, did take much longer to hear than we originally anticipated. We agreed to allow the claimant a further 30 minutes to cross-examine Ms Barry, and eventually, given the delays in dealing with the various applications, until 3 pm on the third day to cross examine Ms Hughes (adjustment 4).
- 11 Eighth, at the conclusion of the cross-examination of the respondent's witnesses on day three, the claimant asked to be given until day four to carry out re-examination in relation to her own evidence. That application was refused, on the basis that submissions could not reasonably begin until the claimant's evidence had been concluded; the panel did not consider that there was anything in the claimant's evidence, that she could usefully re-examine herself on; and there had been no re-examination by Mr Caiden of the respondent's witnesses, so there was no inequality in that respect.
- 12 Ninth, as a further reasonable adjustment, the judge helped the claimant by re-phrasing some of the questions put to her by the respondent's counsel to her; and some of the questions she wanted to ask in cross examination of the respondent's witnesses (adjustment 5).
- 13 Tenth, also on day three, the claimant asked to be allowed to ask further questions of the respondent's witnesses on day four, having considered overnight whether she had any further questions. The application was refused for the same reasons set out in paragraph 10 above.
- 14 Eleventh, and as a further reasonable adjustment, we agreed to allow the claimant extra time, overnight between the third and fourth day, to prepare her submissions (adjustment 6). Mr Caiden had prepared written submissions and spoken to them for approximately 15 minutes, towards the end of the third day of the hearing. The claimant was allowed 30 minutes on the fourth day of the hearing to present her submissions and she duly presented written and oral submissions at the beginning of the fourth day.
- 15 The tribunal then met in private in order to make its decision.

## **The evidence**

The tribunal heard evidence from the claimant; and for the respondent, from Ms Marion Barry, Director, and Ms Susannah (Susie) Hughes, Head of Talent. We also

had the benefit of listening to the recordings of the telephone calls between the claimant and Ms Hughes/Ms Barry dated 22 March, 26 March, and 28 March 2018. There was an agreed trial bundle of 80 pages. References to page numbers below are to the corresponding pages in the agreed bundle.

## Findings of fact

### *Initial background*

- 16 Talentyard is a boutique recruitment agency specialising in temporary and permanent roles for personal assistants and secretaries in the London area.
- 17 The claimant applied for the role of Patient Care Coordinator (PCCR) through the respondent recruitment agency on or about 21 March 2018. Her claims arise out of that application.
- 18 By the time of the hearing, the respondent had conceded that the claimant had a disability, as set out in paragraph 1 above, as defined by the Equality Act.

### *Respondent's business - how it works*

- 19 Talentyard receives requests from its clients about specific vacancies. Their staff generally meet with the client in order to gather as much information as possible about the needs of their business and specific requirements of the role. The essential and desirable criteria are explained. The respondent only sends CVs to its clients for those candidates they deem to be most suitable for the role. The role is then advertised by the respondent. When potential candidates apply to the respondent, initial telephone interviews are conducted, followed by, if necessary and if time allows, a face-to-face meeting. It is the client's decision whether to invite a candidate for interview. Ms Hughes would not in those circumstances have guaranteed that she would arrange an interview for the claimant with the client for the PCCR. That is not something she has the power to arrange.

### *21 March 2018 telephone call*

- 20 On 21 March 2018 a telephone call took place between the claimant and Ms Hughes about the PCCR. What happened in this conversation is central to the claimant's case. Her claim largely succeeds or fails on our findings about it. It is Miss Asghar's statement says that on 21 March she voluntarily mentioned the gap in her CV from June 2017 to May 2018. She says that Ms Hughes asked her further about that and it was then that she told Ms Hughes she was bipolar, had been in therapy and had taken time off sick. We reject her evidence about that call because of the following.
- 21 First, we note that in the claimant's email of 9 April she says instead that Ms Hughes "pried into the gap in her employment", rather than her volunteering it. She also states that she told Ms Hughes that she "had family issues and had been unwell and after treatment I am keen to get back into work" – see page 58. This is inconsistent with her witness statement.

22 Second, during cross examination, Ms Hughes stated that she was very sure that she would recall if Miss Asghar had told her that she had been in therapy. She did not think that she would have asked about Miss Asghar's mental health. She did not believe the claimant had told her she was bipolar. She told us: "I am pretty sure I would have remembered if she had".

23 Third, bearing in mind the conflicting evidence above, and our general findings in relation to the general reliability of witnesses below, we reject the claimant's evidence that she told Ms Hughes on 21 March that she was bipolar, that she had been in therapy and/or that she had taken time off work as a result. Fourth, we are further reinforced in that view by the failure of the claimant to mention her disability of bipolar in any of the subsequent telephone calls or emails, which we refer to below. Had she mentioned those matters on 21 March as she claims, we find that she would have mentioned them in the subsequent calls and emails. The nearest she gets to asserting that is in her email to Ms Barry of 25 April 2018 when she asserts: "I do believe you have discriminated me disability" (note, actual words used).

*22 and 26 March 2018 telephone calls*

24 On 22 March 2018 there was another telephone call between the claimant and Ms Hughes. During that call, Ms Hughes told the claimant that she would send her CV across.

25 On 26 March 2018 there was a further telephone conversation between the claimant and Ms Hughes. Ms Hughes told the claimant during that conversation – see page 43 – that she had sent her CV to the client about the PCCR. That was not in fact true, as Ms Hughes readily admitted in her witness statement and in live evidence.

*Interview process for PCCR*

26 The actual interview process for the PCCR was unusual. Talentyard's client was extremely selective and told Ms Hughes that they were conducting "final stage interviews". After they had done so, they still could not decide who to appoint. So Talentyard's client decided to conduct a further round of "final interviews". The process therefore went on much longer than it might normally have done. Further, Talentyard's client was extremely slow at getting back to Ms Hughes about the PCCR. This also made the process difficult to manage. When Ms Hughes tried to explain this to the claimant, the claimant did not believe her and seemed unable to accept that an employer would act in this way. We did believe Ms Hughes.

*28 March 2018 telephone calls*

27 On 28 March 2018 a further telephone call took place with Ms Hughes in which Ms Hughes told the claimant that she would not have said to the claimant that she had sent her CV. That was not correct. She did tell the claimant she had sent the client her CV – see paragraph 25 above and page 47. She then said - page 48 – that she did not send the claimant's CV over, but she did have a

conversation with her client about it. We accept that such a conversation took place.

- 28 On 28 March 2018 the claimant also spoke with Ms Barry by phone. During that call, the claimant was told by Ms Barry that her telephone manner was great - page 53. Ms Barry also told the claimant that Talentyard had lost the role. That was not in fact true. This was readily accepted by Ms Barry in her witness statement (paragraph 17). She made the same concession during cross examination. The transcript shows (page 54) that Miss Asghar stated: "the fact that I wasn't given equal treatment is questionable". Miss Asghar also says (page 56): "if [clients] had the skillset I would not discriminate them". No further details were given of either the alleged unequal treatment or the reasons for any alleged discrimination. Nor did the claimant mention her disability.
- 29 We listened to the telephone calls. We find, having done so, that the tone adopted by the claimant during those calls was moderate. What she said however was not. In the call with Ms Hughes on 28 March, the claimant was very challenging. She questioned Ms Hughes' professional competence on several occasions. She would not accept Ms Hughes statement to the effect that the client did not want Ms Hughes to send any more CVs at that time.
- 30 In her conversation with Ms Barry, the claimant went into a long and repetitive explanation about, amongst other things, how competent she was and how good she had been in her other jobs. She expounded at length on how knowledgeable she was about the recruitment industry and how it worked. We found her comments somewhat confused, rambling and inappropriate. Ms Barry told us in cross examination that she had felt it odd that the claimant kept repeating the same arguments and that she found the claimant a little scary at times. She was so mystified about how the call proceeded that she discussed it afterwards with her husband, since she thought it might be a scam. We can understand her concerns about the nature of the call.

#### *Subsequent emails*

- 31 Following the call, Ms Barry emailed the claimant on the same day, 28 March, thanking her for her time and providing her contact details - page 60.
- 32 The claimant did not reply to Ms Barry until 5 April. She mentions in the first paragraph of that email that she had undergone "treatment for ill health". In the second paragraph from the bottom, she accused Ms Hughes of "discriminating candidates based on her own opinion". She also stated, towards the bottom of page 59: "I would like to put in a complaint to your company as I believe I was discriminated for having an illness for which I have had treatment. I was not treated fairly and equally to other clients." Again, the claimant did not provide any details about the reason for her ill health, the treatment she had undergone, or the reason for any alleged discrimination.
- 33 Ms Barry replied to the claimant's email on 5 April 2018. She stated: "I am sorry you feel you have been discriminated against but neither Susie or myself were aware you had been ill until this email you just sent". She also stated: "The role is

still available with the client but we don't think you are a suitable match for the role unfortunately. Additionally, they are looking for candidates who would eventually work full-time and you confirmed over the phone that you were only looking for part-time up to 20 hours".

34 The claimant sent a further email to Ms Barry on 9 April 2018, pointing out that she had been told that Talentyard had lost the PCCR but it was still on their website. She accused Ms Hughes of having "prided into her absence of work history" (on 21 March). She continued, "after her prying of why I had a break into my employment, I told her I had family issues and had been unwell, and after having treatment I'm eager to get back into work as I'm better now. It is on hearing this she sounded less interested".

35 A further email was sent by the claimant to Ms Barry on 25 April 2018. She stated in that email: "I do believe you have discriminated me disability but then denied even having he conversation, please be aware, I do have these calls recorded" (note, actual words used).

36 Ms Barry sent an email in reply to the claimant on 25 April 2018. In a brief reply, Ms Barry stated: "Neither myself nor my colleague Susie were aware of any disability, nor any ground to discriminate against you on. Susie originally considered putting you forward for the role but upon reflection we do not think you are suitable for it". We accept Ms Barry's explanation that the purpose of this email was to conclude the matter. They said as little as possible because they were concerned that the more they said (for example as to why they did not consider that the claimant was suitable), the more the claimant would argue about. The reference to the calls being recorded made them think it was some sort of 'scam'.

#### *Claimant's suitability for the PCCR*

37 We make the following findings as to why the respondent did not think that the claimant was suitable for the role. First, the more Ms Hughes spoke with the claimant, the more Ms Hughes became concerned about the claimant's suitability for the role. Second, her client had explained that they needed someone with an excellent telephone manner, who was diplomatic in nature. During the 26 March and 28 March calls with the claimant, Ms Hughes found her conduct on the telephone call to be antagonistic, abrupt and undiplomatic.

38 Ms Hughes told the tribunal that her client had told her during a telephone call about the PCCR that they particularly wanted someone with private medical experience. The advert for the role is at page 40 which mentions that "a background in private health care would be beneficial but is not essential". The claimant does not have relevant experience within the private medical sector. Ms Hughes accepted that the claimant's lack of experience in the private medical sphere was not mentioned by her during the calls.

39 Ms Hughes discussed with the client the candidates that Talentyard had available and the client considered that the other candidates they already had arranged interviews for had stronger experience. In addition, in answer to a question from



the tribunal, Ms Hughes confirmed that the client had always said, right from the start, that although the role was advertised as part-time, they hoped to expand and if so the client expected the role to become full-time. The ability to eventually work full-time was not an essential requirement but was preferred. We accept Ms Hughes evidence on these points.

40 During cross examination on the afternoon of the third day, Ms Hughes told the tribunal that the claimant was not suitable for the role due to a combination of three reasons. First, the client ideally wanted somebody with private medical experience. Second, based on her own experience of the claimant, she doubted the claimant's telephone manner and her ability to act diplomatically. Third, she referred to the errors in the email sent by the claimant on 5 April 2018 which is at pages 59 to 60 of the bundle. This contained a number of grammatical and typographical errors, including the claimant stating: "she did changed in her delivery of words"; "said she had sen it"; "this went on for will Wednesday the following week"; and there were no capital letters in relation to the words "you then told me"; and "this email" (our under-lining). The job description on page 72 states that the requirements of the role include "good data entry and typing skills"; "experience managing challenging customer situations..."; and a "well-developed, professional telephone manner and etiquette". Ms Hughes concluded that the claimant did not meet those requirements.

#### *General issues of reliability*

41 We also considered more generally the way that the witnesses came across whilst giving their evidence. We found the claimant's evidence during cross examination to be extremely rambling and repetitive. Whether that could be due to the disabilities relied on in her claim and her dyslexia we were not willing to speculate on, in the absence of any medical evidence. We did not want to make any stereotypical assumptions about how those disabilities might affect her.

42 In answer to a question from the tribunal panel, the claimant told us that she was not aware that she had recorded the calls on 22, 26 and 28 March 2018. She told us that she had put an app on her phone which recorded calls and had then "forgotten about it". She says that she only discovered the recordings just before she sent the email of 25 April saying that she had the calls recorded. We do not accept her account. Having listened to the telephone calls, we take the view that her tone in those calls was relatively calm, moderate and controlled. That was in stark contrast to the way she conducted herself during these proceedings, during which on frequent occasions we found the claimant to be excitable and emotional, tended to raise her voice, and frequently interrupted others when they were speaking. The difference in the calls, we find, was that the claimant knew she was recording herself and wanted to create a better impression. Even then, she was combative, convoluted and repetitive.

43 The claimant also told us that she must have changed phones between 21 and 22 March, and that is why there isn't a recording of the 21 March phone call with Ms Hughes. We note the contents of the letter from O<sub>2</sub>, her phone provider, dated 4 February 2019 (page 73 to 74), which confirms that she changed her phone several times. It does not however confirm when and is of little evidential value.

The claimant asks us to find that she must have changed her phone between 21 and 22 March. We do not accept that is what happened. The claimant's evidence was not at all convincing on that point.

- 44 By contrast, where Ms Hughes and Ms Barry had asserted matters in telephone calls or emails that were not true, such as sending the claimant's CV or that the PCCR had been lost, they readily admitted to that in their evidence in chief and cross examination. They did not attempt to hide from the fact that they had misled the claimant. They admitted that it was a mistake to have done so.
- 45 Further, when the claimant suggested to Ms Hughes that it was 'convenient' that she could not recall what was said on 21 March, Ms Hughes stated that in fact it was most inconvenient that she could not readily recall what was said. She did not hide from that fact or pretend otherwise. Ms Hughes was also asked about note keeping. Her practice was to write on a pad, or odd bits of paper, and then discard the notes shortly thereafter. That practice was perhaps unwise, something Ms Hughes did not shrink from. As a result of this case, her practice now is to make notes on screen when speaking to candidates.

## The Law

46 Section 15 Equality Act 2010 reads:

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

47 In a disability discrimination claim under section 15, the case law demonstrates that an employment tribunal must make findings in relation to the following:

48.1 The contravention of section 39 of the Equality Act relied on – in this case section 39(2)(d).

48.1 The contravention relied on by the employee must amount to unfavourable treatment.

48.2 It must be "something arising in consequence of disability".

48.3 The unfavourable treatment must be because of something arising in consequence of disability.

48.4 If unfavourable treatment is shown to arise for that reason, the tribunal must consider the issue of justification, that is whether the employer can show the treatment was "a proportionate means of achieving a legitimate aim".

48.5 In addition, the employee must show that the employer knew, or could reasonably have been expected to know, that the employee or applicant had the disability relied on.

- 48 See the decisions of the EAT in *T-Systems Ltd v Lewis* UKEAT0042/15 and *Pnaiser v NHS England* [2016] IRLR 170 (EAT).
- 49 Mr Caiden referred us to a number of cases in relation to objective justification, but for the reasons set out below, we did not need to consider those in any great detail since the answer to that question was obvious, where it arose at all.
- 50 Under s136 of the Equality Act, if there are facts from which a tribunal could decide, in the absence of any other explanation, that a person has contravened the provision concerned, the tribunal must hold that the contravention occurred, unless A can show that he or she did not contravene the provision.
- 51 Guidelines on the burden of proof were set out by the Court of Appeal in *Igen Ltd v Wong* [2005] EWCA Civ 142; [2005] IRLR 258. The tribunal can consider the respondents' explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof. (*Laing v Manchester City Council and others* [2006] IRLR 748; *Madarassy v Nomura International plc* [2007] IRLR 246, CA.)
- 52 The Court of Appeal in *Madarassy*, a case brought under the then Sex Discrimination Act 1975, states:

'The burden of proof does not shift to the employer simply on the claimant establishing a difference in status (eg sex) and a difference in treatment. Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the balance of probabilities, the respondent had committed an unlawful act of discrimination.'

## Conclusions

- 53 We now apply the law to the facts to determine the issues. If we do not repeat every single fact, it is in the interests of keeping these reasons to a manageable length.
- 54 In reaching our conclusions, we have had in mind the burden of proof provisions. This is not a case where those provisions have been of any real assistance to the decision-making process since we were able to make clear factual findings in relation to the treatment alleged by the claimant and the reasons why Talentyard acted as it did.
- 55 The sub-headings below refer to the four unfavourable acts/detriments identified at the PH on 4 January 2019 (see paragraph 1 above).
- 56 We start with the issue of knowledge in each case. This is an essential ingredient for a section 15 claim, since if a respondent did not know and could not reasonably have been expected to know that a claimant had the disability alleged, there can be no discrimination contrary to section 15.

*Not arranging interview for claimant/not sending claimant's CV (1.1.1, 1.1.2)*

- 57 In relation to the first and second alleged detriments i.e. the alleged failure to send the claimant for an interview, and not sending the claimant's CV to the client, we conclude that at this time, the respondent and in particular, Ms Hughes, did not have any knowledge of the claimant's disability (or for that matter, of any time off for ill-health, or any requirement of the claimant for time off for treatment including therapy which meant she could not work full-time). The first two claims therefore fail, based on that lack of knowledge.
- 58 In any event, even if the claimant could demonstrate that Ms Hughes had knowledge of her disability at that time, which based on our factual findings, was not the case, the claimant would still not have succeeded. This is because the reason that the claimant did not have an interview arranged was because the client for the PCCR had told the respondent it was in final interviews and did not require any further candidates to be put forward at that stage. As for not sending her CV, the reason for that was because the client had told the respondent not to send any further CVs. That was why the claimant's CV was not sent. Neither reason had anything to do with the claimant taking any time off for ill health or her needing time off for therapy and not being able to work full-time as a result. In any event, Ms Hughes was not aware of either of those at that time. Hence those factors could not have had any influence on Ms Hughes' actions (or inaction) at that point.
- 59 We can understand that the claimant was upset by the fact that she had been told by Ms Hughes that her CV had been submitted but was then told on 28 March that it hadn't. That was not sufficient to reverse the burden of proof however.

*Contents of email of 5 April 2018 – mention of part-time working (1.1.3)*

- 60 In relation to the third alleged detriment, namely the contents of the email of 5 April, by this stage the claimant had mentioned that she had been discriminated against and subjected to unequal treatment, and that she believed that she was being discriminated against as a result of an illness she had, for which she'd had treatment. However, she did not disclose to Ms Hughes or Ms Barry any disability to which such illness/medical treatment or the alleged discrimination/unequal treatment was allegedly related. This claim must again therefore fail, because the respondent did not at this stage have knowledge of the disability, nor could it reasonably have been expected to know that the alleged illness and treatment which the claimant mentioned in her 5 April 2018 email resulted from that disability. Further, the mere mention of an illness did not put the respondent on notice that the claimant had a disability.
- 61 Whilst we do not strictly speaking need to do so because of the conclusion on knowledge, we further conclude that even if the respondent did have knowledge of the claimant's disability by this stage, the alleged unfavourable treatment is not made out on the facts. This is because the claimant was told that she was not a suitable match for the role. The email goes on to say that additionally, the respondent was looking for candidates who would eventually work full-time. The

claimant's inability to work full-time was because of something arising from her disability, i.e. her need to attend therapy sessions at least one day a week. But the alleged inability to work full-time was not the reason at this stage for her being said to be unsuitable. It was simply a further reason mentioned in the email in addition to her general unsuitability for the role. The reasons why the respondent considered the claimant to be unsuitable are set out in paragraphs 37 to 40 above. None of those relate to the 'something arising' relied on by the claimant in her claim – see paragraphs 1.2.1 and 1.2.2 above. Regardless of her desire to work part-time, the respondent did not consider that the claimant was suitable for the role. We understand the respondent's reservations in that regard, given everything that had happened by then.

62 Even if we were wrong about the knowledge and the causation issue, the respondent relies on a justification defence. The legitimate aim being put forward is to fulfil the specific requirements of its client. We find that is a legitimate aim, and given the concerns by the respondent about the claimant's suitability for the role, we find that its conclusion that she was not able to meet the specific requirements of its client was entirely justified in the circumstances, and was therefore a proportionate means of achieving a legitimate aim.

*Contents of email of 25 April 2018 – no explanation as to why not suitable for PCCR (1.1.4)*

63 We turn to the final alleged detrimental act, namely the email of 25 April 2018 in which Ms Barry stated that the claimant was not suitable for the PCCR, with no further explanation why that was the case. In relation to knowledge, the respondent had been told, in the claimant's earlier email of the same date: "I do believe you have discriminated me disability but then denied even having he conversation" (actual words used). Again, there were no details given as to what the claimant's disability was. Again therefore, we conclude that the respondent did not have knowledge of the claimant's disability; nor could the respondent reasonably have been expected to know about her disability. It was the respondent's evidence that they did not know that the claimant suffered from the specific disability relied on in this claim until it had been submitted. We accept their evidence in that regard.

64 Again, whilst we do not strictly speaking need to do so, on the basis of the above conclusion, (and even if we considered that the contents of the email amounted to unfavourable treatment and/or a detriment), the claim would in any event have failed because the reason for a brief email being sent was to close the matter down, once and for all. Ms Barry was concerned not to put any further details into the email because of the fear that the more detail she included, the more the claimant would have come back to the respondent about. Those reasons, which we accept as being legitimate in the circumstances, were not because of the 'something arising from disability' relied on in the pleaded case (see 1.2.1 and 1.2.2 above, namely the disability-related absence or the need to attend therapy/treatment).

**Conclusion**

65 For the above reasons, we conclude that the claims are not well-founded and they are dismissed.

Employment Judge A James  
London Central Region

Dated 24 Oct 2019

Sent to the parties on:

25/10/2019

.....  
For the Tribunals Office

Notes

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

**Public access to employment tribunal decisions**

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