EMPLOYMENT TRIBUNALS

Claimant: Mrs T Collinson

Respondent: CG & SA Levett, t/a Hartley Coffee House & Farm Shop

Heard at: Ashford

On: 16th, 17th and 18th December 2019

Before: Employment Judge Pritchard
Mr D Clay
Mr G Anderson

Representation
Claimant: Mr M Foster, solicitor
Respondent: Mr R Cater, advocate

RESERVED JUDGMENT

It is the unanimous decision of the Tribunal that:

1 The Claimant's claim that she was unfairly dismissed is well-founded and accordingly succeeds.

2 The Respondent subjected the Claimant to a detriment on the ground that she had made public interest disclosures.

3 The Respondent discriminated against the Claimant by failing to make reasonable adjustments.

REASONS

1. The Claimant claims she was unfairly dismissed (both under "ordinary" principles and "automatically") and that she was subject to a detriment for having blown the whistle. The Claimant further claims that the Respondent discriminated against her by failing to make reasonable adjustments. The Respondent admits that the Claimant is, and was at relevant times, a disabled person, the Respondent resists the claims.

2. The Tribunal heard evidence from the Claimant on her own behalf and from the Respondent's witnesses: David Glazebrook (described as the Managing Director) and Sheenagh Levett (joint owner). The Tribunal was

provided with a bundle of documents to which the parties variously referred. At the conclusion of the hearing, the parties made oral submissions, Mr Foster also referring to his written skeleton argument.

Issues

3. The parties provided the Tribunal with an agreed list of issues. Following discussion at the commencement of the hearing the issues to be determined can be described as follows:

3.1. Can the Claimant show that she was subject to unjustified lengthy suspension and subject to further disciplinary action without enquiry? If so, can she show that those acts on the Respondent's part amounted to a repudiatory breach of her contract so as to entitle her to resign from her position?

3.2. Can the Claimant show that she resigned her position in consequence of the fundamental breach (if found) and that she did so within a reasonable time scale of the breach or last breach (or the last in a series of events cumulatively amounting to a fundamental breach)?

3.3. If constructively dismissed, was the Claimant unfairly dismissed?

3.3.1. In respect of the claim for "ordinary" unfair dismissal, the Respondent conceded that if the Tribunal found that the Claimant was unfairly dismissed, the dismissal would be unfair.

3.3.2. In respect of her claim for "automatic" unfair dismissal, has the Claimant adduced some evidence to show that the reason for the breach was because she had made protected disclosures? If so, can the Respondent show that reason was not the automatically unfair reason (Kuzel v Roche Products Ltd 2008 ICR 799, CA; Marshall v Game Retail Ltd EAT 0276/13).

3.4. Did the Claimant suffer the detriment of suspension and/or disciplinary action on the ground that she had made protected disclosures? This will require the Respondent to show the ground on which the act was done. The Respondent denies that some of the protected disclosures relied on by the Claimant were made but conceded that if the Tribunal found the disclosures were made, they would necessarily amount to protected disclosures.

3.5. Did a provision, criterion or practice of the Respondent's put the Claimant at a substantial disadvantage in relation to her suspension and disciplinary action in comparison to persons who are not disabled?

3.6. Did the Respondent know, or could reasonably be expected to know:

3.6.1. That the Claimant had a disability; and

3.6.2. That the Claimant was likely to be placed at the substantial disadvantage alleged?

3.7. If so, did the Respondent fail to take such steps as were reasonable to

avoid the disadvantage?

4. Although contained within the list of issues, the Claimant confirmed that she was not pursuing a claim of direct disability discrimination.

5. The question of remedy would be considered at a further hearing should the Claimant succeed in all or any of her claims.

Findings of fact

6. The Respondent operates a farm shop in Cranbrook employing approximately 44 members of staff. For some years the Respondent's business has consistently achieved a local authority hygiene rating of five stars.

7. The Claimant commenced employment with the Respondent on 6 October 2015 as Deli Manager. She worked a three day week alternating with a four day week. The Claimant holds a certificate in food hygiene level 2. She was fastidious about matters of food hygiene.

8. The Claimant suffers from agoraphobia, anxiety and depression. In the absence of any credible evidence to the contrary, the Tribunal accepts that when she was interviewed for the job she told the interviewing manager that she had a disability and suffered from panic attacks which might require her to run from the premises. The Tribunal also accepts that it was general knowledge that the Claimant would only go out with someone accompanying her, such as when she went shopping with her mother on Mondays. It was also common knowledge in the workplace that the Claimant would have her lunch sitting in her car and would sometimes feel the need to leave the workplace because of her condition.

9. The farm shop includes a butchery, a bakery, and a delicatessen. The Respondent also operates a tearoom/coffee shop on site.

10. Since about July 2017, meat from the butchery has been cooked in the bakery then passed to both the coffee shop for making sandwiches and to the delicatessen for sale as cooked meat. This practice applies particularly to unsold raw meat which is nearing the end of its shelf life in the butchery. Cooking such meat for resale is a safe and acceptable way in which shelf life can be extended.

11. On or about 10 July 2017, the Claimant informed Andrea Clark, senior manager, that a quantity of chicken had been left on open display, unrefrigerated for some hours. In the event, the chicken to be sold in the delicatessen was disposed of. Mr Glazebrook discussed the matter with the Claimant. The Tribunal heard conflicting evidence as to what was said at this meeting. Given that Mr Glazebrook promptly introduced a procedure for monitoring, checking and recording cooling times after the matter had been brought to his attention, the Tribunal prefers his evidence that he was not dismissive of the Claimant for having raised the issue and that his comment relating to his dislike of waste was made generally and not directed at the Claimant.

12. The Claimant complains that in mid-July 2017 she was instructed by Mr Glazebook that the life of poultry products should be extended to ten days

after it was cooked. The Tribunal prefers Mr Glazebrook's evidence that he would not give such an instruction and that chicken eaten after ten days could be a health risk. It is highly unlikely that Mr Glazebook would put the desire to avoid waste over and above food hygiene which could potentially have an impact on the Respondent's reputation and business.

13. In late July 2017, the Claimant brought to Mr Glazebrook's attention her belief that the cooling procedure he had introduced was not being followed. The Claimant told the Tribunal that she did not believe that Mr Glazebrook checked compliance with the butchery and bakery managers but in cross examination she conceded that she had no evidence that Mr Glazebrook did not do so. The Tribunal prefers Mr Glazebrook's evidence that he made the appropriate enquiries and was satisfied that the procedure was being followed.

14. The Tribunal heard conflicting evidence as to whether the Claimant then complained to Mr Glazebrook about raw meat being stored in the deli refrigerator together with cooked meat. The Claimant's evidence was confused in this regard. In her witness statement she states her belief that the raw meat was placed there to be cooked in the deli oven. However, upon cross examination the Claimant said that it would have been the butchery manager who placed the raw meat with the cooked meat for members of staff to take home, for which, she suggested, staff would not pay. Mr Glazebrook's evidence was also unclear in this regard: in his witness statement, Mr Glazebrook states that the Claimant simply did not raise the matter with him; in cross examination he said that he spoke to the butchery manager about the issue. Given the Claimant's fastidiousness about food hygiene, it is more likely than not that the Claimant raised the issue with Mr Glazebrook.

15. On or about 18 September 2017 the Claimant reported to the Shop Floor Manager that a cooked joint of beef had its sell by date removed and had been re-dated. This was subsequently reported to Mr Glazebrook. The Claimant entered Mr Glazebrook's office and thrust her telephone towards him with photographs of food products which she maintained did not meet food hygiene standards. The Tribunal accepts the likelihood that annoyance on Mr Glazebrook's part on this occasion was caused by the way in which the Claimant insisted he view the photographs.

16. On or about 18 September 2017, the shop floor manager reported to Mr Glazebrook that the Claimant had asked the shop floor manager to post a photograph of the out of date joint of beef on the Respondent's Facebook page and that the Claimant was going to report the Respondent's food hygiene practices to the health inspector.

17. On 25 September 2017, Mr Glazebrook held an investigatory meeting with the Claimant with regard to three matters: the allegation that the Claimant had failed to arrange holiday cover for the delicatessen while she was away; negative comments about the Respondent's business said to have been made by the Claimant; and the over-ordering of stock.

18. On 9 and 10 October 2017 Mr Glazebrook also held a number of interviews with other members of staff concerning the same three issues. During interview, the Shop Floor Manager repeated what she had told Mr Glazebrook about the Claimant's request to post a photograph of the out of date meat on

Facebook and the Claimant saying she would call the health inspectors.

19. On 17 October 2017, the Claimant informed Mrs Levett that she would not take responsibility for the sale of Scotch eggs in circumstances in which the Claimant believed they had been prepared by a colleague in a place where both raw meat and cooked meat were in a shared area. (The Tribunal is satisfied that Mrs Levett was expressly advised by the inspector of the local health authority that such preparation, carried out in shared but separated and signed areas of the delicatessen, was in compliance with the appropriate hygiene regulations).

20. Later that morning Mr Glazebrook met with the Claimant and discussed what the Shop Floor Manager had to say at the conclusion of which he suspended the Claimant on full pay. That evening the Claimant emailed Mr Glazebrook stating:

> *Following our meeting today (17/10/2017) please can you outline the grounds and any terms of my suspension … At present I have not been given any written conditions.*
>
> *Please can you also include the time period my suspension is likely to last.*
>
> *This matter is very distressing to me. As you are aware of my past diagnosis of Agoraphobia and Social Anxiety I would like to get this matter resolved quickly.*

21. By letter of the same date, received by the Claimant the following day, Mr Glazebrook set out the allegations of potential gross misconduct as follows:

    - *It is alleged that you asked a member of the management team to put photographs of out of date stock on the company's facebook page to promote that we are selling out of date stock*
    - *It is alleged that you said you would call the health inspectors without the company's prior knowledge*

    Mr Glazebrook stated that it was necessary to conduct further investigations and that the suspension was precautionary and not a pre-judgement of the allegations. He informed the Claimant that her suspension would be as brief as possible and under review. The Claimant was told that she was not permitted to attend any of the company's premises or contact any customers, suppliers or employees.

22. By letter dated 6 November 2017, Mr Glazebrook informed the Claimant that the investigation had produced insufficient evidence to support the two allegations and that the suspension was lifted. However, the Claimant was informed that while there were no longer allegations of gross misconduct, there were still allegations to be addressed in a disciplinary hearing to take place on 14 November 2017. Six allegations of misconduct were set out in the letter.

23. The Claimant consulted her GP who certified that the Claimant was not fit for work by reason of stress at work. The Respondent postponed the disciplinary

hearing which was re-scheduled for 26 November 2017.

24. By letter dated 10 November 2017, the Claimant resigned giving notice such that her employment would end on 25 November 2017. She stated:

> *I have raised with you and other members of management my significant and continuing concerns about hygiene and health and safety issues arising within the company. You have seen the photographs I have produced and have produced to me, but little seems to happen.*
>
> *I have reached the stage where I simply cannot accept the standards that you find acceptable, and certainly my own conscience will not allow me to be part of such a process. Furthermore the way you have treated me as a result of having raised these issues means I can no longer have any trust and confidence in the organisation or, sadly your good self.*

25. Although the Respondent invited the Claimant to re-consider her decision and for her complaints to be dealt with by way of the grievance procedure, the Claimant declined.

Applicable law

Public Interest Disclosure

26. Section 43A of the Employment Rights Act 1996 provides that a protected disclosure is a qualifying disclosure which is made by a worker in accordance with any sections of 43C to 43H.

27. Section 43B provides that a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following: (a) that a criminal offence has been committed, is being committed or is likely to be committed (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject (c) that a miscarriage of justice has occurred, is occurring, or likely to occur (d) that the health or safety of any individual has been, is being or is likely to be endangered (e) that the environment has been, is being, or is likely to be damaged (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

28. In determining whether an employee has made a qualifying disclosure, the Tribunal must decide whether or not the employee believes that the information he is disclosing meets the criterion set in one or more of the subsections of section 43B(1) and, secondly, decide objectively, whether or not that belief is reasonable; see: Babula v Waltham Forest College [2007] IRLR 346 CA. Accordingly, provided a whistleblower's subjective belief that a criminal offence has been committed is held by the Tribunal to be objectively reasonable, neither the fact that the belief turns out to be wrong, nor the fact that the information which the Claimant believed to be true does not in law amount to a criminal offence [or breach of a legal obligation] is sufficient, of itself, to render the belief unreasonable and thus deprive the whistleblower of the protection afforded by the statute.

29. Section 43C provides, amongst other things, that a qualifying disclosure is made if the worker makes the disclosure to his employer.

30. In Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38 the Employment Appeal Tribunal held that a protected disclosure must be a disclosure of information and not merely an allegation. The ordinary meaning of giving information is conveying facts. In Kilraine v London Borough of Wandsworth [2018] IRLR 846, the Court of Appeal held that the concept of "information" used in section 43B(1) is capable of covering statements which might also be characterised as allegations and that there is no rigid dichotomy between the two. Whether an identified statement or disclosure in any particular case does not meet the standard of being "information" is a matter of evaluative judgment by the Tribunal in light of all the facts.

31. Section 103A provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or, if more than one the principal reason) for the dismissal is that the employee made a protected disclosure. The causation test is not legal but factual. A Tribunal should ask why the alleged discriminator acted as he did, consciously or unconsciously; see West Yorkshire Police v Khan 2001 ICR 1065 HL. That was a race discrimination case but it was cited with approval on this point in a section 103A case in Trustees of Mama East Africa Women's Group v Dobson EAT 0219-20/05. In that case the Employment Appeal Tribunal stated that it would be contrary to the purpose of the whistleblowing legislation if an employer could put forward an explanation for the dismissal which was not the disclosure itself but something intimately connected with it in order to avoid liability.

32. In Kuzel v Roche Products Ltd [2008] IRLR 530 the Court of Appeal held that when an employee positively asserts that there was a different and inadmissible reason for his dismissal, such as making protected disclosures, he must adduce some evidence supporting the positive case. That does not mean that the employee has to discharge the burden of proving that the dismissal was for that different reason. It is sufficient for the employee to challenge the evidence produced by the employer to show the reason advanced by him for the dismissal and to produce some evidence of a different reason. Having heard evidence from both sides relating to the reason for dismissal, it will be for the Tribunal to consider the evidence as a whole and to make findings of primary fact on the basis of direct evidence or by reasonable inferences from primary facts established by the evidence or not contested in the evidence. The Tribunal must then decide what was the reason or principal reason for the dismissal of the Claimant on the basis that it was for the employer to show what the reason was. If the employer does not show to the satisfaction of the Tribunal that the reason was what he asserted it was, it is open to the Tribunal to find that the reason was what the employee asserted it was. This is not to say that the Tribunal must find that if the reason was not that asserted by the employer then it must be that asserted by the employee. It may be open for the Tribunal to find that the true reason for dismissal was not that advanced by either side. It is for the employer to show the reason for the dismissal; an employer who dismisses an employee has a reason for doing so. He knows what it is. He must prove what it is.

33. Section 47B provides that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on

the ground that the worker has made a protected disclosure.

34. Section 48(2) provides that on such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done. In London Borough of Harrow v Knight [2003] IRLR 140 the Employment Appeal Tribunal stated that the ground on which an employer acted in victimisation cases requires an analysis of the mental processes (conscious or unconscious) which cause him to act. Merely to show that "but for" the disclosure the act or omission would not have occurred is not enough. In Fecitt v NHS Manchester [2011] IRLR 111 the Employment Appeal Tribunal held that once less favourable treatment amounting to a detriment has been shown to have occurred following a protected act, the employer has to show the ground on which any act or any deliberate failure to act was done and that the protected act played no more than a trivial part in the application of the detriment. The employer is required to prove on the balance of probabilities that the treatment was in no sense whatever on the ground of the protected act.

Constructive dismissal

35. Section 95(1)(c) of the Employment Rights Act 1996 provides that an employee is dismissed by his employer if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

36. In Western Excavating (ECC) Ltd v Sharp 1978 ICR 221 it was held that in order to claim constructive dismissal an employee must establish:

    36.1. That there was a fundamental breach of contract on the part of the employer or a course of conduct on the employer's part that cumulatively amounted to a fundamental breach entitling the employee to resign, (whether or not one of the events in the course of conduct was serious enough in itself to amount to a repudiatory breach, although the final act must add something to the breach even if relatively insignificant: Omilaju v Waltham Forest LBC [2005] IRLR 35 CA). Whether there is breach of contract, having regard to the impact of the employer's behaviour on the employee (rather than what the employer intended) must be viewed objectively: Nottinghamshire CC v Meikle [2005] ICR 1.

    36.2. That the breach caused the employee to resign – or the last in a series of events which was the last straw; (an employee may have multiple reasons which play a part in the decision to resign from their position. The fact they do so will not prevent them from being able to plead constructive unfair dismissal, as long as it can be shown that they at least partially resigned in response to conduct which was a material breach of contract; see Logan v Celyyn House UKEAT/2012/0069. Indeed, once a repudiatory breach is established if the employee leaves and even if he may have done so for a whole host of reasons, he can claim that he has been constructively dismissed if the repudiatory breach is one of the factors relied upon; see: Wright v North Ayrshire Council EATS/0017/13/BI); and

36.3. That the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

37. All contracts of employment contain an implied term that an employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: Malik v BCCI [1997] IRLR 462. A breach of this term will inevitably be a fundamental breach of contract; see Morrow v Safeway Stores plc [2002] IRLR 9.

38. In Croft v Consignia plc [2002] IRLR 851, the Employment Appeal Tribunal held that the implied term of trust and confidence is only breached by acts and omissions which seriously damage or destroy the necessary trust and confidence. Both sides are expected to absorb lesser blows. The gravity of a suggested breach of the implied term is very much left to the assessment of the Tribunal as the industrial jury.

39. Mr Foster for the Claimant referred the Tribunal to the judgment of the Court of Appeal in Gogay v Hertfordshire County Council [2000] IRLR 703 in which it was held that the employer's kneejerk decision to suspend the employee in that case lacked reasonable and proper cause and was a breach of the implied term. Mr Foster also referred to an extract from Crawford v Suffolk Mental Health Partnership NHS Trust [2012] EWCA Civ 138 in which Elias LJ noted the psychological damage that can be caused by suspension and who commented:

> *As Lady Justice Hale, as she was, pointed out in Gogay v Herfordshire County Council [2000] IRLR 703, even where there is evidence supporting an investigation, that does not mean that suspension is automatically justified. It should not be a knee jerk reaction, and it will be a breach of the duty of trust and confidence towards the employee if it is.*

The duty to make reasonable adjustments

40. Sections 20, 21 and 39(5) read with Schedule 8 of the Equality Act 2010 provide, amongst other things, that when an employer applies a provision, criterion or practice ("PCP") which puts a disabled employee at a substantial disadvantage in relation to a relevant matter in comparison to persons who are not disabled, the employer is under a duty to take such steps as it is reasonable to have to take to avoid the disadvantage.

41. Paragraph 20 of Schedule 8 provides that an employer is not expected to make reasonable adjustments if he does not know, and could not reasonably be expected to know that the employee has a disability and is likely to be placed at the disadvantage.

42. In Environment Agency v Rowan [2008] IRLR 20, the Employment Appeal Tribunal held that in a claim of failure to make reasonable adjustments the Tribunal must identify:

42.1. the provision, criterion or practice applied by the employer;
42.2. the identity of non-disabled comparators where appropriate; and

42.3. the nature and extent of the substantial disadvantage suffered by the Claimant.

Conclusion

43. The Claimant made a number of disclosures of information to the extent described in the Tribunal's findings of fact above. As conceded by the Respondent, those disclosures amounted to protected disclosures.

44. The Tribunal has carefully considered the evidence as to the grounds on which the disciplinary allegations were made and the Claimant subjected to proposed disciplinary proceedings.

45. As to the allegation regarding the Claimant's suggestion that the Shop Floor Manager should post a photo of out of date meat on the Respondent's Facebook page, the Tribunal is not persuaded that it amounted to anything other than a sarcastic comment on the Claimant's part. As submitted by Mr Foster, it was inconceivable that the Shop Floor Manager would have done so. Whilst making such a comment might amount to evidence of disloyalty, the context in which the comment was made in this case, the Claimant's concern about out of date meat, strongly suggests it was not.

46. As to the allegation that the Claimant said she was going to call the health inspector, if the Claimant had concerns which, in her view, remained unresolved, it would have been appropriate for the Claimant make such a call.

47. The Tribunal concludes that the Respondent unreasonably categorised the two matters as amounting to gross misconduct.

48. Nor did the Respondent carry out an adequate investigation before making the allegations. Although Mr Glazebrook held an investigation meeting with the Claimant on 25 September 2017, he did not put those allegations to the Claimant. Nor does it appear from the notes of the investigation meetings that the two allegations were addressed with other members of staff. It was not until 17 October 2017 that the allegations were put to the Claimant herself.

49. Notwithstanding absences caused by holidays, the Respondent failed to show any credible reason why, the alleged gross misconduct having been initially raised on 18 September 2017, it took Mr Glazebrook until 6 November 2017 to decide that there was insufficient evidence of wrongdoing on the Claimant's part.

50. There was no evidence to suggest that Mr Glazebrook addressed the further disciplinary matters at the meeting with the Claimant on 17 October 2017 despite the fact that the evidence of other members of staff upon which he sought to rely (save that relating to the sale of Scotch eggs) had already been obtained. Mr Glazebrook's evidence that he would have had discussions with other members of staff about the further allegations was unspecific, lacking in detail and unsatisfactory.

51. The Tribunal fails to understand why the Claimant's refusal to take responsibility for sale of Scotch eggs was later said to give rise to a disciplinary allegation in light of Mrs Levett's evidence that she had spoken to Mr Glazebrook and considered it was the end of the matter. There was scant

evidence gathered in the investigation to support the remaining allegations.

52. In Gogay it was said that to be told by one's employer that one has been accused of sexual abuse, a very serious matter, was clearly calculated seriously to damage the relationship between employer and employee. The question is whether there was reasonable and proper cause. In this case, being told of disloyalty was a serious matter. Suspension was particularly stressful for the Claimant given her disability as she clearly informed the Respondent of this in her email of 17 October 2017. In the Tribunal's view, if the Respondent genuinely thought there was any risk of the Claimant remaining in the workplace pending further investigation (which the Tribunal doubts was carried out), the Claimant would have been suspended upon the initial allegation being made on 18 September 2017. The Claimant was not suspended until 17 October 2017, yet a further week after the Shop Floor Manager repeated the allegation. The Respondent has failed to persuade the Tribunal that there was reasonable and proper cause for the Claimant's suspension.

53. Although the Respondent stated that the suspension would remain under review, there was no credible evidence to suggest that the Respondent did so.

54. The Tribunal concludes that the course of conduct on the Respondent's part set out above cumulatively amounted to a fundamental breach of the implied term of trust and confidence. The Claimant treated Mr Glazebrooks' letter of 6 November 2017 making further allegations as the last straw. The Claimant resigned promptly. Although the Claimant says she resigned because of the way in which she felt she had been treated as a result of having complained about hygiene matters, it is clear that the hygiene matters she raised and the allegations themselves were inextricably linked. The Claimant resigned by reason of the Respondent's fundamental breach of contract. She was constructively dismissed which, given the Respondent's concession, amounted to an unfair dismissal. In light of this conclusion, the Tribunal has no need to consider whether the Claimant's constructive dismissal was automatically unfair because the reason for the dismissal was that she had made protected disclosures.

55. The Tribunal has found that Mr Glazebrook's immediate responses to the Claimant's disclosures do not lead to the conclusion that she was subject to detrimental treatment by Mr Glazebrook admonishing her or ignoring what she had to say. However, there was a close temporal proximity to, and relationship between the protected disclosures and the detriments of suspension and disciplinary action. The Respondent's explanation for the detrimental treatment, namely suspension and disciplinary action, was unconvincing. The Respondent has failed to show that the grounds on which the detrimental acts were done played no more than a trivial part in the application of the detriment. The Tribunal concludes that the Claimant was subjected to the detriments on the ground that she had made the protected disclosures.

56. The Respondent concedes that the Claimant was a disabled person at relevant times. The Tribunal concludes, given the Respondent's knowledge of the Claimant's vulnerability caused by her mental health condition, the Respondent knew or ought reasonably have known that the Claimant was

likely to be placed at a substantial disadvantage in comparison with persons who are not so disabled, namely particular distress and acutely felt stress by reason of suspension and the prospect of disciplinary action. Indeed, the Claimant herself informed the Respondent of her particular vulnerability in her email of 17 October 2017. The application of suspension and the disciplinary process amounted to PCPs triggering the Respondent's duty to take such steps as were reasonable to avoid the disadvantage. Such steps might have included a short period of suspension (to the extent that there was any justification for suspension at all) and some management contact and assurance during the suspension period. There was no evidence to show that the Respondent took any steps to avoid the disadvantage. The Respondent discriminated against the Claimant by failing to make reasonable adjustments.

57. The parties are encouraged to resolve the question of remedy, perhaps with the assistance of ACAS, and without the necessity of a further hearing. The case will nevertheless be listed for a further hearing with a one day allocation for consideration of remedy. If the parties are able reach settlement, they should inform the Tribunal promptly so that the hearing date can be vacated.

Employment Judge Pritchard

Date: 18 December 2019