



EMPLOYMENT TRIBUNALS

Claimant: Ms. E. Onigbanjo

Respondent: London Borough of Croydon

Heard at: London South, Croydon

On: 2-3 October 2019 reading for individual members of the Tribunal

4-10 October 2019

11, 15 and 18 October and the 12-13 December 2019 in chambers

Before: Employment Judge Sage

Members: Ms J Forecast

Mr. P Adkins

Representation

Claimant: In person

Respondent: Mr. Campbell of Counsel

RESERVED JUDGMENT

1. The Claimant's claim for unfair dismissal is not well founded and is dismissed.
2. The Claimant's claim for victimisation is well founded
3. The Claimant's claims for discrimination because of pregnancy/maternity are not well founded and are dismissed
4. The Claimant's claim for breach of contract is not well founded and is dismissed.

REASONS

1. By a claim form presented on the 19 October 2017 (the First ET1) the Claimant claimed maternity and disability discrimination. The claim referred to what was described as the denial of basic contractual rights

including access to IT, access to the work premises and the conduct of her return to work meeting on the 10 August 2017. The Claimant also claimed that she was subjected to victimisation when she was invited to an investigation under caution on the 22 December 2016 and when she was invited to attend a disciplinary meeting about her DBS form on the 9 September 2016 and then suspended on the 21 August 2017.

2. The Respondent denied all allegations.
3. By a claim form presented on the 15 February 2018 (the Second ET1) the Claimant claimed unfair dismissal and victimisation in respect of her previous successful claim before the Tribunal for disability and maternity discrimination. The Respondent defended the claims.

The Issues

4. The issues were discussed with the parties at the commencement of the hearing and they were agreed to be those in the bundle at pages 121-6 and are as follows:

Unfair dismissal.

5. What was the reason for the Claimant's dismissal? the Respondent will state that it was gross misconduct relating to housing and tenancy benefit fraud and the Claimant's completion of the DBS application form in May 2015.
6. The Claimant will state that the Respondent's reason for dismissal was not fair for the alleged conduct and in those circumstances does not constitute gross misconduct. The Claimant alleges that the reason for her dismissal was misrepresented as an attempt to justify a breakdown in the relationship of trust between the parties for a fair reason.

Was the dismissal fair in all the circumstances?

7. The Respondent states it was fair, given the seriousness of the allegations which amounted to gross misconduct and which were proven during the investigation and disciplinary process.
8. The Claimant states it was unfair given that the alleged misconduct had previously been investigated and concluded. She stated the alleged tenancy fraud and council tax fraud was investigated and civil proceedings initiated by the Respondent (using the exact same information and evidence as the disciplinary) and those matters were concluded in 2015 before the Claimant commenced employment with the Respondent. The Claimant also states that there was no evidence to suggest a continuation of the investigation, as claimed by the Respondent and there was no new information since the previous investigation to warrant a new investigation. The DBS matter was investigated by the Respondent in August 2016 and she claimed that the Respondent concluded the matter after taking responsibility for the errors identified.

9. The Claimant also alleges that the motive behind her dismissal was discriminatory.

Did the decision to dismiss the Claimant fall within the range of reasonable responses open to a reasonable employer?

10. The Respondent submits it was a reasonable decision in all the circumstances to summarily dismiss the Claimant for gross misconduct, given the Claimant's role with the Respondent as a social worker.
11. The Claimant alleges that the Respondent's decision to summarily dismiss was an unreasonable response because:
- a. The decision reached was based on incorrect conclusions that were not supported by the evidence. She claims the Respondent's conclusion was largely based on reasons that were not part of the disciplinary charges or fully investigated as part of the disciplinary charges.
 - b. The Claimant submits that the Respondent failed to carry out as much and reasonable investigation into the allegations of fraud and the Respondent's reasons for dismissal were based on opinion and the combination of various unsubstantiated pieces of evidence (in relation to the fraud allegation). The evidence presented clearly showed that there was negligence and failing on the Respondent's part and showed that the alleged misconduct was not deliberate on the Claimant's part.
 - c. The Claimant had been employed by the Respondent as a social worker for two years and there were no concerns about her conduct or capabilities. Therefore, it was unreasonable for the Respondent to base dismissal on historical allegations that had been previously investigated and had not succeeded in previous civil proceedings.
 - d. The Claimant submits that her conduct had no bearing on her profession as a social worker in respect of holding two tenancies and claiming benefits for some of that period, which was legal and appropriate under the circumstances at the material time. The issue in relation to the DBS form was a red herring because the Claimant's act or omission was initially investigated and found to be in error on the Respondent's part and had no bearing on the Claimant's role as a social worker.
 - e. The Claimant also stated that the spent allegations of fraud were historic and had been investigated in previous proceedings and there was no evidence of further acts or new information about further acts.

Did the Respondent follow a fair procedure when dismissing the Claimant?

12. The Respondent submits it followed a fair and thorough investigation, disciplinary procedure and appeals procedure when taking the decision to dismiss after considering her appeal.

13. The Claimant alleges that the Respondent failed to follow a fair procedure as the investigating officer relied on “professional trust” from her colleagues and fraud department rather than to scrutinise all the evidence and information that was presented, including those in the Claimant’s defence.
14. The Claimant alleges that the disciplinary and appeal panel both failed to consider mitigating circumstances and evidence or information that could undermine the allegations or which could point towards the Claimant’s innocence.
15. The Claimant further alleges the Respondent was biased and the disciplinary process lacked any independent witness or advice.

Discrimination on the grounds of maternity

What are the alleged acts of discrimination and unfavourable treatment relied upon?

16. The Claimant alleges that the Respondent failed to offer her training, which was crucial to her learning and development as an ASYE employee. The Claimant accepts that it was agreed with her line manager at the time that she would utilise her keeping in touch days to attend relevant training. However, the Claimant was not informed of relevant training courses when they became available and she was subsequently denied access to this training when it was requested.
17. The Claimant alleges that the Respondent restricted her access to the building whilst on maternity leave and that this action caused her anxiety about returning to work successfully and completing her ASYE, within the limited space of time she had left.
18. The Claimant relies on a hypothetical comparator and submits that had she not been on maternity leave, she would have been included on the email that invited her colleagues to the training and have access to the premises not restricted in the manner it was done (without any justifiable reason), which affected the Claimant’s self-esteem.

Victimisation.

19. The Claimant submits she did two protected acts. On 19 April 2016 she wrote a letter of complaint then on 8 July 2016 contacted ACAS and then submitted an ET1 on 8 August 2016, alleging discrimination on the grounds of pregnancy and disability.

Did the Claimant suffer any detriment because of or in part because she did a protected act?

20. The Claimant states she suffered a detriment because the relationship between her and the Respondent broke down, which led to the Respondent wanting to end its working relationship with her.

21. The Respondent attempted to negotiate a mutual termination agreement with the Claimant but warned that if she didn't cooperate with the process there was a pending disciplinary into the Claimant's DBS form that would lead to her dismissal.
22. The Claimant alleges that she was subjected to victimisation and harassment as the Respondent disguised its discriminatory acts under the pretence of fraud investigations when the Respondent was hunting for evidence and reasons to support its decision to dismiss.

What was the reason for the Respondent commencing its investigation into the disciplinary allegations against the Claimant?

23. The Claimant alleges that the Respondent raked up fraud investigations because of or in part because she did a protected act and then the Respondent intensified and inflated the gravity of all three charges because of, or in part, she proceeded with her employment Tribunal claim after an unsuccessful negotiation process.
24. The Respondent denies the disciplinary process was linked to the Claimant's grievance complaint, but states, there was a live investigation into the Claimant's behaviour, which was a separate ongoing process.
25. It was agreed that the hearing would be limited to liability only.

Preliminary issues and matters arising during the hearing.

26. On the first day of the hearing on the 2 October 2019, which was a reading day for only two of the Tribunal, the parties attended and it was clarified that there was a joint list of issues on page 121-6 of the bundle. The parties were told that the hearing could not commence until the 4 October 2019 due to the Employment Judge having to undertake other commitments. At the start of the hearing we again confirmed that the parties were working from a joint list of issues. The Tribunal also asked the Claimant whether reasonable adjustments needed to be made for her whilst in the Tribunal, she indicated that none were required and she was happy with the chair that had been provided. The Tribunal noted that there was reference to a footstool in reasonable adjustments made for her in the workplace and one was offered to her, however she said that this was not necessary. The Claimant indicated that at times she may need to stand up when she was in discomfort, this was noted as an adjustment.
27. At the end of the hearing on Friday the 4 October 2019 the usual warning was given to the Claimant that as she was still under oath, she was not to discuss her evidence with anyone. However, in answers given in cross examination on the 7 October 2019 indicated that she had spoken to her solicitor over the weekend regarding access to recorded minutes of meetings and transcript of the interview under caution on the 16 February 2015. The Claimant had not sought permission to discuss this matter with her solicitor from the Tribunal. The Tribunal made some enquiries of what was discussed, and she confirmed that they only spoke about access to a recording and not her evidence. The Respondent did not pursue any applications in respect of this matter.

The Witnesses

28. For the Claimant we heard from the Claimant only.
For the Respondent (in order of appearance) we heard from:
Mr Segurola the Dismissal Manager
Ms. McPartland the investigations Officer.
Mr. Iles the Appeals Manager
Ms Langton Claimant's line manager from 1 July 2017
Ms Tomlinson Service Manger then Head of Service.

Findings of fact

Relevant findings of fact of events prior to employment.

29. There was a history to this matter prior to the commencement of the Claimant's employment.
30. The Claimant was assigned a Local Authority tenancy in 2008 at Eastney Road Croydon, by that time she had two children. She had been on the waiting list since 2006. We were taken to a number of police reports in 2012 at pages 649-655. The incident appeared to have started on the 11 March 2012 where the Claimant informed the police that she had a numbers of text messages and calls from the suspect (a female cousin of the Claimant) which were rude and threatening in nature. The incident report on page 644 also recorded that "the victim has links to violent street gangs". The first report the Claimant made to the police was by internet and it was recorded that the incident was not a hate crime (domestic incident or carer abuse – page 623). The next police report was on pages 648-9 the first being dated the 29 March 2012 and it was reported that the Claimant confirmed that "she is happy at this stage that there is little or no evidence to prove harassment against the suspect". The next police report was dated the 6 April 2012 which reflected that the police had spoken to the suspect who denied making any contact with the Claimant for a number of months and "she no longer knew where [the Claimant] lived and didn't even have possession of the [Claimant's] mobile or phone number". The suspect stated that she had no intention of contacting the Claimant again and "the evidence of potential texts to the victim have been deleted...". The report went on to state "I have spoken to [the Claimant] and informed her of the conversation and she does not want to make a statement relating to this incident and just wants to be left alone" (PC Holmes). There was a further report dated the same day made by DS Windsor again confirming that the Claimant did not want to progress matters further and was "not willing to provide an evidential statement" (page 650). The Claimant was cross examined on this point and although she asserted that she "*told them everything I could and the rest was telephone calls*" from this evidence we conclude that she did not provide a written statement to the police.
31. The next incident the Claimant reported to the Police was on the 22 May 2012 (page 650) where she reported 'continuing harassment' in respect of an unknown male who allegedly followed her only a couple of days after the earlier harassment case had been closed. The Claimant reported that this had been happening 3-4 times a week and her car had been broken into. The Tribunal were then taken to page 652 where a

further incident was reported to the police on the 22 May 2012 where she reported further stalking which she believed was related to her cousin and in this report she states that "*she is currently trying to get rehomed and is attending the Family Justice Centre tomorrow*". The following day the Respondent Council contacted the police (Angela Bradford) stating that the Claimant had asked to be rehomed stating that she did not feel safe where she lived and feared for her life (page 653). The police had an action plan to contact the Housing department and the Claimant with the view that "the victim's life is not in danger based upon the evidence and the nature of the allegations to date. The victim has previously not provided police with a statement". Then on the 27 May 2012 (page 653) the Claimant reported to the police that the unknown male had "somehow gained access to her communal entrance and knocked at her door..". The Claimant gave a description of the male and she said she believed that he may be her cousin's boyfriend but again did not make a statement. DS Galloway suggested that they make a reassurance visit as "she feels quite scared at the moment despite the fact that the male has not approached her or made any threats".

32. Then on the 29 May 2012 (page 654) PC Holmes contacted the Claimant and challenged her as to why she had not reported the fact that a male had been following her 3-4 times a week. It did not record what the Claimant said in reply but said that she stated that "she could not live where she was housed...". PC Holmes said he would speak to the Housing Officer. On the 30 May 2012 (page 655) PC Holmes spoke with Croydon Council and reported to them that the police did not feel that the Claimant's life was in danger and would not support a house move on that basis. It was confirmed that PC Holmes spoke with Ms Wellington but also left contact details for the Claimant's Housing Officer Mr Fantie to contact them, if necessary. This report was marked as complete, indicating no further action. On the 4 June DS Windsor summarised that "*the victim's additional allegation is historical and appears linked to attempts to move home with the Council. Due to time elapsed there is no evidential opportunity.....the risk to the victim is assessed as standard and there is no new or substantive reason for believing her life is in danger in any way*".
33. The Claimant was taken to these reports in cross examination and she stated that she could not recall being asked for a statement because she was hysterical and scared at the time. She also denied that the police told her that the test for being rehoused was that she considered her life to be in danger and she told the Tribunal that the first time she was aware of this test was in 2015 when it came up in Court. The Tribunal on the balance of probabilities conclude that the police reports were an accurate representation of their exchanges with the Claimant. Even if the Claimant had been in deep distress on any one day, it was noted that the police followed up with the Claimant and her position on giving a statement did not change. It was also noted that the Claimant would not provide a statement in relation to the complaints about her cousin. The Claimant accepted that by the 29 May 2012 she had moved to Hunters Road in Kingston (on the 27 May 2012 page 695 see tenancy agreement) moving out of Eastney Road.

34. The Tribunal were taken to taken to page 705 in the bundle which was the Claimant's letter to the housing department dated the 29 May 2012 (two days after she had signed a new tenancy). In the letter she stated that she had moved address "due to harassment" and confirmed that she was "privately renting an (sic) property in another borough while the case is being investigated by the police". She asked that her housing benefit continue for Eastney Road. She gave the contact details for PC Holmes and gave Hunters Road as her new address. The Tribunal noted that the Claimant failed to provide a date for when her new tenancy began and she inferred in this letter that the police investigation was ongoing when she had been informed that the investigations had closed. This was inaccurate.
35. The Tribunal noted that the Claimant described the conduct that led to her moving as harassment not violence. However in the interview under caution conducted by the Fraud Department of the Respondent, dated the 28 March 2017 she told Ms Buley (page 746) that "while it was ongoing I told Croydon Council, and I used the exact same word, domestic violence simply because that was what I was told it was". She also told Ms Buley that "because it is a family member It would be classed as domestic violence". The Tribunal noted that the evidence given by the Claimant to the Respondent on this matter was inconsistent because she stated that it was a family member but she had told the police that it was an unknown male and there was no actual or threat of violence, only that she felt scared. When the police evidence was put to her in the interview, she told Ms Buley that the police were lying (page 748). The Claimant was taken to the evidence given to the appeals manager where she stated in her opening statement to the appeal that "It never once bothered me, until this guy turned up at my door. So automatically that was my concern on that day...", the evidence given by the Claimant appeared to contradict what she had previously told the police. In cross examination she told the Tribunal that she was "always fearful of threats my cousin made". The Claimant's evidence appeared to be contradictory on this point. The Claimant told the appeal (page 1427) hearing that she denied hiding the evidence about this issue and stated that she had "started to learn about law".
36. The Respondent was the Claimant's Local Authority Landlord and had sought repossession of the property following an investigation where it was discovered that the Claimant was not living at this address, which was a breach of her tenancy agreement. The Tribunal saw that an investigation was ongoing into the Claimant's entitlement to claim Housing benefit and Council Tax benefit as it had been discovered that she was residing at two properties and claiming benefit at both addresses; this investigation had been ongoing from 30 April 2014. The Council's repossession application was heard in the Croydon County Court on the 29 May 2015 and the matter was stayed with liberty to restore the matter by 4pm on 29 May 2016, if not the matter be struck out (page 1119). The Claimant applied for the Right to Buy her council property (92 Eastney Road) on the 29 May 2016, the day that the matter was struck out in the County Court. The right to buy application was approved on the 2 August 2016 but then subsequently denied.

Completion of the DBS form prior to commencing employment

37. Prior to commencing employment, the Claimant attended a meeting at the Respondent's premises on the 31 July 2015 with a person from HR (Ms Osborne) to complete her DBS form, this was seen in the bundle at pages 1695-8. The enhanced DBS application was a requirement of her employment and this was a process that the Claimant would have been aware of as she had completed the form a number of times before. The Claimant confirmed that she signed the form but stated that she had signed a blank form because on her evidence Ms Osborne was running late and the Claimant's car was on a meter. She said that Ms Osborne completed the form from documents that the Claimant left with her, she confirmed however that she did not provide Ms Osborne with "from" and "to" dates for any previous name or addresses. The Tribunal heard from the Respondent that the last page of the form was meant to be completed by HR (for office use) and the Tribunal saw that there was a redacted signature showing that the form was countersigned on the 4 August 2015.
38. At the time the Claimant commenced employment, the address she provided on the DBS form was 92 Eastney Road in the London Borough of Croydon and although this was redacted in the DBS form this was not disputed. The Claimant held a Local Authority Tenancy at this address (see above) in her name and this was the property that the Claimant had elected to purchase under the right to buy scheme.
39. The Tribunal saw in the bundle a UK Deed Poll change of name document dated the 17 August 2015, dated less than 3 weeks after she completed her DBS form. In this document she formally changed her name to "Miss Eniola Gabriella Onigbanjo". The document showed her address as 92 Eastney Road, Croydon, the document was witnessed by Keith Burn giving an address in Whytleafe in Surrey (page 815). She had previously changed her name by Deed Poll in 2008 (see page 813) from Enitan Ononuga to "Enitan Eniola Onigbanjo". The Claimant did not provide her previous names on the DBS form that she completed and did not inform the Respondent of her subsequent change of name at the time she commenced employment.

The Claimant's commencement of employment,

40. The Claimant joined the Respondent on the 14 October 2015 as a Newly Qualified Social Worker after her DBS search had come back clear. The Claimant worked in the Looked After Children as a Social Worker in the first couple of years of service called Assessed and Supported Year in Employment "ASYE", this is a social work programme usually completed within two years comprising of regular supervision, portfolio work and observations in the Claimant's case this year was broken by her maternity leave. When the Claimant first joined the Respondent, she was managed by Erin Morris. There appeared to be no concerns about the Claimant's performance or capability during her first year of employment (until she commenced maternity leave).

41. The Tribunal saw the Respondent's disciplinary procedure at pages 168 -179, we were taken to page 170-1 which stated that the procedure linked with other procedures (such as grievances and complaints) and where a complaint is pursued by the employee this would "not normally prevent the continuation of the disciplinary proceedings". The Tribunal also noted that in paragraph 5.3 on page 171 which stated that where an allegation is made that the disciplinary proceedings were motivated by reasons other than conduct or that the proceedings are discriminatory, the employee can raised raise a complaint and if that is done "it can be dealt with as part of the disciplinary procedure". The definition of gross misconduct was at pages 178-9.
42. The Tribunal were taken to page 719 in the bundle which was an email from Mr Baden the Intelligence Officer South West London Fraud Partnership to Ms Campbell the Tenancy Fraud Investigations Officer at the Respondent, on the 30 March 2016 referring to an earlier request for further information about the Claimant. The email was in relation to an address in Chessington called 53 Court Crescent and also named a further person called Keith Burn (who was accepted to have been the Claimant's partner at various stages and the father of two of her children and the witness to her name change as referred to above). It stated that the Claimant claimed housing benefit for that address from the 2 June to the 5 October 2014 payable during this period to Mr Burn, who was also her landlord. This email reflected that the Claimant was a tenant at this address from the records held by the Council Tax records. This evidence confirmed that the investigation was continuing or had restarted after the repossession proceedings on the 29 May 2015 and were active at the time the Claimant's grievance was lodged.

The Claimant's grievance

43. The Claimant lodged a grievance in respect of complaints of disability and pregnancy and maternity discrimination on the 18 April 2016 and in the statement attached she also added the claims of age and sex discrimination. This was accepted by the Respondent to be a protected act.
44. A meeting on the **2 June 2016** (see page 519 of the bundle) was conducted to discuss concerns about the Claimant's employment, in attendance was Mr Hogan head of the Anti-Fraud Team of the Respondent, Gail Campbell an Investigator in the same team, Nadine Maloney and Mr Cheng both of HR and Ms Tomlinson. Mr Hogan's notes were emailed to all participants on the 3 June 2016. The meeting was called on this date because the Housing Team had become aware that the Claimant was now working for the Respondent and informed Ms Campbell and the Anti-fraud team of this new development. Ms Campbell outlined at the meeting that the investigation had shown that the Claimant was living at a privately rented address in Chessington and was attending Kingston University. From Croydon Council's initial concerns about tenancy fraud in respect of possible subletting or abandonment of the tenancy at Eastney Road, Ms Campbell had advised that the investigation had now extended to Kingston council investigating benefit claims relating to her Chessington

address as there was a concern that she was claiming benefit for two addresses and they were not clear whether this was permissible.

45. The meeting also discussed a concern that the Claimant had changed her name three times by deed poll and she was a Company Secretary of a limited liability company and had used Eastney Road as the registered address for the Company (which had not yet traded). The Claimant had also been in receipt of a PIP saying that she was unable to care for her children, but the record showed that she was a registered child minder. The Tribunal saw that the action points for this meeting were for HR to conclude a review of the recruitment health and DBS records. Ms Tomlinson would arrange for a system review audit to check the Claimant's client social work interactions and Mr Hogan and Ms Campbell to continue to liaise with Kingston on the criminal investigation and Mr Hogan to begin a separate audit into the Claimant's conduct.
46. As a result of this meeting and in light of the action points, no limits were placed on the Claimant in any way and she was not informed that these investigations were underway. Ms Tomlinson confirmed in cross examination that they did not consider suspension at this stage because investigations were at an early stage and she had "concerns but no grounds", they were just allegation and she did not have grounds to suspend without seeing the final report of the Fraud Team. The Tribunal noted that the investigations were conducted by those who had no knowledge of the Claimant or her grievance, it also extended to another Local Authority and to the police. From these investigations the Respondent had identified evidence of serious ongoing concerns about the Claimant.
47. On the 8 July 2016 the Claimant approached ACAS to enter into early conciliation in respect of her claim. This was accepted to be a protected act.
48. The Claimant was off sick from the 12 July 2016 for two weeks followed by a period of annual leave up to her maternity leave date which was confirmed by Ms Langton to be the 29 August 2016 (but the Claimant gave a different date of the 8 September 2016, nothing turns on this). It was not disputed that the Claimant took 52 weeks maternity leave. Ms Langton stated that the return to work date was the 21 August 2017 which was confirmed in an email dated the 7 August 2017 (page 346).
49. Ms Buley of the Respondent (Fraud team) conducted a data protection search of the records held by the DBS, the response was dated the 20 July 2016 (page 1699) and reflected that the Claimant had made 8 previous applications for certificates. It was also discovered that she had been known by another name of 'Enitan Eniola Onanuga'.
50. The Claimant presented her ET1 given a case number of 2301468/2016 claiming disability and maternity/pregnancy discrimination on the 8 August 2016. This was accepted to be a protected act.
51. The Claimant received the outcome of her grievance on the 10 August 2016 (pages 226-231) which did not find in her favour. The Claimant

lodged an appeal against the decision on the 13 August 2016 (pages 232-243).

Without Prejudice Discussions.

52. Prior to commencing maternity leave, the Claimant was invited to have without prejudice discussions with the Respondent on the 19 August 2016, she was accompanied by her union representative Ms Green. The Claimant in her statement at paragraph 2.11 stated that she was under the impression that she was attending a meeting to discuss her grievance appeal which was outstanding. The Claimant produced a note of this meeting and they were seen on pages 1393-5. The meeting was with Mr Singh who at the time was Head of HR and appeared to be focussed on the issue relating to the DBS form and a pending disciplinary. In this meeting there was a discussion about settlement of her recently presented Tribunal claim. Although the Claimant stated in her submission that her ET1 was read out to her in this meeting, her notes of the meeting did not reflect this. The Claimant was told that the issue in relation to her DBS form could result in dismissal. However, it was clear from the note and from the Claimant's statement that the breakdown of the relationship was discussed in connection with her Tribunal claim and the Respondent was seeking to reach terms to terminate her employment. In the Claimant's submissions she stated that it was clear that the only remedy the Respondent was looking for was a termination of employment to avoid her facing a disciplinary case which would "lead to her dismissal". The Tribunal accept the Claimant's evidence as to the circumstances and the conduct of the meeting, the Respondent not producing any evidence in rebuttal and it was noted that no mention was made of this issue in the Respondent's closing submission. The Claimant confirmed that negotiations were ongoing until the 8 September and settlement was not reached.
53. The issue for the Tribunal is whether this meeting was a detriment because she had done a protected act. We accept that this was a detriment and that it was to discuss settlement of her previous successful Tribunal claim and the further issue of the DBS, which at that time the Claimant knew nothing about. It is clear from the notes and from the Claimant's evidence that the DBS matter was raised by Mr Singh, however the Claimant's notes did not indicate that dismissal would be a predetermined outcome, but a disciplinary process was discussed, and the word dismissal was used but not that it was a foregone conclusion. The Tribunal conclude that Mr Singh used the DBS issue as leverage in the meeting to encourage a settlement on agreed terms. Protected discussions would normally not amount to a detriment. The Tribunal however took into account the context in which the meeting was called and the fact that the Claimant had raised a legitimate complaint of discrimination. The Claimant was also not aware at the time of the meeting of any concern about the DBS form to therefore imply, prior to any investigation that this matter could lead to dismissal was detrimental to the Claimant. We conclude that this was a detriment because she had done a protected act.

54. The Tribunal saw at page 1605 an email from Ms Green to the Claimant stating that she had spoken with Mr Singh and “they have reviewed your DBS and that a mistake has been made and the error is on their part and that you have nothing to worry about”. At this stage it was not clear to the Tribunal which error was being referred to in this email, whether it was the error made by HR on the 4 August relating to the category of social work or whether it related to the detail provided on the form and the missing data. However later events below reflected that the DBS matter was investigated further and led to a disciplinary hearing.

Event after commencement of maternity.

55. After the Claimant commenced maternity leave, Ms Lloyd Taylor informed the Claimant that an issue had come to light about her DBS form which needed to be fully investigated (page 246-7). The Claimant was given the option of delaying the investigatory meeting until the end of her maternity leave period or to use one of her KIT days. The Claimant chose to delay the matter.

Interviews under caution.

56. The Claimant attended an interview under caution on the 22 December 2016 with Ms Buley (page 947-993), she was accompanied by her solicitor. The Claimant was asked about the names she put on the DBS form and she stated that she did not know why her previous names would not have been disclosed. The Claimant told the investigation that she gave Ms Osborne a copy of her driver’s license, Ms Osborne wrote the name down and then the Claimant signed the document (page 951). The Claimant was then asked about the requirement to provide addresses lived at for the last 5 years on the form and she was asked why she did not disclose all her addresses, her reply was that Ms Osborne filled out the form and then indicated that “if you lived at an address for less than 3 years it will ask you where you lived before” (page 953), the Claimant then indicated that she did not look at the form (page 954). The Claimant was asked how long she lived at Hunters Road and she replied 2012 to January 2014 and she had a private tenancy for 2 years. She stated that she moved back to Eastney Road in January 2014 as by that time “the person that was posing a threat to me was deported back to Nigeria” (page 958).
57. There was a line of questioning about a PNC check which indicated that the Claimant had been arrested, which she denied and said that this entry had since been removed. In the interview she was also asked about a business that was registered at Eastney Road, she denied that she had been employed as a secretary for a Limited Company called International Medical Limited (pages 968-9), she confirmed that Keith Burn asked her if she would mind ‘being the secretary’ but could not recall if she signed anything. It was put to the Claimant that she was a registered company secretary with Companies House then she confirmed she was definitely aware of this ‘when the company opened’ (page 971) but could not provide the date. It was put to the Claimant that it was an offence to run a company from council property and she denied that the company was being run from there and said it was only an address for correspondence.

58. The Tribunal saw in the bundle at page 523 dated the 2 February 2017 an email from the Claimant to Ms Buley after the interview, stating that she had no recollection of individual events on the day she signed the DBS form and said that she had no motive for failing to provide previous addresses and she had *“offered to complete a new DBS application with the previous address to prove that I have no reason not to disclose the address. Therefore it is not necessary for you or Gail to continue probing me about a particular previous address”*. The Tribunal noted that the Claimant’s insistence that she had no recollection of the events when her DBS was completed was contradicted in the subsequent disciplinary investigation where she was able to provide details of the meeting. The Claimant also made reference in this email to speaking to Mr Hogan in May 2016 and stated that *“he informed me that the enquiries and investigations were ongoing, and the civil matter was separate to Ms Campbell’s investigation. Subsequent communications with Ms Campbell also stated that the investigation for housing benefit and council tax fraud was ongoing”*. This evidence suggested that the Claimant was aware that there was an ongoing fraud investigation into her claims.
59. The Claimant was interviewed again under caution by Ms Buley and Ms Campbell on the 28 March 2017, she was accompanied by her solicitor, the minutes were seen in the bundle at pages 725-799 (see above at paragraph 35). The Claimant was asked how many children she had because the council property had been awarded to her because she had two children in her care that needed accommodation. She confirmed that the tenancy for Eastney Road was signed on the 14 July 2008 and at that time she had one child living with her (page 742). The Claimant was asked why she moved to Hunters Road Kingston and she replied that she would not be answering any questions because she had already been interviewed under caution about the same matter (page 745). It was put to the Claimant that she had previously said that she moved out of Eastney Road due to domestic violence but when they spoke to the police they were told that in the police’s view it was not domestic violence but harassment (page 746). The Claimant replied that this was what she was told by the police. She was asked if she had given a statement to the police and her reply was *“I gave them everything I could give them at that stage”*. She confirmed she did not pursue the allegation of violence but could not recall why but stated that she felt safer if she moved (page 750).
60. The Claimant confirmed that she moved to Hunters Road in 2012 but would not give the name of her partner at the time. The Claimant was then asked about whether she had lived at any other addresses that should have been disclosed in her DBS and she mentioned the address of Court Crescent (page 757) and she explained that she would not have put it on the DBS form because *“...why I didn’t disclose it on the DBS, again, even if I lived there for like a year or two I probably wouldn’t have because number one, the form, I don’t remember filling it in, and, like I said to you, you see the issue surrounding your address on a DBS, my understanding, until you pointed it out to me that there was, if you’ve lived somewhere for less than 3 years, in this case if you’ve lived there for less than 5 years”*. The Claimant denied knowing that she had to tell Croydon that she was now living in Kingston (page 766). The Claimant stated that she did not

think it was wrong receiving Housing Benefit for a property that she was no longer living in (page 755). The Tribunal noted that this was the first time Court Crescent was mentioned and from the recording of the interview the Claimant appeared to be unwilling to answer questions in relation to the property or answered "I don't know" (pages 794-5). The Claimant clearly said in this interview that she had never lived at Court Crescent (page 761) but she accepted that she had liability and Keith Burn allowed her to stay there when she had lectures. It was put to the Claimant in cross examination that the Respondent had only become aware of Court Crescent in 2017 and she replied that "this was not a huge problem because this was a term time address" and they knew about it in 2017. She accepted in this interview that she was paid housing benefit and passed this on to Keith Burn but could not recall how this money was paid to him.

61. Ms Morris left the Respondent's employment on the 6 July 2017 and then Ms Langton was promoted to manage the Claimant, this was her first management role. There was a handover conducted but the Tribunal were not provided with the notes evidencing this and we were told that no notes were taken at this meeting. Ms Langton accepted in cross examination that she had been told that the Claimant was 'difficult'.

The Claimant's return from maternity leave

62. The Claimant was due to return to work after maternity leave on the 21 August 2017 and a return to work meeting was arranged. The Tribunal saw a number of emails from the Claimant firstly on the 24 July 2017 (page 300) asking for a return to work meeting and for an OH referral and risk assessment to be done and attached a request for flexible working, this was forwarded the same day to her new line manager. There was also a further email to HR asking to attend some training sessions before she resumed work, she asked for a list of available training courses she could book herself on (page 322). This was the first communication that Ms Langton had with the Claimant as she had only just taken over line management responsibilities for her. Before the meeting the Claimant emailed her manager on the 7 August (page 346) to inform her that her laptop was not working so she did not have access to email or intranet. The Claimant also asked for an appeal in respect of her grievance to be arranged.
63. Ms Langton's evidence was that because she was new to the role, on receipt of the Claimant's request for training courses, she asked internally for a list of relevant courses which she forwarded on, but did not check the contents; she was not therefore aware that all relevant training dates had passed. The Claimant contacted Ms Langton and asked if she could contact the training department direct on the 9 August 2017 (page 342) and the Tribunal saw in the bundle that the Claimant made direct contact with the training team that day. There was no evidence that the Claimant asked her line manager for any further assistance with this matter or that she raised any concerns about training on her return on 10 August.
64. There was no evidence that the Claimant made any requests about training. Looking at the issue above (paragraph 16) although the Claimant

was not informed about training days, this was because the Claimant was on maternity leave and although she had offered to use KIT days it was for her to inform the Respondent of when she wished to undertake this training. Ms Langton's agreement that she could contact the training department direct suggested that if the Claimant had made the request earlier, there was no impediment to her arranging this herself. The facts suggested in the Claimant's email dated the 24 July 2017 (page 322) where she stated that "Finally, I would like to attend some training sessions before I resume work", did not indicate that she felt she had missed out on training due to being absent on maternity leave. This head of claim could only refer to the period from 24 July when she indicated she was ready to attend training sessions to the 21 August 2017 (the date of suspension). There was no evidence to suggest that her colleagues, who had not taken maternity leave, had been invited to attend training. There was also no evidence to suggest that the Claimant would not have been allowed to attend relevant training, or that she would not have had the same opportunities as those not returning from maternity leave, had she requested them. The head of claim above at paragraph 16 is not well founded on the facts.

65. The Claimant emailed Ms Langton on the 10 August 2017 (page 345) informing her that she had spoken to Capita and had learned that her account had been disabled at the request of the 'higher IT team'. The email stated, "I am on my way to meet with you now and I would like to take my laptop and work mobile to the IT team, so if possible, can you look into this for me".

Meeting on the 10 August 2017

66. The minutes of the return to work meeting were on page 349-350 (Claimant's notes on page 352-3) on the 10 August 2017 attended by the Claimant, Ms Langton with a representative from HR. This was the first time they had met and at the time of this meeting the department had relocated to a new building to which the Claimant had previously had access. Ms Langton collected the Claimant from reception, and she asserted in her statement (at paragraph 28) and in cross examination that this was due to concerns about health and safety.
67. The Claimant's note of the meeting suggested that she informed the Respondent that "my full name is Miss Eniola Gabriella Onigbanjo" she did not state that this was a new name which had been changed by deed poll back in 17 August 2015 (see page 815). This was the first substantive point that appeared in the Claimant's lengthy email which purported to be the note of the meeting.
68. The Claimant confirmed in the meeting that she intended to return to work on the 21 August 2017 and explained her disability and the impact that the medication had on her day to day activities. The meeting went on to discuss reasonable adjustments which included physical adjustments and alteration to working hours and conditions. The Claimant's email confirmed that she would require a chair for home working and the chair that had already been delivered to the office needed to be set up to accommodate her disability. The Claimant indicated that she would

contact the Company to carry this out (she later emailed Ms Langton on the 11 August to confirm that an appointment had been made for the 17 August 2017 (page 354)). Ms Langton did not appear to reply on this point. The Claimant followed this up on the 14 August 2017 (page 375) asking about the arrangement to be made for her to attend the office for her chair to be set up as this needed to be carried out at her designated work station.

69. Ms Langton told the Tribunal that as the Claimant had refused to give consent to OH to access her medical records, there was no point in arranging the chair fitting as she believed wrongly (as she conceded in her statement at paragraph 48-9) that the issue of consent was relevant to what she described as the whole process which included "OH referral and the chair fitting as these were part of the return to Work Action Plan to ensure that reasonable adjustments were in place". In hindsight she accepted that the refusal to give consent to the medical records did not prevent her from undergoing an assessment by OH. Ms Langton conceded that she decided to cancel the chair fitting appointment and made no arrangements for the Claimant's assignment to a work station on her intended return to work date, she did not inform the Claimant that she had done this. The Tribunal did not find Ms Langton's evidence credible on this point. It was noted that she was supported by HR as she was a new manager and her alleged misunderstanding of the role of OH in advising the employer could not in any way justify the Respondent's failure to put in place physical adjustments to the work place to facilitate the Claimant's return to work on the 21 August.
70. Ms Langton's unilateral decision to cancel the appointment for the chair fitting and her failure to inform the Claimant of her decision was a detriment to the Claimant. The Tribunal considered the reason for this detriment and conclude in the light of our findings in relation to the credibility of this witness referred to in the above paragraph, that the reason was because the Claimant had done a protected act. The Tribunal also noted that the previous successful ET claim had made recommendations about reasonable adjustments to accommodate the Claimant's disability (page 33 of the bundle) and the chair had been purchased on that basis.
71. A further issue for the Tribunal is in relation to whether Ms Langton would not allow the Claimant to take her laptop to IT. The Claimant's note recorded at page 352 that "*at the end of the meeting Pamela suggested that I should leave my work laptop with her and she can get it to the IT team because she invited me for this meeting, and I am not allowed on the premises without being invited*". The Claimant added "*I did not leave my laptop and agreed to contact the IT department for an appointment...*". The evidence of Ms Langton is preferred that she offered to take her laptop to IT because it would be a simple matter and the Claimant refused this offer. Ms Langton's evidence on balance reflected that she refused to allow the Claimant to take her laptop to IT herself and gave health and safety as the reason for this and also said that she could not accompany the Claimant to IT because her team needed to know where she was in case of an emergency. There was evidence that suggested that the Claimant was denied unaccompanied access to IT as indeed was the case

for the rest of the building and the Tribunal conclude on the balance of probabilities that the reason for this was not related to her pregnancy or maternity as set out above in the agreed issue at paragraph 17.

72. The Claimant's email of the 10 August (page 351-2) again stated that she did not have IT access. It was the evidence of Ms Langton to the Tribunal in cross examination that she had decided not to reinstate the Claimant's access to the system. The Tribunal saw on page 358 Ms Langton's email dated the 11 August 2017 where she stated "*she cannot be trusted for an honest view about any situation*" and linked her comments about the Claimant's 'behaviour' to the decision not to reinstate her IT access.
73. After the meeting the Claimant emailed Ms Langton (page 351) to express her concern as follows "*I was taken aback by your statement at the end of the meeting, when you offered me to leave my laptop with you because I am not allowed anywhere in the building without being invited due to insurance and liability as you said*". Ms Langton's evidence on this point was that if she was tripped or fell "*no one in the building would be aware*" (paragraph 39). However, it was noted by the Tribunal that as the Claimant had used her badge to gain access to the building they would therefore be aware of her presence.
74. The Tribunal saw the risk assessment form in the bundle at pages 324-333 and it was noted that they discussed and identified the problems the Claimant would experience with long distance travel. Although the Claimant alleged in paragraph 4.2 in her statement that Ms Langton had told her that it would not be fair on her team if she returned, that was not something that was included in the Claimant's own contemporaneous note of the meeting or her subsequent email of the 10 August 2017. The Claimant also did not contest the veracity of the risk assessment form which recorded that the Claimant could return to work in week three on flexible hours.
75. Ms Tomlinson then emailed Mr Lewis the Director of Early Help and Children's Social Care on the 11 August 2017 after speaking to Ms Langton about the return to work meeting. At the start of this email she stated that she had sent Mr Lewis a separate email about the Claimant however this did not appear to be in the bundle. Ms Tomlinson was asked in cross examination whether this undisclosed email called for suspension and she replied, "I don't know, it may well have". In this email (page 357) she confirmed that the Claimant would not agree to OH having access to her medical records and therefore they could only make a judgement on what the Claimant told them. The email went on to state "for a number of reasons, we would struggle to trust [the Claimant's] assertions". At the date this email was written Ms Tomlinson was aware of the previous ET and of the ongoing fraud investigations against the Claimant. It was noted that she had attended the meeting with Mr Hogan on the 2 June 2016 and was aware that progress had been made and had been updated in general terms. The documentary evidence and the evidence of Ms Tomlinson suggested that the decision to suspend was taken by Mr Lewis (who did not give evidence to the Tribunal), we find on balance that Ms Tomlinson had a significant input into the decision to suspend on the 21

August 2017 and it was to be put in place immediately on her return to work.

76. Ms Tomlinson confirmed in cross examination that she held a genuine concern about the Claimant's honesty as a social worker and they took this step to protect both the Respondent and the Claimant and to protect vulnerable service users. The evidence before Ms Tomlinson also suggested that the Claimant may have been involved in a Limited Company with a connection to social work and she sought to prevent the Claimant from accessing children's files for unapproved purposes not related to the Respondent's provision of services. On balance the Tribunal conclude that suspension was a reasonable response to the justifiable concerns held by the Respondent and the role that the Claimant held and taking into account that there were no alternative roles where the same trust and risk issues would not apply. The Tribunal further conclude on all the evidence that the reason why the Claimant's access to the building was restricted was not due to maternity or pregnancy as we have concluded above, or as an act of victimisation but due to genuinely held concerns about her honesty and integrity and the intention to suspend pending further investigations.

The Claimant's grievance.

77. The Claimant raised a grievance dated 15 August 2017 citing victimisation in respect of her complaints about IT access, access to the building and training and making a link to her previous grievance alleging these acts were victimisation because she had complained of discrimination. The Claimant added that she believed that the Respondent had initiated a fraud investigation which she claimed was an abuse of process and victimisation. She also pursued a complaint that her appeal in respect of her previous grievance had not been dealt with. The Claimant did not raise a concern that the detriments she referred to in her grievance document were related to either her maternity or disability.

The Suspension Meeting.

78. The Claimant was suspended at a meeting on the 21 August 2017 by Ms Tomlinson the Head of Service, the meeting notes were on page 475-7. Ms Tomlinson told the Tribunal in cross examination that the Claimant was suspended on this date due to the need to conduct an investigation. The Claimant was given no warning of the suspension however the factors surrounding the decision to suspend involved issues of an ongoing fraud investigation therefore it was reasonable under these circumstances to suspend without notice. The policy provided for this at paragraph 11 on pages 1092-3. The Respondent did not suspend earlier because the Claimant was on maternity leave. In the meeting the Claimant refused to hand over her laptop and said she was going to take it home as she had personal information on it, she also said she did not have her work mobile with her. The formal decision to suspend was made by Iain Lewis Director and he had conducted a risk assessment prior to the suspension meeting (pages 465-7).

79. The Claimant was sent an email confirming her suspension (dated the same day see pages 478-80) stating that it was to facilitate an investigation into the following three charges:
- a. Housing tenancy fraud;
 - b. Fraud to evade payment of Council tax with a financial loss to the Council;
 - c. Failure to provide accurate and comprehensive details in your DBS application in July 2015.
80. The Respondent confirmed in the letter that the remainder of the Claimant's ASYE programme would be deferred and if the charges were unfounded or unsubstantiated, it would be reinstated. The Respondent provided the Claimant with a copy of the Respondent's disciplinary and sickness absence policy.
81. The Claimant emailed HR on the 21 August 2017 confirming that she would arrange to hand back her mobile and lap top (page 502). She asked for the reasonable adjustments to her chair to be carried out so that it would be available to her when she attended internal meetings.

The Disciplinary Investigation.

82. Ms McPartland was appointed as Disciplinary Investigator by Mr Lewis on or around the 18 August 2017 (see page 466). Ms McPartland worked within the Health and Wellbeing of Adults Department with responsibility for Adult Social Care, which was separate from Children's Services. She did not know the Claimant and was therefore independent. Before starting her investigation, she was given the suspension letter, the DBS documents and contact details for Ms Buley and Ms Campbell in order to meet and discuss their fraud investigation. Ms McPartland also was provided with the notes of the meeting on the 2 June 2016 (page 519-520).
83. Ms McPartland then wrote to the Claimant on the 29 August 2017 (page 527) confirming the allegations that had been identified in the suspension letter but giving slightly more details of the DBS charge confirming that the failure was in respect of not providing previous addresses and "known by any other names". The Claimant was advised of her right to be accompanied. As part of her investigation Ms McPartland interviewed both Ms Buley and Ms Campbell. Neither were aware of the Claimant's previous protected acts.

The Interview with Ms Buley.

84. The interview with Ms Buley was on the 30 August 2017 (the notes were on pages 529-30). Ms Buley went into the history of the case and confirmed that the Claimant had previously been investigated for tenancy fraud by Ms Campbell as it was found that she was no longer living in the property. She explained that her involvement began after the Housing department became aware that the Claimant was an employee of the Council, after she attended the department to escalate her concern about the property in Eastney Road. Ms Buley had discovered that the Claimant was a registered Secretary of a Limited Company and the Council

Property was recorded as the registered address. Although the Claimant had denied this to her, Ms Buley had uncovered bank statements in the Claimant's name showing her as the Company Secretary. Ms Buley also put to the Claimant that she had a Police National Computer record number which you only received if you had been arrested, again although this was denied by the Claimant who told her that this was a police error, again this was checked and the police confirmed that the Claimant received a caution for criminal damage in 2007. Ms Buley explained that there were current investigations by the DWP in respect of possible Housing Benefit fraud and by Croydon Council in respect of tenancy fraud. Ms Buley expected the DWP case to be progressing through the CPS system sometime in the new year. The notes reflected that there was a suspicion of money laundering due to large sums of money moving through the Claimant's bank account over a 4 year period. The interview notes recorded that Ms Buley had been told by the Claimant that she had been fleeing domestic violence on two occasions and on the second occasion had 'fled' to Kingston and had reported this matter to the police. Ms Buley confirmed that in her opinion on the balance of probabilities there was sufficient evidence to suggest that housing benefit and tenancy fraud had taken place.

The Interview with Ms Campbell

85. The Tribunal were then taken to the interview notes with Ms Campbell on pages 532-5, this took place on the 30 August 2017. She stated that the Claimant had made five applications to buy the Eastney Road Property, all had been denied because checks had identified that she had been living at Hunters Road Chessington. The investigation had found that the Claimant had been claiming Housing benefit and Council tax (student exemption) on Eastney Road and she was also claiming these benefits in Kingston Borough Council. The DWP took over the investigation of the benefit fraud but more recently Croydon had been given permission to jointly investigate the benefit statement provided during the repossession hearing, as it had transpired that the evidence the Claimant gave in Court (where repossession was denied to Croydon Council) was that Eastney Road was her sole property as she had claimed that she had returned there permanently in January 2014 but had then left again because she was fleeing domestic violence. The Claimant had told Ms Campbell that Eastney Road was her sole residence but liaison with Kingston had led to a discovery that the Claimant had resided in two properties in Kingston and had claimed Housing benefit on both. She had not disclosed to Kingston that her partner was listed as the landlord of one of the properties which would have affected her entitlement to benefits from Kingston.
86. Ms Campbell told Ms McPartland that there had been dual raids on Eastney Road and Kings Court (which the Tribunal noted should be a reference to Court Crescent) in Kingston on the 28 June 2017, Ms Campbell accompanied the police that day and had found the Claimant's brother living there. He initially claimed that the Claimant and her children still lived there but after questioning admitted that she had not lived at the property for some time. The Claimant was found at the property at Kingston with her partner, baby and other children. Ms Campbell told Ms

McPartland that the keys to Eastney Road were handed back on the 3 July 2017. Ms Campbell stated that *“if the local authority proceeded to the civil court it would be on the balance of probability, and the amount of evidence that had been gathered (4 lever arch files of evidence linking her to other addresses), would strongly suggest that [the Claimant] had been lying and had behaved in a fraudulent manner in making claims for benefits on her tenancy agreements”*. The Tribunal noted from the agreed chronology that the Claimant was arrested that day and interviewed under caution

87. Ms Calliste Head of HR sent a detailed response to the Claimant on the 29 August 2017 (pages 508-11) responding to her letter of grievance. In outline she stated that her grievance appeal would be kept on hold pending the outcome of the suspension and disciplinary procedures. She also added that the without prejudice discussions with Mr Singh were not appropriate for discussions in the grievance process. She also dealt with the Claimant's concerns arising from her first meeting with Ms Langton on the 10 August in relation to IT, access to the building and her concern about what she described as a change in attitude. It was clear that she provided a substantive response to the Claimant's complaints about how the return to work meeting was handled in her letters and emails of the 15 August, the 22 and 24 August 2017.

The Claimant's interview.

88. The Claimant attended an interview with Ms McPartland on the 15 September 2017 with her union representative Ms Robertson and, as a reasonable adjustment, was permitted to record the meeting. At the meeting the Claimant informed Ms McPartland that she had pursued a Tribunal claim against the Respondent. The Claimant confirmed that she had held a tenancy at the same time for two addresses; Eastney Road Croydon and 77 Hunters Road Kingston. She explained this was due to her domestic situation in 2012 which she had explained to her Croydon Tenancy Officer who had advised her to find somewhere else to live, she also stated that he had said this was 'fine' because she was a student. The Claimant also said that she had telephoned the Housing Benefit Team in Croydon to inform them that she was a student and had started University in 2012. The Claimant asserted that she had informed the Council of her move to Hunters Road and the date she moved permanently back to the Eastney Road address. She confirmed that she had claimed Housing Benefit and Council Tax Benefit on the two addresses at the same time. She also stated that she did not know that student exemption could only be claimed on one property at a time and claimed that she was not aware of the rules surrounding Council tax. It was the Claimant's view that as she had been initially interviewed about these matters in 2015 and as there had been a Court case concluded with no further action, that this matter was concluded. The Claimant denied defrauding the Council or acting dishonestly.
89. Ms McPartland clarified that her investigation was only to determine whether the relationship between the Claimant and the Council, as her employer had broken down, and that the fraud investigation into criminal allegations was a separate matter being handled by the Anti-Fraud Team.

Ms McPartland confirmed that the fraud allegations would however be examined as part of her investigation particularly as the Claimant was working as a social worker for the Council.

90. There was a discussion about the DBS form which the Claimant had completed in 2015 as part of her application process. The Claimant confirmed she had completed DBS applications in the past including in respect of working as an OFSTED registered child minder and in a school. The Claimant told Ms McPartland that she had not understood that she needed to include all of her current or previous addresses on the form but in Ms McPartland's view, which she expressed to the Claimant, her past experience of completing such forms meant that this was not a satisfactory explanation. The Claimant went on to give her version of what had happened on the day of the DBS interview with Ms Osborne. She claimed that Ms Osborne was late for the meeting and the Claimant's car was on a meter. The Claimant claimed that she gave Ms Osborne her documents and signed a blank DBS form before leaving. The Claimant acknowledged the importance of the DBS process particularly working with vulnerable children and adults but said it was an oversight (page 564) and claimed that she did not have a criminal record.
91. At the end of the meeting the Claimant asserted that the Respondent was victimising her and the disciplinary was designed to intimidate her during her legal proceedings (page 574 and 577). The Claimant told the Tribunal that events during her past life which had concluded prior to her employment, could not be considered by the Respondent
92. The Claimant was signed off sick on the 19 September 2017 (page 592).
93. After the interview the Claimant sent Ms McPartland a letter dated the 19 September 2017 (page 579) attaching a letter of complaint (dated the 18 September 2017) regarding the on-going disciplinary procedures. She challenged her suspension and stated that the Tenancy and Housing Benefit fraud matters had been concluded. The Tribunal noted that on page 582-3 the Claimant informed the officer handling the right to buy application of the previous investigation and was told that the Council would carry out an internal and external search concerning possible fraud. This showed that there were investigations taking place as a result of her right to buy application. The Claimant also failed to refer to her previous email to Ms Buley dated the 2 February 2017 where she stated that she had been informed by Mr Hogan that the investigations were ongoing (see above at paragraph 58).
94. The Claimant also provided a written explanation of how the DBS form was completed but accepted that her failure to disclose previous addresses was based on a misunderstanding. She denied acting dishonestly and emphasised that she voluntarily completed a new DBS application in full "*to demonstrate my ability to reflect and learn from my mistakes, and to evidence my awareness of the importance and seriousness of completing a DBS application*". The Claimant stated that she never acted dishonestly or deliberately failed to disclose. In conclusion the Claimant stated that she believed that there was a discriminatory

motive for the disciplinary process. She also stated that *“during the recruitment process, I was not asked about any past investigation with the Council now (sic) was I aware of the need to make voluntary disclosure”*.

95. The Claimant stated further that the *“disciplinary procedure is a result of the councils attempt to frustrate, humiliate and bully me because of my complaint of discrimination, and successful litigation...”*. She confirmed what had been said to her in the investigatory meeting on the 15 September 2017 was that *“these allegations are of a serious nature, possibly gross misconduct; and they raise a question of honesty and integrity, which could subsequently amount to a breakdown in my working relationship with the council”*. She maintained that she had acted honestly and there was no evidence to suggest misconduct since she became an employee or to suggest a continuation or repetition of the *“alleged conducts”*. She claimed that the Respondent’s decision to suspend was disproportionate and caused her detriment to her career and requested that her *“suspension is halted immediately, and this disciplinary procedure is concluded with no further action”*.
96. This letter was forwarded by Ms McPartland to HR to respond (page 589). There was no evidence that Ms McPartland considered the complaints made by the Claimant about the process followed and whether the process amounted to an act of victimisation. Ms McPartland liaised with Mr Hogan and he confirmed that the issue was not closed as new evidence had arisen from their subsequent investigations.
97. Ms McPartland as part of her investigations, held further meetings with Ms Delalu, the Claimant’s former line manager (pages 832-3), Ms Wallace Head of Recruitment (page 822-3) and she obtained copies of the Claimant’s interviews under caution on the 22 December 2016, 28 March 2017 and 28 June 2017. In the interview with Ms Wallace she reported that Ms Osborne (who had since left the Respondent’s employment) could not specifically recall the interview but stated that she had never undertaken an interview for the purposes of completing a DBS in the manner the Claimant described. The normal format was to go through each question in turn before the applicant is required to sign the declaration to say that the information is correct. It was confirmed that this was a paper application not an online form.

The Investigation Report

98. Ms McPartland’s investigation report was dated the 26 October 2017 (pages 611-8). The evidence in relation to the first allegation of Housing Tenancy Fraud was seen on pages 613-4. The conclusion reached in respect of this charge was that the evidence showed that during the period 2012-5 the Claimant held two tenancies running concurrently in two different Boroughs. Although the Claimant had told the investigation that the move from Croydon to Hunters Road Kingston was due to alleged domestic violence, the police report concluded that this was a harassment case and not one of domestic violence. Ms McPartland therefore concluded on the balance of probabilities, that there was no need for the Claimant to move from her home. The report concluded that the real reason she moved was to be closer to her University.

99. The second allegation was in relation to claiming Council Tax and the findings of fact were on pages 615-6. The conclusion was that the Claimant wrongly claimed two student exemptions for Council tax on two properties at the same time, which she admitted. Ms McPartland accepted in cross examination that her finding that the Claimant's children had been signed on the register to attend schools in Kingston was factually incorrect. Ms McPartland concluded in the report that the Claimant had told her in the interview that she wanted to live nearer the University. The Claimant put to Ms McPartland in cross examination several questions to suggest that what she did could not amount to fraud however the Claimant did not deny the factual basis for the conclusions reached.
100. The third allegation was in respect of the DBS form and more specifically her failure to provide details of previous addresses and names. The findings of fact were on pages 616-7 and the conclusion reached from those facts were that she had failed to provide this information and signed a declaration on an incomplete form attesting to the fact that it was complete and accurate. In cross examination the Claimant put a number of questions to Ms McPartland suggesting that her breach of the DBS declaration requirements only amounted to a breach against DBS and not a breach against the Respondent, however this was an unsustainable line of questioning and the Tribunal noted that she did not deny breaching the requirements and also accepted the importance of full compliance with the DBS process in her line of work. Ms McPartland confirmed that if the only charge was in relation to the DBS matter, there would still be a serious case to answer.
101. There was a fourth charge added at this stage about breaching professional standards of conduct, but this was later dropped so the Tribunal did not make findings of fact about this matter.
102. The overall conclusion of the report was on page 618 that "*it is clear that [the Claimant] had claimed for dual housing benefit and dual council tax exemption between 2012-2015 to which she was not entitled*". The conclusion was that the evidence to support all of the allegations was "*conclusive*."
103. On the 15 November 2017 the Claimant presented her second claim to the Tribunal (case number 2302976/2017) alleging victimisation, breach of contract and maternity/pregnancy and disability discrimination.

Preparation for the Disciplinary Hearing

104. The disciplinary hearing was originally scheduled for the 22 December 2017 but the disciplinary pack sent to the Claimant on the 9 December 2017 (page 595 by recorded delivery) could not be delivered. The hearing was therefore postponed until the 12 January 2018 (page 603). The three charges were similar to those referred to above however they became more specific. The first charge was "*Housing Tenancy Fraud 27/05/2012 to 02/07/2017*"; the second charge was "*Council tax fraud from 17/09/2012 to 30/07/2015 (student exemption only)*" and lastly "*failure to provide*

accurate and comprehensive details in the DBS application dated 31 May 2015 ie.: previous addresses and known by any other name”.

105. The letter confirming the date and time of the reconvened hearing was at pages 603-5 of the bundle and was sent by Ms McPartland. Enclosed with the letter was the pack of documents relied on by the Respondent, they were at pages 606-1104 and an additional copy was provided for the Claimant’s representative. The Claimant was warned that if proven the charges “are likely to be regarded as gross misconduct and may lead to you being dismissed..”. The letter also asked about reasonable adjustments and it was confirmed that her chair and footstool would be available at the hearing. The Claimant was informed that if she wished to add any further documents or to call any witnesses, she was to let the Respondent know at least three days before the hearing. The Respondent arranged for the hearing to be recorded as a reasonable adjustment and the Claimant was given the option of recording the hearing herself. Although the Claimant objected to the Respondent recording the meeting (email dated the 28 December 2017 page 1106) the Respondent confirmed in reply that they would record the proceedings as they had allowed her to do so, they felt this was reasonable in all the circumstances which would also serve as a backup to the Claimant’s own recording.
106. In response to this letter the Claimant provided a number of documents that she wished to include in the bundle (see pages 1109-10 dated the 9 January 2018), she asked for Mr Hogan and Mr Fantie to be present so they could be cross examined. Mr Segurola, the person assigned to hear her case, had no previous dealing with the Claimant but had been informed of the fact that the Claimant had pursued an employment Tribunal claim and that there had been a remedy hearing in October 2017. He confirmed he was an independent manager.

The Disciplinary hearing

107. The disciplinary hearing took place on the 12 January 2018 with Ms Bevan from HR present, the Claimant was accompanied by her union representative. In attendance was Ms McPartland, Ms Lloyd Taylor. Ms Buley and Ms Campbell attended to be cross examined by the Claimant.
108. At the start of the hearing the disciplinary hearings manager Mr Segurola informed the Claimant that he would not be proceeding with the fourth charge as this was a matter for the HCPC, however he would be making the findings available to them for them to reach a determination on the matter. The Tribunal noted that if the charges were found to be proven it would be appropriate and necessary for the Respondent to make a reference to the professional body. There was no evidence that to make such a referral would amount to an act of harassment as alleged by the Claimant. The hearing commenced at 10am and lasted a full day. The panel deliberated at the end of the evidence and delivered the outcome to her orally.
109. The Tribunal were taken to the notes of the disciplinary hearing (page 1153-1286). The Claimant was taken to pages 1195-6 in cross examination where she stated that she resumed possession of Eastney

Road at the end of September 2014 because she claimed Housing benefit on Court Crescent until September 2014. She told the disciplinary hearing that she took repossession of Eastney Road in 2015, then confirmed it was September 2014 after a period of what she described as 'shuttling between the two addresses'. The Tribunal noted that it was put to her in the hearing (page 1197) that she had made a right to buy application in January 2014 on the basis that she was the sole and principal resident. Her evidence in reply appeared to be muddled and contradictory.

110. The Claimant put to Mr Segurola in cross examination that the panel did not have enough time to deliberate (taking only 40 minutes to come to a conclusion) and this was evidence that they had already formed a view; this he denied by saying that they had spent the whole day hearing evidence and in view of the clarity of the evidence he described the decision making as a natural process. The Claimant also asked Mr Segurola in cross examination whether it was appropriate to discipline an employee for housing and council tax fraud; he replied that it was as it was an issue of trust and integrity. He added that although it was put to him that they did not "continue to be a problem" he disagreed saying that "they were continuing over a period of time. In 2018 they were relevant and important as an employment issue". He accepted that the Respondent had connected her employment and previous housing issues. Mr Segurola confirmed in cross examination that the matters under investigation were benefit and tenancy fraud, potential subletting and an inappropriate request for the right to buy. He told the Tribunal that it was not his understanding that the issue in relation to tenancy and benefit fraud had concluded (which had been put to him in cross examination).
111. The Tribunal saw the summary outcome delivered at the end of the day at pages 1287-91. Mr Segurola gave a reasoned decision in outline on each charge before the panel, including consideration of the Claimant's response and her mitigation defence. Based on the conclusions reached on the three charges in combination, four counts of gross misconduct were found proven on the balance of probability. The panel considered the findings against the definitions in the Respondent's disciplinary policy. The four counts found to be proven were defrauding or stealing from the Council; bringing the Council into disrepute through acts which damage the reputation or credibility of the Council; failing to disclose any information required by your employment or other information that may have a bearing on the performance of your duties and lastly conduct or activities including those outside of work that make the employee unsuitable for the job or are detrimental to the Council's interests. Mr Segurola confirmed in answers given in cross examination that he concluded that the Claimant was guilty of deception because she made a claim for benefits she was not entitled to. He accepted that the Claimant's council tax fraud claim took place before her employment began but it resulted in a detriment to the Respondent and his conclusion in the dismissal letter (page 1304) was that "Your actions have resulted in a financial loss to the Council as well as having a potential detrimental impact on the Council's reputation".
112. The panel found that the relationship of trust had been irredeemably broken and summary dismissal was the appropriate sanction.

113. The Claimant presented another ET1 to the Employment Tribunal (case number 2300570/2018) claiming unfair dismissal and victimisation
114. Although summary reasons were provided to the Claimant on the day of the disciplinary hearing, a detailed written outcome was provided dated the 16 February 2018 at pages 1292-1307. This letter summarised both the management's and the Claimant's cases and submissions. There was also a section to reflect the panel's deliberations. The dismissal letter was sent to the Claimant with a copy of their transcript of the hearing.

The Claimant's appeal

115. The Claimant appealed the decision to dismiss by a letter dated the 21 February 2018 (pages 1309-1333). In outline she contended that the disciplinary process was discriminatory (an act of victimisation). The Claimant maintained that the disciplinary hearing and investigation were procedurally unfair, the decision reached was incorrect in that the conclusion reached was not supported by the evidence and the sanction was too severe taking into account the nature of the conduct and the mitigating circumstances. In addition to addressing each head of appeal, she claimed that there were inaccuracies in the outcome letter and challenged the veracity of the evidence paragraph by paragraph (see pages 1327-1332).

Preparation for the appeal hearing.

116. The appeal hearing was heard by Mr Iles who was Director of Public Realm in the Respondent's Corporate Leadership Team with no responsibility for oversight of the Social Work Team. He had no prior involvement in any matters relating to the Claimant. He confirmed that he was an experienced appeals manager. The letter of invitation to the appeal hearing was dated the 9 March 2018 at page 1405-6 of the bundle. In his letter he confirmed the Claimant's grounds of appeal and that the hearing would be recorded, a transcript would be provided and she would have the opportunity to question the dismissal manager. He confirmed she could call witnesses and be accompanied to the hearing. He also asked whether any adjustments were required for the hearing.
117. The Claimant requested a comfortable chair and footstool. She confirmed she would like to question Ms McPartland and Mr Segurola and requested the attendance of Gary Fantie Housing Officer (his cross examination was at pages 1505-1519). The Claimant confirmed the date of the 26 March 2018 was acceptable for the hearing (email dated the 10 March 2018 page 1407).

The Appeal hearing

118. The requested witnesses attended the appeal as seen from the notes on pages 1412- 1544 along with Ms Bevan Acting Head of HR and Ms Moorman Director of HR.

119. The Claimant was not represented. At the start of the hearing she explained the basis of her appeal. Firstly she stated that the disciplinary procedure was discriminatory and that the charges had been 'raked up' from a previously concluded investigation. She said that there was no evidence to suggest that there was an ongoing investigation. The Claimant went on to refer to the protected conversation. The Claimant stated that this was a clear case of victimisation. Of the investigation she stated that this was one sided and "everyone trusted the Fraud Team" and failed to consider her side of the case. She claimed that the facts relied upon by the Respondent were inaccurate. The Claimant was asked about what inaccuracies she was referring to and she stated that it was inaccurate to say that she had made five right to buy applications and the investigation was also wrong to conclude that she had attended three interviews under caution, it was in fact five. She also stated that the information about her childrens' school was wrong as they moved school in January 2013 and not in May 2012. The Claimant denied that she committed fraud, she moved home because she was in fear of violence. She claimed that holding two tenancies at the time was not an act of fraud under these particular circumstances (page 1419). The Claimant stated that it was unreasonable to allege fraud/misconduct "in the absence of evidence to suggest the conduct was deliberate in respect of the DBS" (page 1441).

120. The appeal heard detailed evidence about the various tenancies held by the Claimant, and she was specifically taken to pages 1482 where she indicated that she had been told by Croydon Council that it was appropriate for her to have a term time address. Her evidence in the appeal was that she spoke to someone on the phone about this. However, the Tribunal noted that in the interview under caution on the 28 March 2017 she admitted that she did not think that she had told anyone at Croydon Council about Court Crescent. She was asked in this interview whether she knew she was under an obligation to report this to the Council and she denied knowing that she had to report this. The two pieces of evidence were contradictory. The Claimant was asked in cross examination, which was right, did she tell Croydon about Court Crescent or not and she replied, "I spoke to someone to see if I could get help". There was no evidence before the Tribunal that she had disclosed Court Crescent before 2017 and her vague evidence given to Tribunal was, yet another version of events not previously provided in the many interviews that had taken place. When it was put to the Claimant in cross examination that her evidence was contradictory, she replied that "maybe I had a better recollection" in respect of the later evidence given in the appeal. The Claimant told the Respondent at the appeal that she moved back to Eastney Road in September 2014 (page 1482).

121. Mr Fantie and Mr Hogan attended the hearing to be cross examined. The Claimant was taken to the evidence of Mr Fantie given at the appeal hearing on page 1511 where he stated that people often cite a police report when they wished to be rehoused but he stated, "when we do investigate we find they are telling lies". The Claimant commented when taken to this that "mine was not domestic violence".

122. The evidence of Mr Hogan was seen on pages 1520-1530. He was asked about the law in relation to tenancy fraud and he confirmed that his investigation was conducted under the Prevention of Social Housing Fraud Act 2013 (page 1521) which states that a tenant commits an offence if they “sublet or part possession with the whole of the dwelling of the house, and they’re committing an offence if they cease to occupy the dwelling house as the tenant’s only or principal home, but an offence isn’t committed under that if there’s a threat of violence by a person residing in [the property]”. He confirmed that in his view the investigation had never been concluded (page 1525) and was aware that the Claimant had now terminated the tenancy herself (page 1526). He also explained about the status of the two investigations into the Claimant, that there was a tenancy investigation that was started in 2014 looking at the tenancy issues triggered by her right to buy application and the second was a corporate investigation triggered by her telephone call to the tenancy officer, discovering that the Claimant was now an employee looking into her recruitment (page 1529-30).

The Appeal Outcome.

123. The appeal outcome was on pages 1666-1675 and was dated the 3 May 2018, it reflected that following the appeal hearing, Mr Iles reviewed the transcript of the meeting between Ms Campbell and the Claimant on the 15 February 2018 and had further meetings with Ms Campbell and Mr Hogan around the timeline of the audit investigations. Ms Moorman also emailed Bidy Sobamiwa on the 9 April 2018 to seek clarification of emails she sent to the Claimant on the 17 June and 22 April 2017 (about whether the tenancies at Eastney Road and Court Crescent ran concurrently). Ms Moorman also contacted Ms Green, who provided the panel with the handwritten notes of the meeting. The further investigations delayed the outcome but the Claimant was kept informed.

124. The Claimant’s appeal was unsuccessful, and the panel’s findings were on pages 1672-3.

125. It rejected the Claimant’s contention that the disciplinary process was an act of victimisation because she had been informed by Mr Hogan in April 2016 that she was the subject of an ongoing fraud investigation and that this investigation had not ceased in 2015. The Council became aware of the fraud investigation of an employee and they were bound to investigate the matter both in relation to the tenancy issue and in relation to the concerns about the DBS form. He rejected the Claimant’s contention that the investigation only started after she presented an ET claim as he concluded that this was a continuing investigation which commenced on the 30 April 2014.

126. After providing a chronology of the background Mr Iles went into the background to the protected conversation and confirmed that Ms Green was interviewed to provide her perspective (page 1669). It was accepted that a protected conversation took place into the DBS issue and the Claimant’s complaints of discrimination. He confirmed that the key concern for the panel was not whether the Claimant had committed an act of fraud “in the criminal sense” but “it is required to consider whether on the

balance of the evidence, it can form a reasonable belief that you have acted contrary to the Council's tenancy and benefits policy. If that conclusion is reached, the next step is then to consider what action should be taken in the circumstances, and whether this behaviour continued once you were employed by the Council" (page 1669). The Claimant put to Mr Iles in cross examination that although she admitted in her appeal letter (at pages 1565 and 1570) that she held dual tenancies, this did not automatically suggest fraud and she suggested that it wouldn't amount to gross misconduct and it happened before she became an employee. He replied "this is semantics if it is fraud or breaches, at page 1565 you put areas of concern and you felt that it lacked substance. As a chair of the appeal panel I investigated these points. I did not uphold your point". He explained that he concluded that the conduct extended to the duration of her employment because she only handed back the keys in July 2017.

127. He concluded that there was no evidence that the Claimant was treated differently because she had done a protected act. He also concluded that the investigator (Ms McPartland) was not aware of the protected conversation and there was no link between the protected conversation and the decision to investigate. Mr Iles therefore concluded that there was no evidence to conclude that the Claimant had suffered victimisation.
128. In respect of the second ground of appeal that the investigation and disciplinary hearing were procedurally unfair, this was rejected. Although it was accepted that the investigation report could have been clearer (page 1674), it was concluded that they were conducted fairly and thoroughly. It rejected the Claimant's contention that the disciplinary panel's conclusion was predetermined as the appeal panel found that the hearing lasted a full day and had considered a considerable volume of documentary evidence and oral evidence. The panel had taken time for deliberation and followed this up with a detailed decision letter.
129. In relation to the Claimant's complaint that the decision reached was incorrect, the panel concluded that "*the evidence before the Disciplinary hearing leads us to conclude that the breach of your tenancy agreement occurred as you had moved voluntarily, and then did not take action to keep the Council informed of your actions. Your tenancy agreement required you to inform the Council of any period over 3 weeks absence*". The panel therefore concluded that "*on balance the Appeal Panel found that your actions were deliberate and continued throughout two consecutive tenancies up to and beyond the start of your employment, only ceasing when you handed back the keys to your Council property in July 2017*".
130. In relation to the decision reached on the completion of the DBS form it considered that the Claimant had described this as an error on her part. It noted that the evidence of the Claimant and HR conflicted. The appeal decision concluded that the Claimant's account of the events "lacked credibility and there was reason to believe that this was dishonest" (page 1673). The decision letter stated that "for your account to be accurate, the HR person would have been acting in a wholly improper manner (by

completing the form without you present) which may have amounted to very serious conduct”.

131. The Claimant confirmed to the Tribunal that she did not leave details of her previous names and addresses which would have enabled the HR person to complete the form accurately on her behalf. There was no suggestion from the Claimant that she gave the Respondent any further explanation that included providing them with all the necessary details. The Tribunal therefore conclude on the balance of probabilities that the disciplinary panel were entitled to prefer the evidence of HR to that of the Claimant. Mr Iles stated in cross examination that the issue in relation to the DBS form was that the Claimant failed to complete the form and there was incorrect information, he denied that HR had decided that no further action was necessary. The Tribunal noted that the email from HR indicated that there was no issue in relation to the DBS form, however that was a view which changed as a result of the broader and more extensive investigations carried out by the fraud team (see above the meeting of the fraud team on the 2 June 2016 where this was flagged up see above at paragraph 45).
132. It was concluded that the sanction of summary dismissal was appropriate in the circumstances and the disciplinary panel was entitled to find that gross misconduct warranted the sanction of summary dismissal and it was not unreasonable for them not to consider that a lesser sanction appropriate.
133. The Claimant’s appeal was not upheld. The appeal panel “further determined that taking into account your role as a social worker, dismissal was the reasonable sanction in all the circumstances”.

Submissions

134. On the last morning of the evidence, the Claimant expressed she was in physical discomfort. She needed to stand whilst she was cross examining the last witness. On account of this and in consideration of the Claimant’s disability of fibromyalgia and her position as a litigant in person, the Tribunal provided an adjournment for the whole of that afternoon and the next morning in order for the parties to prepare for their closing submissions. When the Claimant appeared for submissions at 2pm on the 10 October 2019, she confirmed to the Tribunal that she was feeling better. We will not recite the submissions made by each party but have referred to them where appropriate.
135. The Claimant and Respondent made oral submissions and written submissions. The Claimant had only brought one copy of her written submissions to the Tribunal, she later sent a copy to the Tribunal and the Respondent on the 5 December 2019. The Tribunal also took into account submission points that formed part of the Claimant’s statement, the Respondent’s opening note and the case law referred to by both parties.
136. Before the start of the delivery of the submissions, the Tribunal clarified that the issues were those in the bundle however the Claimant raised a concern that this made no reference to her claims of disability

discrimination and breach of contract that had been referred to in her statement. The Tribunal discussed these issues and it was clarified that the disability discrimination point that was pursued was victimisation and the breach of contract point was in relation to the handling of the grievance procedure.

137. Mr Crawford pointed out that his cross examination of the Claimant had addressed only the matters covered by the Agreed List of Issues and he commented that the breach of contract matter was well out of time. When asked by the Tribunal whether he had addressed these matters as part of his submissions, he advised that he had done so in brief. The Tribunal gave the Respondent time to flesh his submissions out if he wished to do so in his oral submissions. The Respondent did not object to the course of action suggested by the Tribunal.

138. The Tribunal bore in mind two factors when deciding how to deal with the concern about whether it was appropriate to amend the issues at this late stage of the hearing. Firstly, we considered that the Claimant was a litigant in person and secondly the ruling in the case of *Saha v Capita Plc* UKEAT/0080/18 which reminded Tribunals not to stick slavishly to a list of issues. It was noted that the Tribunal had taken evidence in relation to the matters referred to in the Claimant's statement and the Respondent would be invited to make submissions on new matters raised by the Claimant. The Respondent raised no objection to this suggestion and made submissions in reply to her breach of contract submissions. Although this was a late addition to the list of issues, it was proportionate to include them as no prejudice was caused to either party. The Tribunal therefore considered these two additional matters when making our decision.

Cases referred to in closing submissions by the Claimant

Monji v Boots Management Services Limited [2014] EKEAT/0292/13
Brito-Babapulle v Ealing Hospital NHS Trust [2013] IRLR 854 EAT

Cases referred to by the Respondent

BHS v Burchell [1980] ICR 303 EAT

The Law

Section 98 Employment Rights Act 1996

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
- (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

- (2) A reason falls within this subsection if it—
- (b) relates to the conduct of the employee,
- (4) [Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
 - (b) shall be determined in accordance with equity and the substantial merits of the case.

Equality Act 2010

Section 13 Direct discrimination

- (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.

18 Pregnancy and maternity discrimination: work cases

- (1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.
- (2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably—
- (a) because of the pregnancy, or
 - (b) because of illness suffered by her as a result of it.
- (3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.
- (4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.
- (5) For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).
- (6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—
- (a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;

(b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.

(7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as—

- (a) it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2), or
- (b) it is for a reason mentioned in subsection (3) or (4).

Section 27 Victimisation

(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—

- (a) bringing proceedings under this Act;
- (b) giving evidence or information in connection with proceedings under this 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.

Cases referred to:

The Claimant referred to the cases of:

Monji v Boots Management Services Limited [2014] UKEAT/0292/13

Sekander v Rocket Limited 2301645/2016

Salford Royal NHS Foundation Trust v Rolden [2010] IRLR 121

The Respondent referred to:

BHS v Burchell [1978] IRLR 379

Decision

The unanimous decision of the Tribunal is as follows:

139. Dealing first with the claims of pregnancy and maternity discrimination, we have found as a fact above at paragraph 63-4 that the failure to inform the Claimant of relevant training courses was not an act of discrimination because of pregnancy or maternity. Ms Langton sent the Claimant a list of courses which was out of date but then the Claimant took the initiative to contact the training team herself. There was no evidence to suggest that the Claimant was treated less favourably than other employees who had

not taken maternity leave in the brief period that she was available to attend courses. The burden of proof does not shift to the Respondent.

140. In relation to the Respondent's decision to restrict the Claimant's access to the building, we have concluded that this was unfavourable treatment but was not on the grounds of maternity. We refer to our findings of fact above at paragraph 71 and 76. We concluded that the Respondent held serious concerns about the honesty and integrity of the Claimant, these concerns were genuinely held and her access was restricted for that reason. There was no evidence to suggest that her access was restricted due to maternity and although the Respondent referred to health and safety issues, the Tribunal conclude that this was not the real reason. This head of claim is not well founded and is dismissed. The Claimant's claims of maternity discrimination are therefore dismissed.

141. The Tribunal will next deal with the Claimant's claim of victimisation. The Claimant alleged that the Respondent 'raked up' the fraud investigation and disguised the disciplinary allegations under what was described as a pretence of fraud. The Claimant says that this was an act of victimisation. The Claimant puts her case in very strong terms. However, the Tribunal have made detailed findings of fact about this matter above. We found that the allegations were of a serious nature and the investigation that followed was detailed and complex. The Tribunal have found as a fact that the investigations were ongoing on the 2 June 2016 when it was discovered that the Claimant was an employee of the Respondent. We have also found as a fact above at paragraph 42 and 44 that the investigations were ongoing after the close of the repossession proceedings in 2015 in relation to the Claimant's claim for Housing Benefit. An email dated the 30 March 2016 requested further information and was the subject of further investigations by the fraud team in Croydon. This was before the Claimant had raised her grievance (on the 18 April 2016). This reflected that investigations were continuing and there was no evidence to suggest that there was any link between the protected disclosure and the decision to investigate the Claimant and to subsequently bring disciplinary proceedings against her. The Claimant's claim for victimisation is not well founded and is dismissed.

142. The Claimant also stated above that there was a deterioration in the relationship after she did the first two protected acts. The Claimant in her written submissions referred specifically to the Respondent's decision to pursue a fraud investigation into her conduct. The Tribunal in our findings of fact above show that the fraud investigations had been ongoing prior to any protected act. There was evidence to suggest that Kingston and Croydon were co-operating on a joint investigation and the DWP was involved. This expansion of the investigation was due to new facts and concerns. It was noted in the Claimant's written submission on page 11 that she also used the word intensified which strongly suggested that she was aware that investigations were ongoing. Although the Claimant's written submissions suggested that the fraud investigation had 'died a death', there was nothing to suggest that this was the case there was simply no communication with the Claimant, this was understandable under the circumstances. There was no evidence to suggest that there

was a causal connection between her two protected acts and the deterioration of the relationship between them.

143. The Claimant has also suggested in her written submissions that her protected acts motivated the Respondent and gave them the right to 'rake up' the fraud investigation which then gave them an opportunity "... to carry out an audit that revealed errors on my DBS". The Tribunal have concluded that the fraud investigation predated any protected act and was ongoing. It was when the Respondent, as the Claimant's employer, became aware of the fraud investigation that it decided to conduct a disciplinary investigation. That investigation included looking at the DBS form (as it was inextricably linked to the issue of where the Claimant was residing, or where she claimed she was residing). The evidence before the Respondent strongly suggested wrongdoing. The Tribunal noted that employment of someone as a Social Worker required the employer to expect a high degree of honesty and integrity taking into account their role in the lives of those who are vulnerable. The Respondent was duty bound to look into these matters where genuine concerns had been identified about the Claimant's conduct and where it was suspected that full disclosure had not been made in the DBS form. There was no credible evidence to suggest that this was connected in any way to the protected acts.
144. Turning to the next issue of alleged victimisation, the Claimant stated that she suffered a detriment when she was asked to attend a meeting with Mr Singh to discuss termination of her employment. The Tribunal have found as a fact that the Claimant was misled as to the purpose of the meeting, the Claimant believed she was attending a meeting with her rep to discuss her grievance appeal. This meeting was held by a senior HR person who appeared to produce no minutes of the meeting and there was no evidence led by the Respondent on this point. The Claimant stated that she was told in this meeting that she was facing dismissal for the DBS matter.
145. The Tribunal have found as a fact above at paragraph 52-3 that she was subjected to a detriment and there was a direct causal link between the protected act and the circumstances under which the meeting was called, the option put to the Claimant which was to face disciplinary proceedings leading to dismissal if no settlement was reached. We conclude that on the evidence the burden shifts to the Respondent. Since the Respondent has called no evidence to suggest that the meeting was called for reasons unrelated to the protected act we concluded that this was an act of victimisation.
146. The last issue in relation to victimisation is the Claimant's claim that the disciplinary allegations were raised because of her protected disclosure. The Claimant also added in submissions that the detriment complained of was not only in relation to the allegations against her but to the act of suspension. The detailed findings of fact we have made above showed conclusively that the various and wide-ranging investigations were ongoing before the protected acts.

147. The Tribunal also considered that the reason for commencing the disciplinary investigation was for the reasons we have stated above and in summary due to evidence that had come to light when the Claimant put in her right to buy application. It was then that the fraud department became aware that the Claimant had become an employee of the Respondent in a position of trust. They informed the social work management team and we have referred to that initial meeting above. We are content that this was the principal reason for commencing the investigation and it was not because of her protected act.
148. As we have found as a fact above, suspension was a neutral act to allow the Respondent to carry out a full investigation into all matters. The use of suspension was, in the Tribunal's view to be reasonable and proportionate in the circumstances, considering the nature and gravity of the charges and the need to protect vulnerable service users.
149. There was no evidence to suggest that there was a correlation between her raising her ET claim and an escalation or an intensification of the investigation or of the attitude of the Respondent to the evidence before them. In the absence of any evidence of such a causal connection this claim must fail. Although the Claimant stated that there was a pretence of a fraud investigation, the Tribunal has found as a fact that there were actual and ongoing multi-disciplinary fraud investigations which had for some time involved a fraud team outside of the social work department and in co-operation with Kingston. This head of claim is therefore not made out on the facts.
150. The Claimant also claims breach of contract. Although it was not on the agreed list of issues presented at the start of the hearing, the Tribunal accepted that this was a matter before us and the Respondent accepted that the matter could be dealt with in submissions as it was referred to in some detail in her first claim form (see pages 54-6). As the facts supporting this claim were before us and the issue was on the claim form, we decided that this matter should be dealt with. The Claimant stated that the breach of contract was in respect of the Respondent's failure to comply with their grievance policy and to arrange an appeal hearing. The Tribunal noted that the grievance appeal hearing did not take place. The Claimant stated that the failure to convene an appeal was a fundamental breach and a breach of trust. However, there was no evidence to suggest that there was a contractual obligation to provide the Claimant with an appeal in the grievance procedure. In the absence of any evidence to suggest that the grievance procedure provided the Claimant with a contractual entitlement to have a grievance hearing and appeal, there was no evidence that failure to convene an appeal amounted to a breach of contract. This head of claim is not well founded and is dismissed.
151. Turning to the Claimant's claim for unfair dismissal, she accepted in her written submissions that the Respondent had shown a potentially fair reason at face value of misconduct.
152. The Claimant's headline point in her written submission was that the allegations of fraud were historical and the housing matters that had occurred had been investigated and concluded prior to her commencing

employment. The Tribunal do not agree, and we rely on our detailed findings of fact above. We concluded on the facts the concerns were of a serious nature and the investigation was ongoing. The disciplinary and appeal process were reasonable, and the conclusions reached were consistent with facts before them and within the band of reasonable responses.

153. The Claimant stated that the charges did not amount to gross misconduct and also that the labelling of the allegations as fraud was inaccurate and she put a number of questions to the dismissal and appeals manager about this issue and we refer to the evidence in relation to this above. The Claimant relied on the outcome of the repossession Court case in 2015 to suggest that the relevant matters were neither ongoing nor matters that could be considered again in proceedings against her by the Respondent. The Tribunal again refer above to our findings of fact which show that the concerns raised by the internal fraud team had continued and widened to include the DBS issue and the evidence emerging from the repossession proceedings of Eastney Road. In the Claimant's closing submissions, she confirmed that the Judge at the repossession hearing (in 2015) had found that a breach had occurred but had been rectified. However, from the perspective of the Council as an employer, the fact that any such breach had occurred, was a basis for disciplinary investigation and consideration. There was the possibility that the Respondent could be brought into disrepute by the Claimant's actions. In the labelling of the misconduct as fraud the employer, while needing to be proportionate is not obliged to apply the higher criminal test in disciplinary proceedings and a finding of fraud or any other type of gross misconduct need only to be based on a careful and balanced review of the evidence, applying a test on the balance of probability.
154. Although the Claimant stated that the case cannot be considered twice on the same facts, that may be true in certain circumstances, but this was not a case where the same charges had been brought. In any case, internal proceedings had not been brought against the Claimant previously and there was new evidence before the Respondent and these matters were being investigated by the employer for the first time. The fact that Croydon Council as a landlord had investigated and sought repossession of the property this did not prevent the Respondent as the employer from then considering those facts in addition to other matters when considering charges of misconduct against the Claimant as an employee.
155. In respect of the DBS matter the Claimant conceded in her oral submissions stated that she "in no way wished to lessen the seriousness" of this matter. However, in her written submissions at page 13 she alleged that the DBS issue was re-opened after she failed to reach a settlement, maintaining that it was done to harass her during her Tribunal claim. In the Claimant's oral submissions, she sought to provide an explanation of what she described as the errors that occurred on her DBS form.
156. The Respondent carried out an enhanced DBS check for those in its social work team, this was crucial given the nature of their work. The Claimant was very familiar with the process of disclosure and the reasons for it, having been through the process many times previously (we heard

that she had completed a large number of DBS forms both as a child minder and in connection with social work) and having been trained as a social worker she would have been aware of the importance of full disclosure. The finding that she deliberately failed to complete an accurate DBS form was consistent with the facts before the Respondent and her inconsistent explanations about this matter throughout these proceedings also reflected a lack of credibility. The Respondent had good reason to conclude that the conduct in relation to the DBS form and its completion was an act of gross misconduct. The Tribunal found as a fact that only three weeks after completing the DBS form prior to the start of her employment, she changed her name again by deed poll but only told the Respondent some months later. The Claimant changed her name a number of times but failed to inform the Respondent of her previous names or addresses, we have never been told the reason for this and the Respondent was entitled to conclude, in the absence of any credible evidence, to suggest that this went to the Claimant's honesty and integrity. The Tribunal conclude that the conduct in relation to the DBS form, was sufficiently serious to amount to an allegation of gross misconduct and if proven could result in summary dismissal.

157. The Claimant in her closing submissions has stated that dismissal was a foregone conclusion and relied specifically on the words spoken during the without prejudice discussions with Mr Singh to support this contention. Although we have concluded that the conduct of this meeting was an act of victimisation, we do not conclude that this in any way impacted on the fairness of the disciplinary process. We reach this conclusion because those conducting the investigation were independent, the investigations manager was also independent of the fraud team and the dismissal and appeals manager were independent. There was no evidence that Mr Singh had any input into the disciplinary process, and he did not advise those involved in the process. There was nothing to suggest that Mr Singh had sought to influence those involved during the disciplinary process or that he had shared his views with them. There is therefore no evidence to suggest that dismissal was predetermined as all conclusions reached were supported by documentary and oral evidence and the disciplinary and appeals panels had all the evidence before them. Although the Claimant has suggested that the disciplinary panel had taken insufficient time to reach a decision and therefore this was evidence of predetermination, the Tribunal accepted the credible evidence of Mr Serugola who stated that the process was ongoing throughout the day and the panel had spent their time considering all the evidence. He stated that in light of the clarity of the evidence, they were able to reach a unanimous conclusion without difficulty.

158. If there had been any defects in the procedure followed by the disciplinary panel, the appeals process was fair and thorough. Mr Fantie was called as a witness and Mr Iles carried out further investigations to ensure that all points of appeal had been dealt with. This was a thorough and fair process. The Claimant's claim for unfair dismissal is not well founded and is dismissed.

159. This case will now be listed for a remedy hearing however the parties are urged to see if the matter can be resolved without the need for a

**Case No: 2302976/2017
2300570/2018**

further hearing. The parties have 28 days from the date of the promulgation of this decision to see if a settlement can be reached. If not the parties are asked to write jointly to request that the matter be set down for a one day remedy hearing, dates to avoid should be provided in this letter.

Employment Judge **Sage**

Date: 28 February 2020