Case Number: 2304239/2018
Code V

Reserved decision

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Ms P Gravell	**AND**	Greenwich Housing Rights

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Croydon **ON** 25th, 26th and 27th January 2021

EMPLOYMENT JUDGE A Richardson **Members:** Mr A Peart
Ms L Hawkins

Representation
For the Claimant: in person
For the Respondent: Mrs S Beattie, Consultant

JUDGMENT

The unanimous judgment of the Tribunal is that

(1) The claimant was not victimised under S27 Equality Act 2010 by the respondent.
(2) The claimant's claim of constructive unfair dismissal is not well founded.
(3) The claims are dismissed.

REASONS

Background and issues

1. The claimant complains of victimisation under S27 Equality Act 2010 (EqA) and constructive unfair dismissal under S95(1)(c) Employment Rights Act 1996 (ERA). The claimant resigned on 18th August 2018. The effective date of termination is not disputed and is 19th September 2018. The claimant entered into early conciliation with ACAS between 25th

October and 25th November 2018. She filed a claim form on 25th November 2018.

2. The protected acts relied upon are
    a. that the claimant assisted a work colleague Ms C Herbert (CH) in a grievance against inter alia, their senior supervisor, Mrs Ola Alalade; and
    b. that the claimant filed a grievance against Mrs Alalade on 3rd August 2018.
3. The detriments relied upon were;
    a. the claimant was called into an investigation meeting by Mrs Alalade on 25th July 2018; and
    b. Mr Peter Okali, the Respondent's director, failed to properly deal with the claimant's grievance about Mrs Alalade's alleged conduct.
4. The claimant additionally set out further 'detriments' in her witness statement which were :
    a. in about October 2017 a reasonable adjustment of not requiring the claimant to travel to the Bromley office had not been immediately granted and ultimately was only granted on a temporary basis;
    b. being sent an email by Mrs Alalade, pointing out that the claimant had taken a late lunch break outside the specified break period of 12 noon – 2pm;
    c. unnecessarily being called at home on a non working day;
    d. being given short notice of an investigation meeting;
    e. ignoring the claimant's request to be considered for voluntary redundancy.
5. The claimant did not plead any of these incidents as detriments and we have treated them as background information in support of her pleaded allegations.
6. The respondent pleaded a time point: the claimant had filed her claim form one day late on 25th October 2018.

Proceedings and evidence

7. The proceedings were conducted by CVP. The hearing started late because of the unavailability of a non-legal member of the panel. Furthermore, the other non-legal member of the panel had technical difficulties in downloading and reading the documents. In the circumstances, replacement panel members were substituted for the original panel members. The hearing did not commence until 2pm.
8. We were provided with a final hearing file of documents (the Bundle) exhibited as R1.
9. It was agreed at the commencement of the hearing that the time point would be dealt with as a preliminary issue. The claimant gave evidence and was cross examined. The panel retired to deliberate on the question of whether it was just and equitable to extend time. The tribunal did extend time and found that the balance of injustice and hardship weighed

in favour of the claimant. The decision was given with oral reasons.

Findings of Fact

10. We make our findings of fact on the basis of the material before us taking into account contemporaneous documents where they exist and the conduct of those concerned at the time. We have resolved such conflicts of evidence as arose on balance of probabilities. We have taken into account our assessment of the credibility of witnesses and the consistency of their evidence with surrounding facts and documents. Our findings of fact relevant to the issues which have been determined are as follows.

11. Our assessment of the witnesses was that although overall they were straightforward there were occasions when we preferred the evidence of one witness over the evidence of another where they were in direct conflict. We found the claimant undermined her credibility somewhat by a tendency to be oversensitive in some situations she described and to act on her negative assumptions about the respondent's intentions. We did not accept all of Mrs Alalade's evidence. Ms Grewal was a forceful, persuasive and impressive witness. Mr Okali was honest although at times vague and hesitant

12. The claimant was employed as a Housing Advisor with the respondent Charity as a locum in January 2017. She became a permanent employee in April 2018. The claimant was one of a team of housing advisors. She worked three days a week Monday, Tuesday and Wednesday. At the relevant time the senior manager in the office was Mrs Alalade, a solicitor. Ms Rosie Grewal, also an experienced solicitor in housing rights, was employed to give support to the team of advisors based in the Woolwich and Bromwich offices. Ms Grewal worked on Thursdays and Fridays, occupying the claimant's vacant desk. She was available for the housing advisors to call her any time including on her non-working days for advice and support.

13. On 13th Jan 2017 one of the claimant's work colleagues, Caroline Herbert (CH) emailed Mrs Alalade about experiencing maternity discrimination and that she was going to file a grievance again Mrs Alalade. CH did not refer in that email to the claimant as a potential witness to the grievances about to be raised with the respondent.

14. The grievance against Mrs Alalade was emailed by CH on 4th April 2017 to Mr Okali, the then Director of the Respondent, who reported to the board of trustees. In the grievance CH refers to the claimant on four occasions as being a witness to her grievances. The references to the claimant related to:

(i) CH being humiliated as a highly experienced case worker by being required to 'shadow' the claimant on return from CH's maternity leave;

(ii) CH having a conversation with the claimant in about July 2016 about the composition of the case work team;

(iii) the claimant witnessing a conversation on funding between CH and Mrs Alalade in about January 2017; and

(iv) the claimant notifying CH that there was a development opportunity for a trainee solicitor post commencing in about January 2016 of which CH was not officially informed during her maternity leave although she would have been interested in applying for such a post.

15. On 24th April 2017 Mr Okali acknowledged receipt of CH's grievance and invited her to a meeting on 2nd May 2017. The grievances substantially, but not entirely, related to Mrs Alalade.

16. On 2nd May 2017 CH attended a meeting with Mr Okali to discuss her grievance. At this meeting CH discovered that her grievance had been passed to Mrs Alalade by Mr Okali. On 19th May 2017 CH provided Mr Okali with the names of her witnesses for the grievance investigation which she had omitted to do at the meeting on 2nd May. CH stated in her email: "*I was a bit thrown at the end of the meeting when I found out that Ola had had access to my entire grievance and forgot to give details of all witnesses".*

17. On 19th May 2017 CH's Unison representative, JL, also wrote to Mr Okali complaining that Mrs Alalade had received CH's grievance papers. For technical reasons this email was not sent; it was forwarded to Mr Okali on 9th June 2017. In the email the Union representative stated: *" I am very concerned that you have chosen to share [CH's] whole Grievance with the main person named within it. This is a clear breach of ACAS guidance when dealing with Grievances and makes it almost impossible for Caroline to get a fair hearing now, as the person has been pr- warned as to the allegations against her, giving her ample opportunity to get her story straight, to speak with other witnesses named in the Grievance, and also to destroy any evidence there may have been."*

18. Mr Okali stated that he had passed CH's grievance letter to Mrs Alalade but he could not remember precisely when, or whether it was by hard copy or by email. Mrs Alalade recalled receiving a grievance from CH and passing it on to the trust board as she had been the most senior manager in post at the time, prior to Mr Okali's arrival. She denied receiving a hard copy file of CH's grievance from Mr Okali. She had had several emails

with complaints about her and other members of staff but she did not recall reading any grievance file from Mr Okali. She claimed that CH had raised so many grievances.

19. Once Mr Okali had taken over as director, Mrs Alalade said she had had no involvement in the process apart from being interviewed by SB. She had no recollection of whether the claimant was cited as a witness to any of CH's grievances or whether the claimant was in fact a witness to any incident or what she could say.

20. Mr Okali acknowledged his action in disclosing the grievance to Mrs Alalade was inappropriate and he withdrew from investigating the grievance without interviewing Mrs Alalade. An independent HR Consultant Ms S Briggs, (SB) was subsequently engaged to conduct the investigation. We accept that Mrs Alalade and Mr Okali both had no involvement in the investigation process after SB had been appointed as investigator. We find however that Mrs Olalade was certainly aware that CH had raised complaints against her.

21. The respondent had opened a new office in Bromley close to the County Court. The claimant was routinely included in the rota of housing advisors to attend the Bromley office for client advice sessions to existing and new clients. On 24th October 2017 the claimant emailed Mr Okali to inform him that she was having difficulties travelling to the Bromley office. Following cancer treatment in 2012, the claimant had been left with physical impairments which caused her great personal difficulties travelling by public transport. The claimant requested a reasonable adjustment that she should not be required to regularly travel to Bromley. Mr Okali met with the claimant to discuss her request. The claimant also sought advice from the DWP Access to Work Scheme who recommended that a reasonable adjustment be explored by the respondent before any financial aid for taxis could be considered by the DWP.

22. Mr Okali refused to make a permanent adjustment that the claimant would not be included routinely on the Bromley work rota. He agreed to a temporary arrangement which would continue until a long term solution had been considered.

23. On 29th October 2017 the claimant applied for a full time post with the Royal Borough of Greenwich as Tenant Relations Officer. On about 10th January 2018, the claimant was informed that her application had been unsuccessful and she was placed on the reserve list.

24. In about January 2018 the independent HR consultant, SB, was appointed. Mr Okali stood back from involvement in CH 's grievance

investigation and had no further discussion or contact with Mrs Alalade in connection with CH's grievance.

25. In early February 2018, Ms Grewal undertook training for the Housing Advisor team in handling Legal Aid cases which were more complex than the Legal Help cases the team, including the claimant, had being doing until then. By an email on 1st February 2018 to the housing advisors Ms Grewal emphasised that LAA financial assessment requirements had to be met for obtaining legal aid. Ms Grewal provided links to the Legal Help Financial eligibility guide and a link to the legal aid financial eligibility guide to assist the advisors. She wanted the housing advice team to read and familiarise themselves with guidelines on assessment and evidence requirements for Legal Help and Legal Aid files.

26. On the following day Ms Grewal conducted an in-person training session for all staff on the new file procedures, following on from her email from the LAA guidance on financial assessment requirements. The claimant attended. Ms Grewal emphasised that hard copy files must be correctly labelled with the name and case number, and that the label should be annotated with the number of files in the case, eg. file 1 of 2, file 2 of 2. She handed around a sample hard copy of a file demonstrating what was required in the future. It was passed round for all to look at. The claimant was confident that she already labelled her files correctly with the case number and the client's name. The claimant alleged that no mention had been made in the training of annotating the file exterior with "1 of 2" etc. Ms Grewal's evidence was that she worked from the outside of the file inwards and she did most certainly refer to annotating the file in that fashion.

27. We preferred Ms Grewal's evidence on this point and find that the claimant and her colleagues were instructed to label files with 1 of 2, and a subsequent related file in the same case as 2 of 2. We find it more likely than not that Ms Grewal did refer to it in the training and a hard copy example of it was passed around the room and must have been seen by the claimant.

28. After the training session, Ms Grewal emailed the training notes about files to the staff and attached a photocopy of the cover of the file which bore the annotation 1 of 2, etc. However, that photocopy of the outer cover of the file was virtually illegible because it had photocopied as almost a black page. Ms Grewal apologised in her email for the poor quality of the photocopy and said if in doubt what was needed, please check with Mrs Alalade. The annotation 1 of 2 was legible on the photocopied file cover, just, if you were looking for it. The claimant wasn't looking for it.

29. The hard example copy of the training file was kept by Mrs Alalade in her pigeon hole for anyone to look at should they need to check what was said in the training. What the claimant had picked up from the training was that she had been labelling files correctly and there was nothing different to add to what she did. That was a mistake.

30. Although the claimant already knew from her friend CH that an independent HR consultant had been engaged to undertake the grievance investigation, on 13th February 2018 the claimant was informed by email from Mr Okali that SB had been appointed as investigator and she would wish to interview the claimant. The claimant was interviewed by SB on the following day 14th February 2018.

31. 14th February was a busy day for the claimant. A client 'drop-in' session had run over time and although not on the rota for the session, the claimant had nevertheless assisted. She had also a lengthy discussion that a morning with Mrs Alalade on a complex case. Although staff were required in normal circumstances to take their lunch break period between 12 noon and 2pm, the claimant had not finished her work until 2pm. She went for lunch with CH. They were seen by Mrs Alalade leaving the premises at 2pm.

32. On the claimant's return from lunch, Mrs Alalade emailed the claimant at 2.42pm to remind her that lunch breaks should be taken between 12 noon and 2pm. The claimant immediately responded by email to explain why she had been unable to take a lunch break earlier. Mrs Alalade replied by return claimant, saying *"Thank you for the explanation. That is understandable."* We find that reminding staff of the need to take lunch breaks within the designated period was something that Mrs Alalade might have to do from time to time in her role as senior manager in the office.

33. Despite Mrs Alalade's immediate response to the claimant accepting the explanation for a late lunch, the claimant nevertheless felt 'intimidated' by Mrs Alalade taking issue over the late lunch because it was on the day of the claimant's interview with SB. There was no evidence that Mrs Alalade knew that the claimant was being interviewed by SB that day.

34. On 19th February 2018 Ms Grewal emailed the caseworker team including the claimant to confirm that from now on, everyone had to keep their files in a filing cabinet allocated to each individual.

35. On 20th February 2018 the Royal Borough of Greenwich requested a reference for the claimant in respect of her application for the Tenancy Relations Officer vacancy.

36. On 31st March 2018 the Royal Borough of Greenwich contacted the claimant because the successful candidate for the Tenancy Relations vacancy had withdrawn. The claimant agreed that she would take the post if certain reasonable adjustments could be agreed. The claimant was not confident reasonable adjustments would be agreed but nevertheless she requested Mr Okali by email to provide a reference.

37. One of the claimant's case files which we refer to as the 'JS' file, related to possession proceedings against the client, JS. The respondent was filing a 'disrepair' counterclaim on behalf of the client with a deadline of Friday 6th April 2018. Counsel instructed by the claimant had been provided with the information to complete the counterclaim and draft directions by 5th April. The claimant expected counsel to file the counterclaim in the County Court as, in her own words, she "*did not know anything different".*

38. On 5th April, a non-working day for the claimant, counsel had emailed the claimant copied to Mrs Alalade, with the counterclaim and confirmed that the counterclaim had to be filed on 6th April.

39. On Friday 6th April, also a non-working day for the claimant, she had obtained the agreement of Mrs Alalade to come in and attend training, using the time spent in training subsequently as Time Off In Lieu (TOIL).

40. Filing the counter claim would require a cheque to pay the filing fee. Prior to the training starting, the claimant discussed filing the counterclaim with Mrs Alalade and discovered that the respondent, not counsel was responsible for doing so. The document would have to be filed in person at Bromley County Court as electronic filing was not a possibility for the respondent. The claimant expected Mrs Alalade to delegate the responsibility for completing the respondent's cheque request form and filing the counterclaim in Bromley County Court to the receptionist or another member of staff. Instead Mrs Alalade asked the claimant to complete the cheque request. She could then sign the request form and the cheque. Mrs Alalade was very busy with her own work. There was a delay whilst the up to date template for the cheque request authorisation form, recently amended, was located by Mrs Alalade although she was not the only person who held a copy of the template. Mrs Alalade signed the form and a cheque. The claimant had been stressed by the delay in obtaining authorisation on the cheque request form and a signature on the cheque. She assumed Mrs Alalade was being difficult deliberately and should have done it sooner when asked.

41. The claimant did not request that a taxi should be called to take the counterclaim for filing in Bromley County Court. She was offended, if not

angered, that Mrs Alalade did not suggest that the claimant could take a taxi to file the document in the County Court. Instead, the claimant cycled to Bromley County Court and by the time she returned to Woolwich, she had missed the afternoon's training session which had finished early.

42. Some weeks later, on Wednesday, 18th July 2018, still relating to the JS file, at 17.56pm, the last working day that week for the claimant, she emailed Mrs Grewal to say that she did not know what she was doing with this file. There was a list of questions on the file with which the claimant needed help/supervision. She informed Mrs Grewal that the file was on the claimant's desk, intending that Mrs Grewal pick up the file on Thursday morning, 19th July. The claimant asked Mrs Grewal to look at the file in the morning. She said there was a pressing issue of a directions deadline to ask questions on a surveyor's report by 20th July 2018 and said that the LAA funding had not yet been extended to cover counsel's fees. The claimant said she was concerned about asking for counsel's opinion and committing the respondent to paying counsel's fee without extended Legal Aid funding in place.

43. Ms Grewal did not see the email on Wednesday evening. She arrived at the office on Thursday 19th July and saw the JS file on the claimant's desk. The file label did not indicate that it was 1 of 2 files. Mrs Grewal remembers vividly what happened that morning as the claimant's request to work on the JS file had *"put her day out".*

44. At 12.16 Mrs Grewal sent an email, marked urgent, to counsel, copied to the claimant and Mrs Alalade attaching counsel's brief and enclosures. Mrs Grewal reminded counsel of the court's directions deadline of Friday 20th July.

45. At 13.09 Counsel emailed a reply to Mrs Grewal copied to the claimant (who would not see it until the following Monday) and Mrs Alalade, saying that she needed to see the other side's disclosure to advise on historical matters and that disclosure should have already been provided in May.

46. Mrs Grewal telephoned the solicitor on the other side of the case to discuss disclosure and inform him that she may need to seek an extension of time for compliance with the directions. The opposing solicitor informed Mrs Grewal that he had sent the respondent a hard copy folder of disclosures on the JS case. He did not mention he had sent the disclosures also by email. In fact he had; the documents had been filed electronically by the claimant on the respondent's document system, Advice Pro, in accordance with management instructions.

47. As time was pressing, Mrs Grewal did not read through the

correspondence clip on the JS file to look for the date the disclosures had been sent. She looked in the claimant's filing cabinet which was filled with file slings. She did not see, at first, the disclosure file, label facing down because it was covered by the sling files.

48. Mrs Grewal went to see Mrs Alalade and asked her if she had the claimant's telephone number as the disclosure file could not be found and was needed urgently. Mrs Alalade was hesitant about phoning the claimant on a non-working day but Mrs Grewal pressed her to do so. Mrs Grewal stood next to Mrs Alalade whilst she made the call to the claimant.

49. At 1.23 pm Mrs Alalade called the claimant. The call was on loud speaker so Mrs Grewal could hear the conversation. There is a direct conflict in the evidence between the claimant on the one hand and Mrs Alalade and Mrs Grewal on the other.

50. Mrs Grewal and Mrs Alalade were both clear that the conversation had been very short. The claimant disputed that. They both claimed that the claimant was asked the whereabouts of the disclosure file on the JS case. Her response had been terse, abrupt and said that it was not appropriate that she was being called on her day off. The claimant ended the call. The claimant says that she was not asked about the whereabouts of the JS disclosure file. Instead she believed that the Mrs Alalade was accusing her of not completing work on the JS file and that she should come into the office on her day off to do it. She said in her evidence *"I knew where this was going."* The claimant was determined, she was *"not having it".*

51. We prefer Mrs Grewal's evidence. It is not believable that Mrs Alalade would phone the claimant on her day off work to accuse her of not doing work on the JS file and require her to come into the office to complete the work, or, as the claimant subsequently alleged, to come into the office to scan the JS file for Mrs Grewal. We accept Mrs Grewal's and Mrs Alalade's version of events as being closer to the truth. We think it highly unlikely that Mrs Alalade would phone the claimant on a non working day and imply that the claimant should come into work. We find the reason for the phone call was to establish the whereabouts of the JS disclosure file (as opposed to the correspondence file). The claimant had been asked the whereabouts of the JS file but had declined to engage with Mrs Alalade and had put down the phone on her line manager/supervisor.

52. After the claimant put the phone down, Mrs Grewal went back to the claimant's desk followed by Mrs Alalade to look for the JS disclosure file. Mrs Grewal told Mrs Alalade to return to her own office and take lunch. Mrs Grewal went back to the claimant's filing drawer and took the sling files out. She saw underneath the sling files the disclosure file from the

opposing solicitors, laid label face down in the filing cabinet. Mrs Grewal was then able to respond to counsel's request and sent the disclosure documents to counsel later in the afternoon.

53. The claimant maintained that the file was readily visible and relied on a photograph of the inside of the filling cabinet drawer that she took in early August 2018 some two weeks later, showing very few sling files in the filing cabinet drawer, and the JS disclosure file readily visible with the label facing upward. Mrs Grewal was adamant that the almost empty filing cabinet in the photograph did not at all portray the state of the claimant's file cabinet on 19th July; the disclosure file had not been immediately visible in the claimant's file cabinet. It had been covered with sling files. Mrs Grewal asserted that not only did the correspondence file not indicate that it was one of two files in the case, but also the second file had not been attached to the first file with an elastic band. She placed an elastic band around both files to keep them together. We preferred Mrs Grewal's evidence. The photograph had no probative value. Mrs Grewal was a persuasive witness. Her evidence had the ring of truth to it.

54. Mrs Grewal told Mrs Alalade that she thought the claimant's behaviour in abruptly ending Mrs Alalade's telephone call was unacceptable. She had been shocked by the claimant's rude and aggressive behaviour towards Mrs Alalade. She said it was not teamwork; it had not been helpful to Mrs Grewal in completing urgent case work. Mrs Grewal suggested to Mrs Alalade that she take advice from Croner, the respondent's HR support service, on how to deal with the incident. Mrs Alalade agreed to seek advice from Croner on Monday 23rd July.

55. On Friday 20th July 2018, Mr Okali sent a staff briefing on a proposed redundancy and restructure exercise to all staff setting out invitations to one to one meetings. The claimant was identified as being in one of five groups of staff at risk of redundancy.

56. On Monday 23rd July 2018 Mrs Alalade contacted Croner for advice giving them information about the events on 19th July in respect of the claimant relating to recent exchanges with the claimant in connection with the JS file and the phone call on 19th July. The claimant attended work as usual on 23rd, 24th and 25th July. Mrs Alalade didn't speak to the claimant until Wednesday 25th July because she was waiting for a response from Croner. Croner drafted a letter for Mrs Alalade to send to the claimant.

57. Mrs Alalade sent the letter that Croner had drafted for her to the claimant by email on Wednesday 25th July 2019 at 2.49pm inviting the claimant to an investigation meeting at 3.30pm, effectively on 40 minutes notice, to meet in the library. The claimant was informed that it was an opportunity

for her to provide an explanation for the following matters of concern:

"Your work on JS file
- *File labelled incorrectly – file opening procedure of labelling not followed.*
- *Work required on the file not complete. – court direct deadline to be complied with by 20th July 2018 – why not completed?*
- *If no time to complete why not pass to a colleague?*
- *Why did you refuse to discuss the case with me, when I called you to ensure we complied with the direction to meet our client's expectation?"*

58. The letter confirmed that the meeting was not a disciplinary hearing and therefore there was no right to be accompanied to the meeting. The letter also stated that the matter was still under investigation and no decision had been taken as to whether it would progress to a disciplinary hearing.

59. At the investigation meeting the points in the letter were discussed. Mrs Alalade demonstrated to the claimant what was required in labelling files. She also queried why the claimant had abruptly ended the phone call on 19th July. Mrs Alalade confirmed she had only wanted to ask the claimant about the whereabouts of the file, not to ask her to come into work. The claimant disputed that she had been asked about the whereabouts of the file. Mrs Alalade claimed she had taken a note of the conversation and stated that Mrs Grewal had heard the conversation. The claimant at that point feared that two solicitors, Mrs Alalade and Mrs Grewal, would conspire to lie about the conversation on the phone on 19th July. She asked Mrs Alalade to delete the claimant's personal mobile phone number from her phone. Mrs Alalade refused.

60. The meeting concluded just before the commencement of the first redundancy briefing for all staff at 5.30pm in the library.

61. Mrs Alalade took no further action as a result of the investigatory meeting with the claimant. She did not notify the claimant formally or informally that she did not intend to take any further action.

62. After the redundancy consultation meeting on 25th July, later in the evening at 19.43pm, Mr Okali emailed all staff with a copy of the briefing paper presented in the group consultation meeting along with relevant job descriptions. The job description for a case worker included reference to the respondent's Housing Possession Court Duty Scheme in Bromley County Court. It also referred to requirement for the caseworkers to provide cover for colleagues across all the respondents services in Bromley and Greenwich as required by the Director of the

Solicitor/Casework Supervisor. At the meeting the staff had been informed that the current roles of duty advocate and advisor posts were going to be combined and staff would cover both offices, Bromley and Woolwich. The claimant read the job description and saw that it would require attendance at both Bromley and Woolwich offices.

63. Following the meeting on 25th July with Mrs Alalade which had been immediately followed by the redundancy consultation meeting, the claimant believed that the respondent was trying to oust her on trumped up competency charges. She believed that she had been treated differently from other staff who had not been subjected to a disciplinary meeting. The claimant considered the meeting with Mrs Alalade to have been a disciplinary meeting. In contrast, the claimant was aware that one member of staff had instructed a barrister without LAA funding in place, and even Mrs Alalade had once missed a court deadline, both without any disciplinary repercussions. The claimant decided that she would prefer to be made redundant than be unfairly dismissed with no compensation.

64. Later that evening the claimant emailed Mr Okali to confirm that she would be interested in voluntary redundancy. Mr Okali did not reply because he believed he had to adhere to the redundancy timetable and could not enter into negotiations on voluntary redundancy with any individual at that point in the proceedings.

65. On 26th July 2018 the claimant emailed Mr Okali asking him to deal informally with Mrs Alalade's refusal to delete the claimant's personal phone number from her phone. The claimant requested that she be supplied with work mobile numbers if she was to be called at home as she did not want to receive calls from unrecognised numbers due to anxiety.

66. On 27th July 2018 an invitation was sent to the claimant to attend a first redundancy consultation meeting on 1st August 2018. The second consultation meeting was to be held on 20th August 2018.

67. On 3rd August 2018, the claimant's last working day before going on leave for two weeks, at 09.58 in the morning the claimant sent to Mr Okali a ten page grievance letter against Mrs Alalade for victimisation and bullying. The grievance covered a large number of topics including an unmanageable workload; difficulty in arranging to take TOIL; failure by Mrs Alalade on several counts to provide the claimant with adequate supervision; conflicting advice from supervisors because there was no agreed file management process; unequal treatment by Mrs Alalade in summoning the claimant to the meeting on 25th July 2018 when others who had made errors (including Mrs Alalade herself) were not subjected to a formal approach as the claimant had been subjected by Mrs Alalade.

68. Additionally the claimant expressed concern that she was being singled out for a sham capability process because the respondent had little cash reserves for the redundancy payments. The claimant had perceived a direct connection between the investigatory meeting with Mrs Alalade which had been followed immediately by the staff redundancy consultation meeting on the same day, 25th July 2018.

69. In respect of the telephone call from Mrs Alalade on 19th July 2018, the claimant informed Mr Okali in the grievance letter that she had a recording of the conversation which showed that there had not been any request from Mrs Alalade for the location of the JS file. This was a lie as the claimant had not made any recording. The claimant was motivated to lie to Mr Okali in her grievance because she believed it would prevent Mrs Alalade and Mrs Grewal from conspiring to give an untrue account of the conversation that had taken place.

70. The grievance also included the claimant's express complaint that the motivation for Mrs Alalade's treatment of the claimant was (i) the claimant's refusal to continue a conversation with her on 19th July by telephone and (ii) the claimant's support for CH's grievance. The claimant also gave a very personal account of circumstances outside work and at work as background to her concerns about Mrs Alalade's approach to the sexual orientation of staff about which she also complained.

71. The outcomes the claimant sought in her grievance were:

    a. adequate support and supervision when requested;
    b. sufficient time to undertake allocated work;
    c. being enabled to take TOIL as accrued;
    d. why there had been an informal investigation meeting on 25th July 2018 and what was the outcome of that meeting;
    e. why other staff in similar circumstances hadn't been treated in a similar manner as the claimant had been treated;
    f. whether the claimant's personal phone numbers had bene deleted from Mrs Alalade's phone;
    g. if not accepted as a volunteer for redundancy the claimant would seek a caseworker role on similar terms and conditions as her current post at Woolwich. She wished to know if the 'investigation' by Mrs Alalade on 25th July would affect the redundancy selection process and in what way.

72. The respondent's grievance policy states that the organisation's intention is to deal all grievances as quickly possible and a meeting will usually be held within 5 days to give the employee opportunity to give full details. In

compliance with his usual practice and the respondent's grievance procedure, Mr Okali, replied to the claimant at 5pm on the day he received the grievance, 3rd August. He asked her whether she would be available to meet the following week despite knowing that the claimant was on holiday, so that they could go over the issues raised before he started to follow up with others. He added that if the claimant was unable to meet the following week, to let him know when would be the best date to meet so that he could arrange accordingly when the claimant was back from leave.

73. On Sunday 19th August 2018, the evening before returning to work on 20th August 2018 the claimant emailed her resignation to Mr Okali, giving one month's notice ending on 19th September 2018.

74. When the claimant returned from annual leave, Mr Okali was himself on leave until 28th August 2018. On the first morning of his return to work at 09.44am on 28th August Mr Okali emailed the claimant regarding her notice. He apologised for the delay in responding and stated that he was surprised to receive the claimant's resignation because the restructure process was far from complete. He asked to meet the claimant to discuss her end date and what her resignation meant for the status of her involvement in the ongoing redundancy and restructure consultation process. He proposed a meeting the next day on 29th August 2018.

75. Later in the evening of 28th August the claimant replied to Mr Okali stating that she had expected to meet him to discuss her grievances. She had prepared a response to the consultation which she attached in case any of the points she raised in her response would be relevant to any remaining staff. The claimant stated that there was no point in her taking any further part in the redundancy/restructure process. She wanted to use her TOIL before the end of her notice period.

76. The Claimant finally stated: *"I didn't think my notice would come as a surprise, I've wanted to leave for a long time. I hope the restructure can save GHR but I personally think this has come too late and that it won't be possible. It's therefore a relief for me that I won't have to be involved in the restructure process."*

77. The claimant's carefully thought through ten page response to the respondent's redundancy proposals were detailed. Overall the claimant thought that the proposals had been poorly thought through and had little hope of succeeding. She stated:

"I chose to volunteer for redundancy as I feel the restructure plans have been poorly thought through and have little hope of succeeding. I'd therefore expect that if I keep a 0.6 FTE caseworker role at the Woolwich

office that within a matter of months I'd lose my job anyway and that instead of any contractual pay I'd end up with a statutory payment via the national insurance fund/redundancy payments office."

78. The claimant queried whether the respondent should be winding up rather than restructuring?

79. The claimant and Mr Okali met on 29th August 2018. Later in the day Mr Okali emailed his notes of their meeting for the claimant to edit and amend as she saw appropriate. He commented that in confirmation of the claimant's resignation, the claimant had said this was not as a result of the consultation process but for other reasons – generally that the claimant did not think the restructure would work and that the claimant did not want to go through a winding up of the organisation and also because her job offer from the Royal Borough of Greenwich had come through. Under the circumstances the claimant had stated that she had decided to take it even though the terms and conditions were not ideal for her.

80. Mr Okali also confirmed the practical arrangements he and the claimant had discussed, relating to holiday, outstanding TOIL, equipment to be retained by the claimant, handover of work and other arrangements. Mr Okali confirmed that he would write separately regarding the grievance discussion they had had.

81. The notes confirm that at the meeting on 29th August 2018 the claimant and Mr Okali did discuss the grievance and the outcome that the claimant wished to achieve. With regard to Mrs Alalade's motivation for her treatment of the claimant, the claimant told Mr Okali of her belief that because a number of situations had arisen with other staff in the past, some with more significant case managements problems than file labelling and the location of the JS disclosure file, which had not resulted in any formal investigation, the issues of the claimant's file management raised by Mrs Alalade *must* have been about something else. The claimant saw the potential link with the restructure as her meeting with Mrs Alalade had immediately preceded the staff briefing meeting on the restructure proposals.

82. Mr Okali confirmed that Mrs Alalade had deleted the claimant's telephone numbers from her mobile phone. He also confirmed that Mrs Alalade had had no involvement at all in the restructure planning and implementation process. There had been no link and would be no link between the investigation meeting on 25th July and the outcome of the respondent's restructure or any selection process planned for the caseworker roles.

83. The notes also confirmed that although the claimant was leaving and did not wish to take any further part in the consultation, Mr Okali would continue with the investigation and aim to complete it before the claimant left on 19th September.

84. The claimant made substantial amendments to the notes of her meeting with Mr Okali, but not to those sections referred to above. She returned the notes by email on 31st August 2018 to Mr Okali, providing yet further information about the file management issues raised by Mrs Alalade and an incident where a work colleague had breached procedures and wasn't called into any investigatory meeting.

85. Mr Okali did not complete the grievance investigation and outcome before the claimant left. The claimant commenced ACAS early conciliation on 25th October, completed on 25th November 2018. She filed proceedings on 25th November 2018.

86. On 30th November 2018 Mr Okali sent the claimant the detailed outcome of her grievance raised on 3rd August which he had investigated following their initial meeting on 29th August 2018. He apologised for the delay in writing to the claimant which, he, explained had been for a number of reasons, including the scale of the investigation needed to address the broad scope of issues raised, Mr Okali's leave arrangements and that since 1st October he had reduced his working week to three days, also fitting in three critical funding deadlines over the last month.

Submissions

87. We received written submissions from both parties and also heard oral submissions. We have taken the submissions into account in our deliberations.

The Law

88. Section 27 Equality Act 2010 states:

By Section 27 of the EQA, it is relevantly provided that:

"(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.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

89. We remind ourselves of the burden of proof under Section 136(1) – (3) EqA 2010 and **Madarassy v Nomura International plc [2007] IRLR 246, CA**, namely that the claimant must prove facts from which a Tribunal could conclude, in the absence of an adequate explanation, that the respondent committed a contravention of the Act. We also remind ourselves of that a detriment arises *"if a reasonable worker may take the view that he had been disadvantaged in the circumstances in which he had to work"*: ***Shamoon v CC of Royal Ulster Constabulary [2003] UKHL 1. Barclays Bank PLC Kapur [1995] IRLR 87*** *established that a*n unjustified sense of grievance is not enough; see also ***Bayode v CC of Derbyshire UKEAT/0499/07]*.**

Conclusions

90. We apply the law to the facts. Was there a protected act? The respondent conceded that there were two protected acts – (i) the support given by the claimant to CH in her grievance proceedings in 2017 / 2018; and (ii) the claimant's grievance of 3rd August 2019. We accept that both are covered by S27(2) EQA 2010.

91. What was the alleged detrimental treatment? The claimant says it was being summoned to an investigation meeting on short notice on 25th July 2018 and Mr Okali not dealing with the 3rd August grievance in a timely manner. As a result of which the claimant alleges that she was entitled to resign and consider it to be a dismissal; she claims the respondent by those two acts irrevocably breached the implied term of mutual trust and confidence.

25th July 2018 meeting

92. We consider whether inviting the claimant to an investigation meeting on 25th July with Mrs Alalade to discuss her conduct on 19th July was a detriment motivated by the claimant's assistance to CH in her grievance.

93. The claimant claimed first that the notice of the meeting was too short – 40 minutes; second, the photocopy of the file cover example sent to the claimant in early February 2018 had been illegible and the claimant could

not see that it was marked 1 of 2 etc; third that the meeting had been a disciplinary, not an investigation meeting.

94. The claimant introduced a new argument not previously pleaded – that the investigatory meeting had been one where Mrs Alalade had been investigating her own grievance against the claimant, and in so doing, was not following best practice in accordance with the ACAS disciplinary and grievance procedure, nor the respondent's own grievance policy.

95. We find that Mrs Alalade was not investigating her own grievance against the claimant. She had filed no grievance against the claimant. Mrs Alalade is a supervisor/manager investigating the conduct of a subordinate; the meeting on 25th July 2018 was called in that capacity after having taken advice from Croner. Mrs Alalade's issues with the claimant's conduct were, first, her failure to label and keep together the JS correspondence and disclosure files, marking them 1 of 2 and 2 of 2 respectively. The second reason was the telephone call, made to find out where the disclosure file could be found as a matter of urgency, and which ended abruptly by the claimant without assisting her employer in an urgent matter on the claimant's case file. Both are potentially legitimate reasons which could reasonably cause any employer to call an investigation meeting. The investigation meeting was justified in the circumstances.

96. Was it appropriate that Mrs Alalade investigated the claimant's conduct? The claimant had been shown the correct way to label files by Mrs Grewal but had not taken sufficient notice of the requirement to label files 1 of 2, 2 of 2 etc. She believed she had been asked to do no more when labelling a file than she had already been doing for years. She was mistaken and therefore was in breach of the instruction on labelling files. On 19th July 2018, that had caused Mrs Grewal when working on the claimant's case file, to be unaware initially that a disclosure file was missing. Mrs Grewal completed instructions to counsel without the disclosure documents being included. The claimant had failed to keep the files together with an elastic band and had placed the disclosure separately in the filing cabinet. This was contrary to instructions.

97. These are small matters of detail but they caused Mrs Grewal delay, extra work and frustration in getting instructions and information to counsel promptly to meet a county court directions deadline. It caused inefficiency. Alone, perhaps a quiet word was all that was needed, rather than an investigation meeting.

98. However, the issue with labelling the case file gave rise to another issue - the phone call. Mrs Alalade had been reluctant to make the call to the claimant on a non-working day. She had been encouraged to do so by

Mrs Grewal who was anxious to find quickly the missing disclosure file. Mrs Grewal was under pressure to send the disclosure documents to counsel. The claimant had not completed urgent work on the JS file; she had not left the files together in the appropriate place to enable Mrs Grewal to complete the outstanding task to be completed quickly and efficiently.

99. The claimant was asked by Mrs Alalade where the disclosure file was. The claimant denies that any mention of the whereabouts of the disclosure file was raised, but we find it highly unlikely that her supervisor would call her on her non-working day to indirectly apply pressure on her to go into the office to scan the disclosure file which, the claimant alleged, had already been found. The claimant suggested that the telephone call was arbitrary and not a genuine inquiry about the file's whereabouts. We preferred the respondent's evidence. We find that the claimant's conduct on the phone call which was uncooperative and rude, in short, insubordinate. Her line manager was justified in investigating the incident.

100. Given the potential seriousness of a failure to comply with court deadlines and court directions, this was alone sufficient to justifying calling the claimant to an investigation meeting to explore how the situation could be avoided in the future.

101. The claimant complained that the investigation meeting had been unreasonably called on very short notice. There is no formal procedure to calling a person to an investigation meeting. It could be an oral invitation or a written invitation. There is no right to be accompanied because there is no disciplinary sanction at the end of an investigation meeting. 40 minutes notice may have been short in one set of circumstances and not in another. The matters to be investigated were matters on which the claimant could personally comment and give her version of events without any preparation. The claimant gave her account, with the consequence that Mrs Alalade took no further action.

102. Mrs Alalade had sought guidance from Croner about the claimant's conduct on 19th July 2018 and had waited for their response to her request. If she had not held the investigation meeting on 25th July it would have been delayed to the beginning of the following week. There was limited time available to Mrs Alalade as the staff redundancy consultation was arranged for 5.30pm on the same day.

103. The meeting was not a disciplinary meeting, contrary to the claimant's claim that it was, apparently based on a document template reference at the foot of the invitation letter " disc 02". That is clearly an internal Croner template reference and the use of that template to

arrange a meeting does not make it a disciplinary meeting. The invitation letter clearly stated it was not a disciplinary meeting.

104. The key issue for the claimant is that she believed the investigation meeting by Mrs Alalade was a detriment motivated by the claimant's assistance to CH in her grievance against Mrs Alalade. We find that Mrs Alalade was aware of the grievance CH intended to file against her because CH had informed her personally of it. We also find that Mrs Alalade had been provided with a copy of the formal written grievance in about April / May 2017 by Mr Okali.

105. Did that motivate Mrs Alalade to call the meeting with the claimant on 25th July, a year later? We note that it was Mrs Grewal who suggested and encouraged Mrs Alalade to phone the claimant on 19th July 2018 and Mrs Grewal had also strongly criticised the claimant's conduct as unacceptable on that day and had encouraged Mrs Alalade to take advice from Croner about the claimant's conduct. If Mrs Alalade had been motivated by a personal grudge against the claimant for supporting CH's grievance, she would have needed no such encouragement from Mrs Grewal to phone the claimant about the JS file. Mrs Alalade had acted on professional HR advice; there is insufficient evidence to infer that she was motivated by a grudge against the claimant. Furthermore Mrs Alalade had accepted the claimant's explanation at the meeting on 25th July 2018 for her conduct and had taken no further action. That does not suggest a personal grudge and deliberate detrimental treatment. A similar situation had occurred when Mrs Alalade had accepted the claimant's explanation for taking a late lunch on 14th February 2018. Mrs Alalade had been acting within her role as officer manager, encouraging staff to comply with the rules on taking a lunch break.

106. The claimant also believed that there was a connection between the investigation meeting in the afternoon of 25th July 2018 and the first collective staff redundancy consultation meeting at 5.30pm. She believed that the investigation meeting was the commencement of a sham capability procedure which would entitle the respondent to dismiss the claimant for redundancy.

107. There is no merit in that suggestion. Mrs Alalade had had no involvement in the redundancy and restructure proposals which had taken place at a higher level. We could find no connection between the two events. That was confirmed in evidence by Mr Okali and we accept his evidence as truthful.

108. Stepping back and looking at the evidence, we find that there was a genuine management reason to invite the claimant to the investigation

meeting on 25th July. Any employer could reasonably had decided to conduct an investigation into circumstances similar to those that occurred on 19th July. Mrs Alalade as the office manager and senior solicitor, had cause to be concerned about standards of work and conduct. Those were her reasons for calling the investigation and not her knowledge of the claimant's support for CH. Mrs Alalade pointed out in cross examination that whilst she knew that the claimant would be a witness in the grievance investigation conducted by SB, she did not know what the claimant was going to say or what she would be able to say. The investigation meeting called by Mrs Alalade on 25th July 2018 was not called in response to the claimant offering assistance to CH in her grievance against Mrs Alalade. It therefore did not constitute a detriment within S27 EqA 2010. The meeting on 25th July 2018 was not an act of victimisation.

Delay in responding to 3rd August 2018 grievance

109. Was the delay in processing the grievance lodged with Mr Okali on 3rd August 2018 a detriment?

110. Mr Okali acknowledged the claimant's email with the attached grievance on the day that he received it and offered to meet the claimant the following week if she was available. The claimant was on holiday until 20th August 2018. Mr Okali was then on leave himself until 28th August.

111. It was unfortunate but a coincidence that Mr Okali's annual leave and the claimant's annual leave were back to back. On Mr Okali's return from holiday on 28th August he contacted the claimant immediately. He had a meeting with her about her resignation and her grievance on 29th August. He established the issues and confirmed what he had identified in writing to the claimant, inviting her to check and edit the notes he had taken, as appropriate.

112. The main objection from the claimant was that Mr Okali had failed to commence the grievance investigation immediately on receipt and whilst she was on holiday. She expected him to have substantially completed it by the date the claimant returned from holiday. It was the claimant's opinion that her grievance had been so detailed that there was no need for a grievance meeting; she believed that nothing needed clarification. She was therefore disappointed to return from holiday to find that nothing had been done whilst she was away and before Mr Okali took his annual leave.

113. The claimant's expectations were unreasonable. Mr Okali was in fact following the respondent's grievance procedure. He acted promptly

as soon as he was back from his annual leave despite having received the claimant's resignation. Mr Okali disagreed that no grievance meeting was required – in his opinion, because of the length and detail of the grievance, he had to get some clarity on the issues. He was entitled to hold that opinion. It is noted that the claimant having said that there was nothing to add to her grievance and no meeting was necessary, did in fact send Mr Okali further information about her perceived different treatment of other team members who had made errors.

114. The claimant left the respondent's employment on 19th September less than three weeks later. The outcome of the grievance was sent at the end of November 2018, after the claimant had filed her claim form. However, the claimant had resigned (on 19th August 2018) before Mr Okali had had a reasonable period of time to conduct a grievance meeting with her and complete a grievance investigation. There was no detriment prior to the claimant's resignation. Nor was Mr Okali's conduct of the grievance process a breach of contract, fundamental or otherwise. There was no detriment in his handling of the claimant's grievance during her employment.

115. We note that the outcome of the grievance was delayed by some 2 ½ months. Mr Okali gave his reasons – he had reduced his working hours to 3 days a week; and the respondent had been in the throes of a restructure and redundancy programme which had been time consuming. The claimant's grievance had been detailed and covered a lengthy period of time involving several people. It was a complex matter to investigate including the alleged mistakes of other employees and how they had been treated.

116. The claimant rejected those explanations, but we find that Mr Okali's explanations for the delay were honest. The delay was not ideal in the normal course of events. However, there was no detriment to the claimant within the meaning of S27. The claimant was not victimised by Mr Okali.

117. Why did the claimant resign? The claimant stated to Mr Okali on 28th August 2019 that she had wanted to leave for a long time. She had applied for a position with another organisation in 2017. That application eventually came to fruition and the claimant joined her new employer on 24th September 2018.

118. The claimant held the view as is set out in her comments on the respondent' restructure proposals that they would not work. She said that they had been poorly thought through and had little chance of succeeding. She was concerned about the financial viability of the respondent and

suggested that it might be better to wind up the charity now. In her email to Mr Okali on 28th August the claimant said *" I hope the restructure can save GHR but I personally think this has come too late and that it won't be possible. It's therefore a relief for me that I won't have to be involved in the restructure process."*

119. The claimant submitted that she believed that she would be an inevitable casualty of the restructure because she could not meet the job description. She came to that conclusion because the job description stated there was a requirement to work across both locations. The claimant still believed that the adjustment she had in place not to work at Bromley was only temporary. Nevertheless, she reached that conclusion without further discussion with Mr Okali. It was an assumption that the claimant made. Mr Okali confirmed in his evidence which we have accepted as truthful, that the job descriptions sent to the staff including the claimant were generic job descriptions. They were not tailored to any individual's needs at that stage in the redundancy and restructure process.

120. The claimant had made other assumptions about the respondent's conduct. She feared a connection between being informed on 13th February 2018 that the HR consultant, SB, would be interviewing her about CH's grievance and Mrs Alalade emailing her about a late lunch after the interview with SB on 14th February. The claimant saw that as ominous. It was mere coincidence. Mrs Alalade did not know what programme SB had for interviewing witnesses or who would be interviewed and when.

121. The claimant complained that she wasn't given support by Mrs Alalade and that she was 'set up to fail'. Her own evidence contradicts that where the claimant refers on at least two occasions (one being on 14th February) and the other ( ) that she had a lengthy discussion with Mrs Alalade on a case. We find that Mrs Alalade was highly unlikely to be setting up the claimant to fail when the failure to meet court deadlines would have a negative impact on the respondent overall and would, from Mrs Alalade's point of view as the senior solicitor and office manager, be self- defeating, reflecting failure on her as office manager. Mrs Grewal , an experienced housing rights solicitor, was also hired to provide support to the claimant and other work colleagues. The claimant acknowledged in her evidence that she emailed Mrs Grewal and spoke to her outside Mrs Grewal's normal working days.

122. We accept that the claimant and Mrs Alalade did not have a good working relationship. Mrs Alalade was at times clumsy in her dealings with the claimant and could appear unsupportive. At times she expected the claimant, an experienced case worker, to seek help from other senior

case workers or Mrs Grewal when Mrs Alalade was engaged with her own case work and under pressure.

123. Mrs Alalade did not always follow procedure appropriately, for example she failed to inform the claimant after the 25th July 2018 meeting that no further action would be taken.

124. However, looking at the evidence overall, we find that the claimant developed an over-sensitivity to Mrs Alalade and attributed to her acts of victimisation which did not exist. Another example of this is when the claimant deliberately lied to her employer that she had recorded the telephone conversation on 19th July with Mrs Alalade because she feared Mrs Alalade and Mrs Grewal would conspire to lie about what had been said in the phone call on 19th July 2018. That was a very serious and unfounded allegation against them to make to their employer. Mrs Alalade and Mrs Grewal were both experienced solicitors, required to conduct themselves according to SRA code of conduct. It is an example of the breakdown in the claimant's relationship with her employer but we find that the respondent did not commit any breach the claimant's contract. The claimant's disenchantment with working for the respondent went back to 2017 when she applied for work elsewhere. She was engaged in finding work with the Royal Borough of Greenwich long before her first allegation of victimisation by Mrs Alalade.

125. In summary, applying the burden of proof, the claimant was not victimised. The respondent has provided a reasonable explanation for its conduct. There was no breach of contract. The claimant resigned voluntarily. The claims are dismissed.

Employment Judge A Richardson
Signed on: 12 February 2021