



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Brenen

Respondent: South Tyneside Council

CERTIFICATE OF CORRECTION

Employment Tribunals Rules of Procedure 2013

Under the provisions of Rule 69, the *Reserved Judgment* sent to the parties on 23 April 2020, is corrected as set out in block type at the name of the claimant.

Employment Judge **Martin**

Date 22 April 2021

Important note to parties:

Any dates for the filing of appeals or reviews are not changed by this certificate of correction and corrected judgment. These time limits still run from the date of the original judgment, or original judgment with reasons, when appealing.



THE EMPLOYMENT TRIBUNALS

Claimant: Mrs A BRENEN

Respondent: South Tyneside Council & Another

Heard at: North Shields Hearing Centre **On:** 24th, 25th & 26th February 2020
Deliberations: 10th March 2020

Before: Employment Judge Martin

Members: Ms L Jackson
Mr R Greig

Representation:

Claimant: Mr Robinson-Young (Counsel)

Respondent: Mr Menon (Counsel)

RESERVED JUDGMENT

1. The Tribunal does not have jurisdiction to hear the claimant's complaint of disability discrimination and the complaint is hereby dismissed.
2. The claimant's complaint of unfair dismissal is not well-founded and is hereby dismissed.
3. The claimant's complaint of breach of contract wrongful dismissal is also not well-founded and is also hereby dismissed.

REASONS

Introduction

1. The claimant gave evidence on her own behalf. Mr S Price the headteacher of the second respondent; Mrs Victoria Long, chair of the governing body at the second respondent; Mrs Angela Pino, vice chair of the governing body at the second respondent; Mrs Celia Handy, school operations manager; Mrs Caroline Watkins retired teacher; Ms Angela Betts teaching assistant; Mrs Joanne Gallagher teaching assistant; Mrs K Olds (formerly Vipond) class teacher; Mrs Dawn Christie learning support assistant all gave evidence on behalf of the respondent. Witness statements were also submitted and not contested for Ms Bays-Richardson (class teacher); Ms Jill Dickinson (class teacher).

2. The Tribunal was provided with an agreed bundle of documents marked Appendix 1.

The law

3. The law which the tribunal considered was as follows:

Section 6 Equality Act 2010 “A person (P) has a disability if--

- (a) P has a physical or mental impairment, and
- (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

Section 15 (1) Equality Act 2010 A person (A) discriminates against a disabled person (B) if--

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

Section 15 (2) “ Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.”

Section 20-21 of the Equality Act 2010 –

Section 20 (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, section 21 applies; and for those purposes, a person on whom the duty is imposed is referred to as A.

Section 20 (2) The duty comprises the following requirements: (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.”

Section 21 (1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

Section 21 (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

Section 123 (1) of the Equality Act 2010 “Proceedings on a complaint within section 120 may not be brought after the end of--

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or

Case No: 2500658/2018 & 2501243/2018

- (b) such other period as the employment tribunal thinks just and equitable.

Section 98 (1) of the Employment Rights Act 1996 “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

Section 98 (2) A reason falls within this subsection if it:-

- (b) relates to the conduct of the employee

Section 98 (4) ERA 1996 “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.”

Article 3 of the Employment Tribunals (Extension of Jurisdiction Order 1994) “proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum:-

- (c) the claim arises or is outstanding on the termination of the employee's employment”.

4. The case of Department of Constitution Affairs v Jones 2007 EWCA-CIV894 the EAT considered whether account should be taken of whether a disability made it difficult to make decisions about taking action.
5. The case of Robertson v Bexley Community Centre 2003 IRLR434 where the Court of Appeal held that an employment tribunal has a very wide discretion to determine whether or not it is just and equitable to extend time. It stated that time limits are exercised strictly in employment cases. There is no presumption that a tribunal should extend time. The Court of Appeal went on to say that it is for the claimant to convince the tribunal that it is just and equitable to extend time. The exercise of discretion is thus the exception rather than the rule.
6. The case of Edomobi v La Retraite RC Girls School UKEAT/0180/16 reported 2016 in particular paragraph 31 thereof which held that the burden is on the claimant to show it is just and equitable to extend time and that the claimant should explain the delay.
7. The Tribunal was also referred to Harvey on Industrial Relations paragraph 279.02. The case of Bowden v Ministry of Justice UKEAT/0018/17 is unreported and in particular paragraphs 37 and 38 which stated that an

Case No: 2500658/2018 & 2501243/2018

assertion of ignorance of right must be genuine. Ignorance of those rights whether the right to make a claim or the procedure for making it or the time within it must be made must be reasonable.

8. The Case of London Borough of Southwark v Afolabi 2003 IRLR220, where the Court of Appeal held that it is not necessary to go through all the matters listed in section 33(3) of the Limitation Act 1980, so long as no significant factor has been left out in exercising that discretion. Those factors in section 33 being – the length of and reasons for the delay; the prejudice to the parties and impact on the evidence; whether the respondent contributed to the delay; the extent to which the claimant acted promptly when she knew of the cause of action and steps taken by her to seek advice.
9. The case of British Home Stores Limited v Burchell 1978 IRLR379. The EAT held that in a case where an employee is dismissed act of misconduct, the Tribunal has to consider whether the employer had a reasonable belief that the claimant had committed the misconduct; that it had reasonable grounds for doing so and that they undertook a reasonable investigation into the matter.
10. The case of Iceland Frozen Foods Limited v Jones 1982 IRLR439. The EAT reminded itself that the tribunal must not substitute its decision for the right course to adopt for that employer. The question for the tribunal was whether, in the particular circumstances of the case, the decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted.
11. The case of Polkey v AE Dayton Services Limited 1987 IRLR503, where the House of Lord held that it is open to a tribunal to find that even if a fair procedure had been followed that an employee would still have been dismissed in any event.
12. The case of Nelson v BBC 2 1979 IRLR346 where the Court of Appeal held that compensation can be reduced on the grounds of contributory fault, where the conduct is culpable or blameworthy; it caused or contributed to the dismissal; and that it is just and equitable to reduce the compensation in that regard.

The issues

13. The issues which the Tribunal had to consider are set out in the orders made on 23rd May and 23rd August 2018 as follows:
14. What was the principal reason for the dismissal – it is pleaded as conduct. In that regard, did the respondents have a reasonable belief that the claimant had committed an act of misconduct; was that based on reasonable grounds and did they undertake a reasonable investigation into the matter?
15. Did the respondent follow a fair procedure and was dismissal within the band of reasonable responses?
16. Were there any procedural irregularities and would the claimant have been fairly dismissed in the event or did she contribute to her dismissal.

17. Did the act of misconduct amount to gross misconduct and were the respondents entitled to dismiss the claimant without notice?
18. In relation to the complaint of disability discrimination was the claimant a disabled person for the purposes of Section 6 of the Equality Act 2010. During the course of these proceedings the respondents conceded that the claimant was a disabled person pursuant to those provisions.
19. Did the claimant bring her claim of disability discrimination in time namely before the end of the period of three months beginning with the date of the act complained of? In that regard the claimant concedes that the claim was brought out of time. The Tribunal had to go on to consider whether it was just and equitable to extend time to enable the claimant to bring the claim of disability discrimination.
20. Did the respondent apply to the claimant a provision criterion or practice (PCP)? The PCP relied upon is paragraph 24 (ii) b of the grounds of complaint namely that the respondents requirements regarding the claimant's personal conduct and in particular decision making processes.
21. Did the respondents apply that PCP to the claimant and did that put the claimant at a substantial disadvantage compared to a non-disabled person?
22. Did the respondent know or should the respondent have reasonably been expected to know that the claimant was a disabled person at the material time?
23. If so, did the respondent know or should the respondent reasonably have been expected to know the effects of the disability and the claimant was likely to have been placed at that substantial disadvantage?
24. If so, did the respondent fail to make reasonable adjustments to the PCP which would have removed that disadvantage from the claimant? It was noted and recorded that the claimant asserts that the respondents failed to provide her with proper supervision and support; failed to obtain medical advice on the claimant; carry out a proper risk assessment in relation to the claimant's position; and/or fail to place her on leave until medication had brought the symptoms of her disability under control.
25. In relation to the claim of discrimination arising from disability the Tribunal had to consider whether the claimant was treated unfavourably by the respondent when it dismissed her?
26. Was that treatment because of something arising in consequence of the claimant's disability? It was noted and recorded that the claimant contends that the something arising from her disability was her out of character behaviour when compared to her behaviour over many years as a teacher with an impeccable record.
27. If so, did the respondents know or should the respondents reasonably have been expected to know that the claimant was a disabled person at the material time.

Case No: 2500658/2018 & 2501243/2018

28. If so, were the actions of the respondent in dismissing the claimant a proportionate means of achieving a legitimate aim. It was noted and recorded that the details of the legitimate aim are those set out in the response form at paragraph 10.4 which are namely, the legitimate aims were safeguarding pupils in the school; maintaining good professional relations between the staff at the school and preventing any further animosity behaviour between or amongst the staff; maintaining good professional relations between staff and parents of pupils at the school; and protecting the good reputation integrity and professionalism of the school and its teaching staff complement.

Findings of fact

29. The claimant was employed as a primary school teacher with the second respondent, which is a primary school in South Tyneside. The claimant had worked for over 17 years as a teacher, initially at Mowbray primary school and then since 2004 at the second respondent school. She was a member of the senior management team. She was acknowledged to be a good/outstanding teacher. She had not been subject to any disciplinary action.
30. The claimant is the mother of three children; two of whom attended the second respondent school at the time. The claimant suffers from depression, which the respondent accepted during the course of these proceedings to amount to a disability under the Equality Act 2010. The claimant has suffered from postnatal depression in the past following the birth of her last child in 2012.
31. Teachers are expected to maintain certain standards of behaviour both in school and outside school. They are responsible for safeguarding pupils in their care. Teacher's standards set out at page 231 of the bundle; the second respondent's staff handbook setting out standards required all staff is that page 238 of the bundle.
32. Around the beginning of 2016, the claimant was experiencing problems within her marriage. The claimant was open with other school colleagues about her domestic problems and the involvement of social services with the family as her children had witnessed domestic abuse. The claimant left the family house in February Half term 2016. She told Mr Price, the headteacher, that she was having problems at home.
33. In her evidence to the tribunal, the claimant said she started a sexual relationship with the father of pupil F, a child at our school. The claimant did not disclose that relationship to the headteacher. She said she did not do so because it only lasted a short time. She said that with hindsight she acknowledged that the relationship was inappropriate, that says that her mental impairment affected her judgement at that time.
34. A number of the claimant's colleagues indicated that they are aware that there were rumours circulating that the claimant was in a relationship with the father pupil F. Mrs Gallagher said that she saw the claimant's car parked outside pupil F's father House one morning. Mrs Gallagher said that she asked the claimant about that and the claimant implied to her that the relationship was physical.

35. The claimant was absent for further period in 2016. As a result of have absences the claimant triggered an absence review meeting in October 2016 under the second respondent's absence management policy. This meeting Took place as was usual procedure with the school's operations Manager–Mrs Handy. The notes of the meeting are at page 198– 199. It shows that the claimant had two absences for stress in January and March 2016. Mrs Handy said in evidence that she had asked the claimant if she had any underlying issues and was told that she did not (page 98). Mrs Handy also says that she offered the claimant occupational health and counselling but the claimant refused (page 99). The claimant says that she could not recall being offered occupational health. In her evidence Mrs Handy said that the claimant did not say anything to her about any mental health problems or about any prescribed medication. The claimant acknowledges that she did not tell Mrs Handy about how depression or that she was on medication. That is consistent with the notes of the meeting, which do not make any reference to any mental health issues or medication. Mrs Handy wrote to the claimant after that meeting to confirm the discussion. The letter which is that page 197 of the bundle refers to the offer of the occupational health and counselling and notes that the claimant did not take up either of those offers. In accordance with the second respondent's absence management policy, a further absence review meeting took place in June 2016, which was closed as the claimant had had no further absences.
36. In her oral evidence to the tribunal, the claimant said that she had told Mr Price, the headteacher, about her depression and her medication. She could not recall when she told him and there is no specific reference in her witness statement in these proceedings. Mr Price said that the claimant did not tell him about her depression all that she was on medication. We prefer Mr Price's evidence in that regard. He came across to us as the clear and credible witness. On the other hand, the claimant does not present as the most reliable witness. It is noted later in this judgement that the claimant did not admit the relationship with pupil F's father until these proceedings and actually denied it during the disciplinary and appeal process.
37. Mr Price said that the claimant suggested in early 2017 that she may wish to relinquish hey senior management responsibilities. He said that by March 2017 the claimant told him that she would keep on those responsibilities.
38. In June 2016, a school residential trip took place. The claimant did not attend that trip. She sent a text to one of the staff members enquiring about pupil F. She accepted during her evidence but she had sent that text. Mrs Olds, who lead the residential trip, noticed that the claimant would come into her classroom and ask pupil F to do jobs for her. Mrs Christie said that the claimant had commented about being unhappy with Mrs Olds commenting on her relationship and threatened her to the effect that she reminded her that she would be line of managing her the following year. In her evidence, the claimant did not deny using words to that effect. She said that she was not acting rationally at that time.
39. Mrs Christie, a learning support assistant, said that she heard the claimant on one occasion using her mobile phone in the PPA room to make travel arrangements for the father of pupil F. The claimant does not deny doing

that.

40. In June 2017, the claimant said that she had a friendship with the father of pupil G, who was in her class. She admits, that although she reported the father of pupil G to the police for harassing her, she allowed him to go on a school trip as a parent helper. The claimant says that her judgement was impaired at this time. A number of claimant colleagues—Mrs Gallagher and Mrs Watkins—said in evidence that they had seen pupil G's father in the classroom with the claimant on several occasions and that she seemed to be spending a lot of time talking to him. Mrs Watkins said that she tried to distract the claimant but that the claimant continued with her discussion with pupil G's father. The claimant does not deny that she allowed pupil G's father into the classroom, but she said but it was not unusual to allow parents into classrooms.
41. In or about mid- 2017, Mrs Betts said that the claimant asked about a child in nursery and commented that she knew the father previously. The claimant arranged to bring a teddy bear back into the nursery after having contacted the father of that child.
42. In May 2017, the claimant asked Mrs Christie to mark homework for her and told her not to say anything about it. The claimant admits asking Mrs Christie to mark homework that said other teachers did it too..
43. Mrs Christie says that the claimant told her about text messages from the parent of pupil E, who had not done her homework. Mrs Christie says that the claimant knew the parents of pupil E and told her on that occasion not to send pupil E, as is usual practice, to homework club.
44. A number of the staff indicated but they had concerns about the claimant's unusual behaviour during this time. They all said that the claimant did not say anything to them about any about her depression all medication. They are all attributed how unusual behaviour to the problems in her marriage breakdown. A number of staff brought to their concerns to the attention of the headmaster.
45. On 22nd of May 2017, Mr Price had a meeting with the claimant because a number of support staff had raised concerns about the claimant's behaviour. The notes of that meeting are at Page 222 of the bundle. At that meeting, Mr Price raised an issue about pupil D's mother raising concerns that the claimant was sharing information with pupil D's father with whom the pupil did not have contact. The claimant admitted that she had been into reception and acknowledged that this was inappropriate. A discussion also took place about the claimant asking Mrs Christie to mark homework and the issue raised by Mrs Christie regarding pupil E. There was also a discussion about the use of mobile phones and a discussion about crockery and cutlery in the classroom. In her evidence, the claimant said that she often had crockery in the classroom but she was doing it more often at that time due to her mental-health problems.
46. At that meeting, there was also concerns raised about pupil progress as the claimant's people progress and books seem to have taken a dip. In her evidence to the tribunal the claimant suggested that this was due to have mental impairment. In his evidence to the tribunal, Mr Price said that

Case No: 2500658/2018 & 2501243/2018

teachers often show dips in pupil progress over the year and that pupil progress usually picks up by the end of the term. He said that in the claimant's case her pupil progress did in fact pick up by the end of the year. He said but by the end of term how pupil progress was good two outstanding so that there was no issue at the end of term with her pupil progress.

47. Mr Price said but that meeting he offered the claimant counselling. He also suggested that she speak to her GP. Mr Price said that the claimant refused counselling. Mr Price said that the claimant did not indicate during this meeting that she was suffering from a mental impairment nor mention that she was on medication. The claimant does not suggest that she told Mr Price about her depression or medication at this meeting, but says that she had told him previously about this. We prefer Mr Price's evidence that the claimant did not, contrary to what she says, tell him about her depression or medication. This meeting would have been the obvious time to mention those matters, but the notes of the meeting are consistent with Mr Price's evidence that he raised the issue of counselling and support, but there is no mention of the claimant mentioning her medical problems.
48. From September 2016 -January 2017 claimant applied the various deputy head positions. On the application form she said that she did not have a disability. In August 2017 the claimant also told Mr Price that she was looking at another deputy head position.
49. From September 2017–October 2017, the claimant was off sick with an injured left arm (pages 395-397).
50. Due to the allegations of domestic abuse, the claimant's children were being regularly reviewed by social services. An initial Child Protection Conference (IPC) was arranged concerning the claimant's two youngest children in early October 2017. Mr Price said that he was invited to that IPC as the children were at his school. He said that he prepared a short report on the children, which as was his usual practice, he arranged to share with the claimant. He said that when the claimant attended she had a social worker's report which she said she was not happy about and which she offered to show him but he declined. He said that it was not appropriate for him to read the social worker's Report before the IPC, as he said that all reports were usually provided just before that meeting.
51. The social worker's Report, which is a 19 page document at page 254a of the bundle. At pages 10 and 11 of that report there is a brief reference to the claimant's mental condition. The claimant says that was read out at the IPC. Mr Price said that he was handed a number of longer reports just before the meeting including the social worker's Report and could not recall any reference to the claimant's mental condition being mentioned.
52. Mr Price said that at that meeting there was a reference do the claimant's relationship with the parents oh Pupils at the school. He said that it was mentioned that pupil G's father had been stalking the claimant. Mr Price said that was the first time he was aware of that issue.
53. The IPC meeting took place on 4 October 2017. Mr Price said that at the meeting he also learned that the claimant had resumed a relationship with her husband and that social workers were concerned that the claimant and

her husband were failing to protect the children from witnessing domestic violence/abuse. At the IPC, the claimant acknowledged that she had relationships/friendships with the fathers of some pupils at the school. Mr Price said that he was unaware of that until then.

54. A LADO meeting was arranged for 11 October 2017. Mr Price said that he was invited because the claimant was a teacher at the school. The notes of the LADO meeting are at that pages 207– 212 of the bundle. The meeting was called because of concerns about allegations of abuse in the family home and whether the claimant could recognise safeguarding concerns in her role as a teacher. In that meeting, concerns were expressed about the claimant's husband residing in the family house. The claimant said he had returned to assist when she had had problems with her arm. It was noted that the claimant had been asked to inform social services if she resumed her relationship with her husband and had not done so. Concerns were expressed about the effect on the children of witnessing verbal and physical abuse and concerns were also expressed about the claimant's daughter who was living with her father. The claimant and husband suggested that the children were lying. There was also a discussion at the IPC about the relationships which the claimant had formed with the fathers of pupils at the school. It was not clear if those relationships had been formed through the claimant's role as a teacher. There was a reference to stalking of the claimant by pupil G's father and concerns about the claimant forming relationships with the parents of children in her class. Concerns were expressed about the impact of the claimant's actions on the reputation of the school and her ability to safeguard children. The claimant's children were placed on a child protection order.
55. After the meeting, Mr Price decided to undertake an investigation into the claimant conduct.
56. The claimant returned to work on 30th of October 2017. She was suspended pending an investigation into the concerns about her conduct. The letter of suspension is it page 467 of the bundle.
57. Mr Price undertook an investigatory meeting with the claimant on 6 November 2017. The claimant was represented by Jill McManus, her trade union representative. The notes of the meeting are at pages 223 -230 of the bundle.
58. During the investigatory meeting, the claimant admitted that she had allowed her husband to stay in the family home without first notifying social services. It appears that she had initially denied to social services that her husband had returned. She also admitted texting about pupil F during the school trip; using her seniority to make a colleague's life difficult; using her mobile phone to arrange a holiday for pupil F's father; acknowledged that she would keep an eye on a particular child but denied passing on information the father; confirmed a friendship with the father of pupil G, whom she had met as a parent and admitted that she had failed to disclose that friendship; confirmed that she had reported him to the police and yet invited him to attend on a school trip. At the investigatory meeting, she admitted that she had meet Child F's father at parents evening and had formed a relationship with him but said it was just a friendship. Mr Price informs the claimant at the end of the investigatory meeting that she will be

invited to a disciplinary hearing.

59. Mr Price then took further statements from staff regarding the various incidents. Statements were taken from Mrs Christie; Mrs Gallagher and Mrs Betts (page 246 -249). Those statements are similar given to the tribunal. Mr Price also obtained witness statements from the social workers which are at pages 250 - 254 of the bundle. The social worker confirmed the claimant had been requested to inform them if she resumed her relationship with her husband and that she had not done so as they would want to assess the children's safety if this was to occur (page 250). Miss Hudson, another social worker, made a statement referring to the background to the matter and a strategy meeting in September 2017 and assessment at that meeting. Miss Hudson refers to concerns about the claimant's husband being in the family home, contrary to earlier indications that he was not residing in the family home. Mrs Hudson confirms that the claimant referred to relationships with two men who had children at her school. She refers to pupil G's father being reported to the police by the claimant after he tried to contact her eldest daughter on Facebook. Miss Hudson raises concerns about the safety of the children and the impact on them. She refers to the reasons why the IPC was held on 4 October 2017.
60. On 30th November 2017, the claimant is invited to a disciplinary hearing. The letter is that page 468 of the bundle. The reason for the disciplinary meeting is to consider allegations relating to failing to maintain professional boundaries; failing to demonstrate an appreciation and understanding of safeguarding; upholding public trust in the profession and standards the behaviour in the school; abusing her position as a leader as a senior leader at the school; breaching the trust and confidence in her as a member of staff. The claimant is informed that she can be represented by her trade Union at the meeting. The meeting is arranged for 11th December 2017.
61. The respondent say that the documents for the meeting was sent to the claimant the 5 December 2017. In evidence to the tribunal the claimant said she did not receive the documents until later in December. On 7 December 2017, the claimant sent a number of texts to colleagues asking them to provide statements in support of her. The claimant said that her trade union representative had received the documents around the time she was sending those texts. Mr Price says the documents were not sent to the trade union representative until 11th December 2017 (page 271).
62. In or around 8 December 2017 the respondent received a visit from OFSTED regarding a complaint which the respondent believes was made by the claimant. The complaint was found to be malicious.
63. The disciplinary hearing was due to take place on 11 December 2017, but the claimant was unable to attend due to illness.
64. On 15 December 2017, the claimant raised an issue with the first respondent regarding a breach of data protection legislation and indicated that she would be contacting the ICO (page275).
65. On 19th of December, a complaint was made by the claimants husband regarding Mr Price (page 278).

66. This Respondent responded to the complaint on 8 January 2018. It was not upheld.
66. on 5 January 2018,, the claimant raised a grievance and a whistleblowing complaint (Pages 280– 28 one and Page 282–283). The respondent replied on 20th of January 2018.
67. The disciplinary hearing was rescheduled and took place on 8 January 2018. Neither the claimant nor the claimant's representative attended the meeting. On page January 2018, the claimant's trade union representative emailed the respondent (page 284). The email was copied to the claimant. The email stated that the claimant has decided not to attend the disciplinary hearing nor does she wish how to trade union representative to attend but intends to submit a statement and accepts that the hearing will go ahead in her absence.
68. The claimant did not ask for an adjournment of the hearing. In evidence to the tribunal she said but she was not in a fit mental state to attend the hearing but she did not tell the respondents. In evidence to the tribunal, Mrs Long, who chaired the disciplinary panel, understood that the claimant was content of The hearing to proceed in her absence. She said that she thought that the claimant was probably too embarrassed to attend the disciplinary hearing and that that was the reason why she did not attend.
69. On 8 January 2018, the claimant submitted a written statement for the disciplinary hearing. The statement is a long statement and consists of over 3 pages (pages 289-292). In the statement, the claimant refers to had postnatal depression; her period of absence in March 2016 suffering from stress; a difficult family circumstances; how long period of service with the respondents without any complaints; her relationship with the local community. She also refers to her friendship with pupil G's father and her relationship with pupil F's father, which she says is nota sexual relationship, although in have evidence in tribunal she admits that she was in a sexual relationship with him. She refers to the matters discussed with Mrs Olds and says that she reacted in anger and apologises. She also apologises for using her mobile phone. She states that she understands the concerns that the school may have about her ability regarding safeguarding but she refers to her previous good record with the skill and indicates she would undergo further safeguarding training if necessary. She confirms that she is cooperating with social services. She says that she should not be dismissed for a first offence and refers to the ACAS code of practice. She says similar situation would not occur again. She does not make any reference to any disability nor does she suggest that her disability caused her to behave in this way as she is now suggesting in these proceedings.
70. The disciplinary hearing proceeded in the claimant's absence. Mr Price presented the evidence including the investigation with the claimant. The claimant's statement was read and considered. The notes of the disciplinary hearing are at pages 293–298 of the bundle. The disciplinary Committee found that the allegations were proved and amounted to gross misconduct. They considered that the appropriate sanction was dismissal.
71. The respondent wrote to the claimant to confirm her dismissal on 12th January 2018. The letter of dismissal is that pages 299– 301 of the bundle.

Case No: 2500658/2018 & 2501243/2018

The claimant was dismissed inappropriate relationships with parents of pupils at the school and for failing to maintain the normal boundaries expected between the teacher and parents. She was also dismissed because of concerns about the safeguarding of pupils in her care when she invited a parent on a school trip after she had reported him to the police for obsessive behaviour towards her. She was dismissed for failing to notify the headteacher of this man's behaviour and her relationships with parents she was also dismissed for her actions in abusing her position as a senior member of the team to less senior member of the team. The respondents found that all of the allegations has been substantiated and amounted to gross misconduct. The claimant was given the right to appeal against the decision.

72. The claimant appealed against the decision on 16 January 2018, as it is noted at page 343–344. In her appeal letter the claimant refers to breaches of data protection and Mr Price using information obtained from the IPC for the disciplinary hearing. She also says that she was inhibited from gathering of witness evidence.. She refers to another member of staff marrying a parent of a child at the school. She also says she was told by the police to treat the parent of pupil G in the same way as any offer parent and raises issues about whether this is a safeguarding matter.
73. On 26 January 2018, the claimant raised a further complaint about breaches of the data protection legislation (page 311 of the bundle).
74. On 4 February 2018, the claimant sent in a further letter of appeal which is at Pages 312– 314 of the bundle. In that letter of appeal the claimant repeated the grounds of appeal set out in her earlier letter. She also commented on the allegation of abuse of power and said that it was done in the heat of the moment and not acted upon. She says that she has a supportive member of the team. She also says that she feels she has been victimised by Mr Price, whom she suggests is dragging up every minor issue. She says that he is referring to historic issues which have already been resolved. She also says that it is the false allegation that she gave information to the father of child D. At the outset of this appeal letter, the claimant says that she cannot attended the appeal hearing because she feels the unfair treatment but she has received has damaged her mental-health. She says that she cannot go into the school and expresses concern about the hearing taking place in Mr Price's office. She asked her statement to be read out instead. It appears that email was not received by the panel until 7 February 2018.
75. The appeal hearing took place at the school, albeit not in Mr Price's office. It took place on 8 February 2018. Mrs Pinto was the chair of the appeal panel. The claimant did not attend the appeal hearing nor did she send a representative.
76. In her evidence to the tribunal, Mrs Pinto said she did not consider adjourning the appeal hearing all arranging the appeal hearing to take place at a different location. She acknowledged that the claimant had said that she did not want to attend at school. In her evidence Mrs Pinto said that she understood the claimant do not want to attend the appeal hearing and have submitted the statement instead.

Case No: 2500658/2018 & 2501243/2018

77. The appeal hearing was by way of a rehearing. Mr Price represented the case; all the documents were considered and the claimant's letters of appeal were also considered. Mrs Pinto said that no evidence was presented that the claimant was suffering from a disability. The notes of the appeal hearing are pages 315– 320 of the bundle. The appeal was dismissed.
78. The respondent wrote to the claimant to dismiss her appeal on 21 February 2018. The letter is that pages 321– 322 of the bundle. The appeal was rejected because the panel concluded that, having considered all of the information provided by the claimant and the school, it is considered that the claimant had failed to maintain proper professional boundaries expected between a teacher and parents and that her relationships with some parents were inappropriate. The panel also concluded that the claimant had failed in her safeguarding responsibilities.
79. The claimant submitted a complaint to the first respondent about Donna Hudson the social worker, which complaint was rejected further first respondent on 1 March 2018 (pages 324-325).
80. On 26 March 2018, the claimant issued proceedings unfair dismissal to this tribunal.
81. In or about early April 2018, the first respondent was contacted by the ICO regarding a complaint made by the claimant and her husband (pages 336-337). On 18th May 2018, the ICO rejected that complaint against the first respondent. It confirmed and that the information obtained by Mr Price at the IPC was appropriately disclosed to the school. They said that's Mr Price could not reasonably have ignored that information in the light of the fact that the claimant's children were at the school. It concluded therefore that the processing of the information was correct.
82. On 1 April 2018, the claimant instructed how current solicitors. An appointment took place with the claimant on 14th May 2018, at which counsel was present. On 21 May 2018, the claimant gave instructions to her solicitors to see an amendment to her claim. An application for leave to amend her claim was made to, to include a claim for disability discrimination, on 22 May 2018. The claimant's representative acknowledged that the claim was out of time the claim. The application was refused on 23 May 2018. The claimant issued a further claim of disability discrimination on 8 June 2018.
83. The claimant led no evidence about why time should be extended to allow her claim for disability discrimination to proceed until at the end of her evidence the question was asked by the employment judge. In answer to that question she said that's the delay was because she did not have legal advice and did not know her rights. She also said that's the trade union stopped helping her after her dismissal.
84. The claimant submitted a disability impact statement during the course of these proceedings. In that statement, she talks about the impact of her disability on her ability to undertake normal day-to-day activities. She does not suggest in that statement that one of the effects of her disability is on the way she behaves. During the course of these proceedings, a joint

Case No: 2500658/2018 & 2501243/2018

medical expert was instructed, his detailed Report is that pages 417–446 of the bundle. The expert concludes that the claimant is disabled. He does not suggest that her behaviour is an effect of her disability.

Submissions

85. Both parties filed written submissions.

Conclusions

86. This tribunal does not have jurisdiction to hear the claimant's complaint of disability discrimination.
87. The claimant was dismissed on 8 January 2018. Her claim for disability discrimination was not presented to this tribunal until 8 June 2018. As acknowledged by her solicitors, this is outside the time limit for the presentation of such a claim.
88. This tribunal does not consider it is just and equitable to extend time to allow the claim of disability discrimination to proceed. The case of Robertson makes it clear that time limits are abstract and that time should not necessarily be extended on just and equitable grounds. It is stated that it is for a claimant to explain why it is just and equitable for a time limit to be extended; why a time-limit had been missed and the reasons for any delay. In this case the claimant led no evidence during the course of her evidence on this issue until she was asked for an explanation at the very end of her evidence by the employment judge. The explanation which you gave at that stage was that it was due to lack of legal advice and knowledge about our rights. The Claimant did not suggest that her disability impacted on her ability to bring these proceedings.
89. After her dismissal, the claimant raised various complaints and issues in writing. She raised a written grievance against the respondent; a whistleblowing complaint; complaints about breaches of the data protection legislation; a complaint to the ICO; and 2 detailed letters of appeal. Further, the claimant was able to issue her claim for an unfair dismissal within the prescribed time limit, so it is unclear why she was unable to bring her claim for disability discrimination in time.
90. The claimant was being represented throughout the disciplinary proceedings by her trade union.
91. The claimant did in fact contact her solicitors in time to make a claim for disability discrimination, but the delay in issuing the proceedings appears to lie with her legal advisers as it appears that there was a delay of over six weeks before a meeting was arranged with counsel. Having sought legal advice in time, the claimant could have issued her claim for disability discrimination in time as she still had a few days left in which to do so. Accordingly the delay in issuing the proceedings appears to lie with her legal advisers.
92. This tribunal has not reached any specific conclusions in relation to the

Case No: 2500658/2018 & 2501243/2018

complaint of disability discrimination as we do not find we have jurisdiction to hear that complaint. However, we have to consider the question of the prejudice to both parties in relation to whether it is just and equitable to extend time. We accept that there would be prejudice to the claimant in not being able to pursue her claim of disability discrimination. We also considered the potential prejudice to the respondent in that we think that the claim has little merit. We find that the respondent did not know, and indeed could not reasonably have been expected to know that the claimant had a disability. There was no evidence available to the respondents to alert them to the possibility of her disability: – the claimant had been off sick two weeks for stress at home in March 2016; her performance had dropped for a period, but by the end of the year she was a good/outstanding teacher; although she was displaying unusual behaviour that was attributed to her domestic circumstances and her failure to attend the disciplinary hearing was attributed to the embarrassment at the circumstances. None of this would have alerted the respondent to consider the possibility that the claimant may have been suffering from disability. We should also add that we that we consider that it would be difficult for the claimant to prove that her behaviour, for which she was dismissed, was something arising in consequence of her disability. There was no evidence produced from either the medical expert or in her disability impact statement to suggest that might be the case. It is also difficult for us to see how the respondent should have considered reasonable adjustments in this case when there was no reference to disability in either of the long and detailed written statements produced by her to the disciplinary or appeal panels. Accordingly, we consider that there was prejudice to the respondent as well as the claimant.

93. For those reasons, we do not consider it is appropriate for us to exercise our discretion and extend time on just and equitable grounds the claimant to pursue her claim of disability discrimination.
94. This tribunal finds that the reason for dismissal was conduct, namely for having inappropriate relationships with the fathers of pupils in her school; failing to maintain proper boundaries with parents; failing to safeguard children in her care in particular having invited the parent of a child on a school trip after reporting him to the police for stalking her; failing to disclose any of these relationships to her headteacher; failing to be alive to safeguarding issues within her own family home by failing to notify social services that she had resumed her relationship with her husband and allowed him to move back into the family home despite being instructed to notify social services and abusing her senior position with a more junior member of the school.
95. Conduct is a fair reason for dismissal under section 98(2) of the Employment Rights act 1996.
96. This tribunal finds that the misconduct was gross. It was a serious breach of the standards expected of a teacher. It was also a breach of the standards set out in the second respondent's staff handbook. The claimant's actions clearly could bring the reputation of the school into disrepute and weaken both the school and the parent's confidence in the claimant. Safeguarding is the fundamental aspect of a teacher's role. The claimant's inability to recognise safeguarding issues was clearly a serious matter for the respondent. Her actions amounted to gross misconduct.

97. This tribunal finds that the respondent did undertake a reasonable investigation into the allegations. We do not consider it was inappropriate for the headteacher to follow up matters raised at the ICP. Indeed he would have been failing in his duties if he had failed to do so, as he could not argue that he was not aware of the situation after that meeting. Following the ICP, a full investigation meeting took place with the claimant and other members of staff. The respondent had reasonable grounds, following that investigation, to believe had the claimant had committed serious acts of misconduct. The respondent had evidence from the ICP. Further, the claimant herself had admitted many of the allegations during the investigatory meeting.
98. The tribunal consider that the respondent largely followed a fair procedure. The claimant was given the opportunity to respond to the allegations at the disciplinary hearing. She chose not to attend but sent in a written statement. The tribunal consider it was reasonable for the respondent to proceed with the disciplinary hearing in the claimant's absence based on the information provided to them by email from her representative which was copied to her and which was not disputed by her. However, in the light of the comments made by the claimant in her second letter of appeal, we have some reservations about the respondent proceeding with the appeal hearing in the absence of the claimant, without giving her first the opportunity to attend at a different venue. However, we do not think it would have made any difference to the outcome of the appeal hearing. The claimant had already submitted two long letters of appeal, which were in similar terms and which were considered at the appeal hearing and are not considered sufficient to overturn the dismissal. Further, the claimant has not led any evidence before this tribunal suggesting what else she might have said at the appeal hearing if she had attended in person.
99. This tribunal finds that dismissal was a reasonable response in the circumstances of the case. The claimant was in a senior role at the school. She was a teacher and, as such, is expected to maintain certain standards of behaviour and maintain appropriate boundaries with parents, which she failed to do. As a teacher, she is responsible for the safeguarding of children in her care. She failed to appropriately address safeguarding issues both within her own family home and in school.
100. For those reasons, this tribunal finds that the claimant's claim for unfair dismissal fails.
101. As we found that the claimant's conduct amounted to gross misconduct, we find that the respondent was entitled to dismiss the claimant without notice.

EMPLOYMENT JUDGE MARTIN

Case No: 2500658/2018 & 2501243/2018

**EMPLOYMENT
2020**

**JUDGMENT SIGNED BY
 JUDGE ON 3 April**

ON

JUDGMENT SENT TO THE PARTIES

23 April 2020

AND ENTERED IN THE REGISTER

**Miss K Featherstone
FOR THE TRIBUNAL**

Public access to employment tribunal decisions

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