Case Number: 2204867/2019

THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON CENTRAL**
BEFORE: **EMPLOYMENT JUDGE ELLIOTT**
MEMBERS: **MR M REUBY**
MS J TOMBS

BETWEEN:

Ms R Stubbs

Claimant

AND

London Borough of Hammersmith and Fulham

Respondent

ON: **20, 21 and 22 April 2021**
IN CHAMBERS: **23 April 2021**
Appearances:
For the Claimant: **In person**
For the Respondent: **Mr F McCombie, counsel**

RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is that the claim fails and is dismissed.

REASONS

1. By a claim form presented on 1 November 2019, the claimant Ms Rema Stubbs, claims direct age discrimination, victimisation. By way of an amendment she also claims associative disability discrimination.

2. The claimant relies on her age at the relevant time of 58 years.

3. The claimant works for the respondent as a Specialist Sheltered Housing Officer and remains in their employment.

This remote hearing

4. The hearing was a remote public hearing, conducted using the cloud video platform (CVP) under rule 46. The parties agreed to the hearing being conducted in this way.

5. In accordance with Rule 46, the tribunal ensured that members of the public could attended and observe the hearing. This was done via a notice published on Courtserve.net. No members of the public attended.

6. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal. From a technical perspective, there were no difficulties of any substance.

7. The participants were told that it was an offence to record the proceedings.

8. The tribunal ensured that each of the witnesses, who were all in different locations, had access to the relevant written materials. We were satisfied that none of the witnesses was being coached or assisted by any unseen third party while giving their evidence.

The issues

9. The issues for this hearing were identified at a case management hearing before Employment Judge Goodman on 16 March 2020 and were amended at a case management hearing before Employment Judge Khan on 20 July 2020.

Section 13: Direct discrimination on grounds of age

10. Has the respondent subjected the claimant to the following treatment falling within section 39 Equality Act, namely:

    a. Yvonne Stoney instructing her to leave the door open after she complained of a tenant filming her in July 2018. The comparators relied upon are Joyce Farrell, Maura Regan and Angeline Blondell. The claimant did not know their ages, the respondent said their ages were: JF aged 58/59; MR aged 57/58 and AB aged 46/47.
    b. Yvonne Stoney telling the claimant there was an expanding list of tenants' complaints about her (leading to the claimant's grievance of January 2019 which is the protected act for a victimisation claim)
    c. Wrongfully deducting money from her March 2019 pay following a request to buy additional leave. (Payment was made in April 2019). This allegation was dismissed upon withdrawal on 20 July 2020 and was no longer in issue.
    d. Anne Needham failing to reimburse £7.20 postage, requested of Ms Stoney on 4 and 16 April 2019 and of Ms Needham on 22 October 2019. This allegation was withdrawn during cross-examination on day 1 of this hearing as the claimant said that the amount had been paid.

e. Yvonne Stoney emailing her about her whereabouts on the afternoon of 10 June 2019. The claimant was at work. She was not normally required to notify her attendance.
f. Yvonne Stoney requiring the claimant to cover for other SHOs at several different workplaces, more than other SHOs in north team. The claimant complained about this on 8 July 2019. Actual or evidential comparators mentioned were MR and DF who passed away in 2018 at the age of 62/63.
g. Ms Needham telling tenants the claimant may have to apply for work as a caretaker.
h. Ms Needham refusing TOIL on 29 July 2019.
i. Ms Needham refusing a request for annual leave on 2 August 2019.
j. Ms Needham refusing leave on 29 August 2019 despite the claimant having notified it well before.
k. Ms Needham and Ms Stoney disciplining the claimant for taking this leave on 30 August, resulting in a verbal warning.
l. Ms Needham and Ms Stoney failing to provide support when the claimant was abused by a tenant's family member in September 2019.
m. Ms Needham's dismissive attitude when the claimant reported sick on 28 October 2019.

11. As evidence of age being the reason for the treatment the claimant explained Yvonne Stoney had called her "*rigid*" and "*set in her ways*" at 1:1 meetings from 2017 onward, in particular concerning procedures for keys, and in December 2018, leafletting.

12. Has the respondent treated the claimant as alleged less favourably than it treated or would have treated the comparators? If none are named, the claimant relies upon a hypothetical comparator.

13. If so, has the claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the claimant's age? The claimant relies upon Ms Stoney telling her that she was "*rigid"* and *"set in her ways*", at 1:1 meetings from 2017 onwards, in particular concerning procedures for keys and in December 2018, leafletting.

14. If so, what is the respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?

15. And/or does the respondent show that the treatment was a proportionate means of achieving a legitimate aim? The respondent has not pleaded justification for any treatment found to be age discriminatory.

Section 27: Victimisation

16. Has the claimant done a protected act? The claimant relies on a January 2019 meeting with Ms Stoney and her grievance dated 3 April 2019. The claimant found it hard to describe her protected act for the purposes of section 27 and said that it was Ms Stoney calling her "*stuck in her ways*"

and "*rigid*".

17. If there was a protected act, has the respondent carried out any of the treatment relied upon as direct discrimination, because of the protected act.

Time/limitation issues

18. The Early Conciliation period began and ended on 23 October 2019. The claim form was presented on 1 November 2019. Accordingly, any act or omission which took place before 24 July 2019 is potentially out of time, so that the tribunal may not have jurisdiction.

19. Does the claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period? Is such conduct accordingly in time?

20. Was any complaint presented within such other period as the tribunal considers just and equitable?

Unlawful Deductions from Wages

21. Has the claimant unlawfully made deductions from the claimant's wages by (1) failing to pay for annual leave on 31 August 2019 or (2) failing to reimburse postage. The tribunal must decide whether either payment was (a) wages as defined in section 27, and (b) "properly payable - section 13, both Employment Rights Act 1996. This complaint was withdrawn at the case management hearing on 20 July 2020 and was no longer in issue.

Disability discrimination by association

22. On 4 June 2020 the claimant was given leave to amend her claim to add two claims of disability discrimination by association in respect of:

    a. The refusal of a request made on 27 August 2019 for annual leave on 30 August. This is also relied upon as an act of direct age discrimination.
    b. Failure in January 2020 to allow a change in working hours from 9am – 5pm to 8am – 4pm.

Remedy

23. If the claimant succeeds, in whole or part, the tribunal will be concerned with issues of remedy.

24. There may fall to be considered a declaration in respect of any proven unlawful discrimination, recommendations and/or compensation for loss of earnings, injury to feelings and/or the award of interest.

Procedural background

25. A case management hearing took place on 20 July 2020 before Employment Judge Khan. This case had originally been listed for a full merits hearing to commence over three days starting on 20 July 2020. It could not take place due to restrictions in place due to the pandemic. At the case management hearing on 20 July 2020, it was re-listed for four days commencing on Tuesday 20 April 2021.

Witnesses and documents

26. There was a main electronic bundle of 547 pages and a supplementary bundle of 137 pages.

27. The tribunal heard from the claimant.

28. For the respondent the tribunal heard from 2 witnesses: Ms Anne Needham, a Sheltered Housing Manager for the north area and the claimant's line manager and Ms Yvonne Stoney, a Sheltered Service Manager. Ms Stoney is Ms Needham's line manager.

29. All three witnesses had both a main statement and a supplementary statement.

30. We had written submissions from both parties to which they spoke. They are not replicated here. All submissions were fully considered whether or not expressly referred to below. Neither side cited any case law.

Findings of fact

31. The claimant has been employed by the respondent local authority since 1 February 2016. She is employed as a Specialist Sheltered Housing Officer and remains in the respondent's employment. The claimant's main place of work is at the Askham Court Sheltered Housing Scheme.

32. The claimant's Job Description was at page 309 of the bundle. The claimant agreed that to a degree it was part of her job to facilitate social activities for the residents. The claimant agreed in cross examination that it was part of her job to get along with residents and be accessible to them.

33. In May 2019 Ms Anne Needham became the claimant's line manager. Ms Needham is a Sheltered Housing Manager. Ms Needham's line manager is Ms Yvonne Stoney, a Sheltered Service Manager. Ms Stoney manages two Sheltered Housing Managers, Ms Needham and Ms Marianne Duffield. They manage a team of 6 Specialist Housing Officers, including the claimant, for the north region.

(a) <u>Instructions to leave the door open</u>

34. On 18 July 2018 there was an incident in which a friend of a tenant, who is

referred to as S, filmed the claimant through the office window, such that the claimant felt threatened and intimidated by this tenant. The claimant was concerned for her safety and called the police. This was discussed in a 1:1 meeting between the claimant and Ms Stoney on 2 August 2018. The notes of the meeting were at page 536. This was also confirmed in Ms Stoney's email to the claimant of 16 August 2018 (page 63). It is not in dispute that in that both in the meeting and the email Ms Stoney instructed the claimant to keep the door to the communal hall open when she was in the office.

35. This instruction was given because it had come to Ms Stoney's attention that the claimant had been leaving the main entrance door closed when she was in the office. Ms Stoney's concern was if the door was closed, residents would not know that the claimant was in the office and it should be open to provide the service to their residents and members of the public.

36. The claimant relies upon this as direct discrimination because of her age and she relies upon three comparators who are referred to as JF, MR and AB. The three comparators all worked at different housing schemes and did not work in the same place as the claimant. The buildings in which the comparators work have different layouts and building access which did not require that they left the doors open. Comparator JF worked at Riverside Gardens and Banim Street. The Riverside Gardens office is located within the main building and accessed with a fob so that anyone wishing to see JF can use an intercom. The claimant was not aware of the intercom or the fob system. For Banim Street door does not have a latch facility or an intercom so it is necessary to tap on the window to seek access. It is in a separate building from the tenants' residence.

37. Comparator MR worked at Plane Tree Court and Underwood House. The claimant agreed that Plane Tree Court office can be accessed by a fob in the main building. There is also an intercom but the claimant did not believe that it was working when she was there. At Underwood House the office was in a separate building to the residence. The door had to be propped open and Ms Stoney's evidence was that MR kept the door propped open when she was in the office so that non-residents could make contact with her. The claimant thought that MR did not prop the door open but it was on the latch.

38. Comparator AB worked at Michael Stewart House which can be accessed via a fob and there is also an intercom for non-residents to use. The claimant had only worked there once so she could not confirm this.

39. The claimant worked at the Askham Court scheme office which is located within a separate building to the residents' homes. The claimant agreed that it can only be accessed by a key and there is no intercom. The claimant agreed that it has a Yale lock that can be put on the latch and also a hook and eye latch to keep it in an open position. The claimant said there was a doorbell as well and if the door was on the latch people could push the door open. Ms Stoney said that she was unaware of a doorbell. We accepted

her evidence that she was unaware of a doorbell for the reasons we give below as to her credibility. We do not doubt the claimant that there was a doorbell, as she worked there, but our finding is as to what Ms Stoney knew when she gave her instruction.

40. The difference with Askham Court was that if the door was closed people could not get in to access the SHO. We find it was a requirement of the service that the SHO's had to be accessible to the residents and members of the public.

41. Disciplinary proceedings were commenced (amongst other things) in relation to not opening the door to speak to tenants who wished to speak to the claimant amongst other matters. The investigation manager was Ms Cate Evans, Specialist Housing Services Manager and the disciplinary issues were set out in a letter dated 18 August 2018 (page 357). Following the investigation, Ms Evans made the decision not to recommend disciplinary action (letter page 66).

42. The claimant submitted that the requirement for her to leave the door open whilst at work amounted to age discrimination because other Sheltered Housing Officers did not have to abide by this rule, and she says she was specifically singled out for different treatment. The claimant's comparators were JF, MR and AB. JF and MR are about the same age as the claimant and AB is about 12 years younger.

43. We find that the comparators were in materially different circumstances because of the different physical layout and design of the particular buildings in which they worked. We find that the instruction to leave the door open was not because of the claimant's age; it was given because of the service and operational requirements for the SHO to be accessible.

44. In any event the comparators JF and MR were of the same or very similar age to the claimant. If Ms Stoney's reason was to give this instruction to older workers because of their age, we find she would also have given the same instruction to these comparators and she did not. We find that this instruction was not less favourable treatment because of the claimant's age.

(b) <u>Telling the claimant that there was an expanding list of complaints</u>

45. The claimant complains that at the 1:1 meeting on 2 August 2018 Ms Stoney asked her how many more people would complain against her because the list was expanding. Ms Stoney denies that she told the claimant that "*the list was expanding"* in relation to the number of complaints against her.

46. There was no reference to this in the notes of the meeting of 2 August 2018 (page 352). It was referred to in Ms Stoney's note of a meeting with the claimant on 21 January 2019, page 545, which said "*RS stated that in August I came to speak to her about the complaint made by [S]. RS stated that I said 'this list is expanding, how many more people are going to*

complain about you'. I stated that I do not recall saying this, and that this is not the type of thing I would say. RS stated that as I do not recall saying this, there is nothing to add".

47. There was also a complaint from S on Wednesday 18 July 2018 (see note at page 355). There had also been a complaint that had been investigated in February 2018 concerning the issue of a TV and a guitar. Another complaint was made against the claimant, on 2 November 2018 (page 88-89) but this post-dated the meeting on 2 August 2018.

48. We find as a fact that Ms Stoney did not say to the claimant that the list of complaints about her was expanding. There was no reference to it in the 2 August 2018 meeting note and in the 21 January 2019 meeting note, Ms Stoney records that she did not recall saying it. We found Ms Stoney to be a credible, straightforward and considered witness. We found her professional in her record keeping and note taking throughout the evidence we were taken to and we accepted her evidence and we find that the claimant was mistaken in her recollection.

49. Even if we are wrong about this and the comment was made, we can see no connection between this comment and the claimant's age. Had we found that the comment was made, we would have found that it was not because of the claimant's age.

<u>The alleged protected act - the 21 January 2019 meeting and a grievance dated 3 April 2019</u>

50. A meeting took place on 21 January 2019 between the claimant and Ms Stoney. The meeting was called by the claimant because she felt harassed and bullied by Ms Stoney. During her evidence, the claimant's recollection of that meeting was limited. The note of that meeting was at page 544. The issue of the complaint discussed in February 2018 was raised as was the issue of leafleting.

51. The note of the meeting shows and we find that Ms Stoney said the following to the claimant:

> "*I have in the past advised RS not to get involved with some things to do with the residents committee, however not everything is black and white, and sometimes we do things and sometimes we won't. In each situation we make a judgment on what is needed."*

52. The claimant thought this was a negative comment towards her in terms of Ms Stoney saying "*not everything is black and white*" (bundle page 545).

53. At that meeting, the claimant complained that Ms Stoney had told her in August 2018 that there was "*an expanding list of complaints"* against her, against the backdrop of the 2 August 2018. Ms Stoney did not recall saying that and told the claimant it was not the type of thing she would say. The claimant agreed that she did not say anything about her age during that

meeting.

54. The claimant says that Ms Stoney said she was "*rigid*," "*set in her ways*", "*saw everything in black and white"* and had some communication problems with tenants*.* The claimant agreed that she did not use the word "*discrimination*" in that meeting. She wanted Ms Stoney to know how she was feeling and the impact upon her and in an attempt to resolve the situation. Ms Stoney denied ever calling the claimant "*rigid*," or "*set in her ways*" but admits that she said that the claimant "*saw everything in black and white"* and saying that the claimant had some communication problems with tenants*.* In response to a question from the claimant, Ms Stoney gave an example of where she felt the claimant had not communicated well with a tenant. She and the claimant were not in agreement about the incident, but this was Ms Stoney's view as a manager.

55. In December 2018 the claimant was asked by Ms Stoney to distribute by leaflets an invitation to the residents' Christmas Party. The claimant said it was unreasonable to expect her to distribute leaflets to 56 tenants when Ms Stoney had told her not to get involved with what they do (email page 69). The claimant agreed that it was part of her job to facilitate socialising. The claimant relies upon Ms Stoney saying that she was "*rigid*" and "*set in her ways*" in relation to leafleting.

56. We find on Ms Stoney's admission that she said that the claimant "*saw everything in black and white"* and that she had some communication problems with tenants. We find that at no time did she say that the claimant was "*rigid*," or "*set in her ways*". In any event, we find that these are not comments which amount to age discrimination. A person of any age can see things in black and white and a person of any age can have communication issues. Similarly, even if it was said, which we find it was not, both young and old can be "*rigid*" and young people as well as older people can be resistant to change to the extent that they can equally be described as "*set in their ways*". Being older does not necessarily equate with being set in their ways. We drew no adverse inference from the comments Ms Stoney admitted she made and we would have drawn no adverse inference had we found she made the other comments.

57. On 3 April 2019 the claimant raised a grievance against Ms Stoney and sent it to Mr Peter Hannon, Head of Neighbourhood Services, (page 270-272). There is no mention in this grievance of the claimant's age. The claimant complained at point 7 of the grievance that Ms Stoney described her as seeing things in black and white, that she had problems communicating with people and was "*rigid*".

58. In the Preliminary Investigation Report, Mr Hannon found that saying that the claimant "*saw things in black and white*" was "*not used in an offensive or undermining way*" and he found no evidence of any other inappropriate language used (page 279). On 26 June 2019 the claimant appealed against Mr Hannon's decision (page 289). In her appeal the claimant did not complain about discrimination because of any protected characteristic or

refer to her age or her daughter's disability.

59. We also considered the grievance itself of 3 April 2019 (page 270). There is no reference in that grievance to any of the protected characteristics in the Equality Act 2010 (see section 4). Whilst the claimant mentions bullying, harassment and/or victimisation, this is not enough to amount to a protected act without the link to the matters set out in section 27(2) of the Equality Act (set out below). The claimant did not say, for example: "*I have been bullied because of my age"* or *"less favourably treated because of my age / my daughter's disability"* or "*this is age discrimination".*

60. We were not taken to anything said, verbally or in writing, that amounted to a protected act under section 27 Equality Act 2010 and none was identified. The raising of issues by itself does not amount to a protected act and we find that there was no protected act.

d Failing to reimburse £7.20 postage

61. The claimant withdrew this allegation because the money had been paid to her.

e Ms Stoney emailing the claimant about her whereabouts on 10 June 2019

62. On 10 June 2019 Ms Stoney sent an email to the claimant. The claimant's evidence was that she was disturbed to receive this email which she said she found both demeaning and humiliating because she said it sounded as if she was "*a wanted criminal*" (her statement paragraph 18). Her evidence was that at the time of receipt of the email she had been at work for over five hours.

63. We saw the email at page 140 of the bundle. It was sent at 14:28 hours and said "*Hi Rema, Are you in today? Kind regards,".* The claimant replied 11 minutes later saying "*Good afternoon Yvonne, I'm at EWE. Kind regards*". EWE is Edward Woods House. The claimant was offended by the subject tile of the email which was "*Whereabouts"* which she said made her feel like a criminal and said that Ms Stoney could have checked the rota or phoned her.

64. As a manager Ms Stoney checks in with her staff throughout the day particularly as the claimant was a lone worker. Ms Stoney could not remember the reason she needed to speak to the claimant on 10 June but had tried to call her a number of times. When she could not reach her, she sent the email. It was the standard sort of email that Ms Stoney used when she was trying to track down a member of her team.

65. We find that this was not less favourable treatment because of the claimant's age. It was a standard managerial email sent when Ms Stoney could not reach the claimant by phone. We find that it was sent out of concern and had nothing whatsoever to do with the claimant's age.

f Requiring the claimant to cover for other SHOs

66. The claimant's complaint was that Ms Stoney required her to cover for other SHOs at several different workplaces, more so than for other SHOs in north team. The claimant complained about this on 8 July 2019. Her comparators are MR and DF. MR is the same age as the claimant. DF was very slightly older than the claimant.

67. The Housing Department has a rota which they use to manage cover across the schemes. In July 2019 they were short staffed which resulted in housing officers covering additional schemes. We saw the rota for 29 July 2019 to 2 August 2019 at page 402.

68. At page 580-585 of the bundle we saw a summary of the rotas from December 2018 to December 2019. Ms Needham concluded as follows (page 585):

> *From the 52 weeks between 27th Dec 2019 to the 27th Dec 2018*
> *During this period.*
>
> *Ms Stubbs has provided cover for 3 schemes 13 times*
> *JF Has provided cover for 3 schemes 6 times*
> *LM Has provided cover for 3 schemes 16 times*
> *MB Has provided cover for 3 schemes 17 times*
> *KI Has provided cover for 3 schemes 32 times*
> *LJ Has provided cover for 3 schemes 10 times (within 16 week period)*
>
> *YS has aided and covered 15 times in the north area.*
> *AN has aided and covered on 129 times From May 2019 – Dec 2019.*
> *Assistance from South team has been needed 5 times*
> *North team has aided the south 26 times inc 2 by Ms Stubbs.*

69. The claimant considered that this information had been "*fabricated*". She said that KI did not have his own scheme to cover. The claimant said that at no time did Ms Needham or Ms Stoney tell her that she was not covering as much as her colleagues.

70. We saw for example the rota for the week of 1 July 2019 at page 397 of the bundle – headed "*Sheltered Housing Cover Arrangements North Team*". The claimant was covering Askham Court every morning that week and doing phone cover for the Edward Woods Estate save for being there in person on the afternoon of 4 July 2019. She was due to be at Plane Tree Court on the afternoons of 2 and 3 July 2019 and Underwood House on Friday afternoon 5 July. It also showed who was off work for any reason. The claimant covered 4 schemes during the course of the week but only 2 schemes on any one day. In the week of 29 July 2019 she sometimes covered 3 schemes in one day (page 402), as did her colleagues KI and LM. Ms Stoney thought that KI was in his mid 50s, the claimant said he was in his 60s. Ms Stoney said LM was in her mid-50s. Three members of staff were off that week so there was more need for cover. Ms Needham

also did some cover; she is a manager and it is not her usual role.

71. We find that the information given by Ms Needham in the rota summary was based on the rotas which we saw in the bundle. We find that it was not fabricated. The managers including herself and Ms Stoney, had to step in to provide cover themselves. It was a service under strain. We find that the claimant was not singled out. We find that KI and LM were covering as much as the claimant and when the service was short, the managers then had to step in. The claimant accepted that the requirement to provide cover was part of her job.

72. We find that the requirement for the claimant to cover other schemes was entirely service related and she was not asked to do this more than colleagues including KI whom Ms Stoney thought was in his mid-50s but the claimant thought was in his 60s. We accept that the requirement for cover was difficult for the claimant, but it was related to lack of resources, her colleagues were also under pressure and even the managers were having to fill in.

g Ms Needham telling tenants the claimant may have to apply for work as a caretaker.

73. On 3 June 2019 Ms Needham went to the claimant's workplace at Askham Court to consult with residents about some proposed changes to the structure of the services. She was accompanied by Sheltered Housing Manager Ms Marianne Duffield. The claimant was present for part of the meeting but left before it finished. The minutes of the meeting were at pages 553-556 headed "*Residents Consultation Askham Court".* Three different options were discussed with residents.

74. Option 3 was for a "*total revamp of the service/change of service*" which would have had implications for the claimant's job role. There were FAQ's at page 555. At point 6 of the FAQ's, it said that if there was the introduction of a concierge role, all the SHO's might have to reapply for this role.

75. The claimant's case is that when the residents asked what would happen to the SHO Ms Needham told them not to worry because the SHO could "*apply to become a caretaker*". The claimant's case was that Ms Needham told the residents that the SHO, the claimant, may not remain at Askham Court and the claimant considered this denigrating, humiliating, belittling and seeking to undermine her personal dignity. She thought that this was because as an older employee the only option available to her was to apply for a lesser role with less pay.

76. In her witness statement at paragraph 19 the claimant's account of this meeting was that the residents made a general enquiry about what would happen to the SHO in general rather than the claimant personally. In oral evidence, she said that it was a personal enquiry about her. The respondent accepted in submissions that it was entirely plausible that residents would have raised the position of the specific SHO known to them

in their particular scheme, when there was a discussion about the three options. We find that the discussion was about a concierge and not a "*caretaker*" as per the options for discussion. This was supported by a witness statement submitted on the claimant's behalf by 3 residents who used the word "*concierge*" (bundle page 413) and not "*caretaker".* It was the claimant who has changed this to the word "*caretaker*".

77. We find that it was not Ms Needham who raised the issue about the claimant personally. We find on a balance or probabilities that it was the tenants who raised the query about the claimant personally because they knew her as their own SHO. We find that Ms Needham did not tell the tenants that the "*the claimant may have to apply for work as a caretaker".* We find that Ms Needham made general comments about what might happen to the SHO's rather than anything specific about the claimant. The concierge role was one of the options and she told them about this. Ultimately the tenants' wishes were respected and the status quo remained.

78. In any event, we cannot see any connection between what was said at this meeting on 3 June 2019 and the claimant's age. The discussion was part of a consultation about proposed changes and the discussion about the options and the concierge role had nothing to do with the claimant's age.

h Ms Needham refusing TOIL on 29 July 2019.

79. On Monday 29 July 2019 at 09:40 the claimant made a request by email to Ms Needham for time off in lieu (TOIL) for the afternoon of Friday 2 August (bundle page 161).

80. Ms Needham replied at 12:41, 3 hours after the request was sent saying: *"Good afternoon Rema, Currently I cannot approve toil on Friday. As we have 2 officers on a/l. Regardless of having an officer off sick as well I had a request for leave from another officer on Friday that I'm still trying to organise, but currently refusing as well As soon as the situation improves where there is only 1 officer on a/l then I'm happy to approve this for you"* (also page 623).

81. We saw from the rota that there were three people off that week and officers such as the claimant and two of her colleagues were covering three schemes per day.

82. The claimant asked again at 13:00 saying she had been consistently covering and needed time off to recuperate and did not get home until 7pm on 2 days. Ms Needham again said at 13:14 she was very short staffed and as soon as this lessened, she would approve the request. The claimant replied at 14:39 hours "*Afternoon Anne, Ok"* (page 160).

83. Clause 8 of the claimant's contract of employment dealt with Overtime and time off in lieu (page 317). This said: *"…if for operational reasons, overtime working is necessary to maintain essential service provision, and the taking of flexi leave and time off in lieu is not conducive to the smooth running of*

the service, then overtime payments can be considered".

84. In 2019 Ms Needham managed a team of 6 SHO's across 12 Schemes. In the week commencing 29 July 2019 she had two SHO's on annual leave and two off sick. This left the claimant and one colleague to cover all 12 schemes. If she had granted TOIL to the claimant for Friday 2 August, this would not have left enough staff to properly cover all the schemes. This was not something which she could do if she was going to maintain the service for the vulnerable residents.

85. The claimant linked her need to recuperate to the need for the TOIL. To the extent that she might link this to her age, we find, as the respondent submitted, that this could only be the claimant's reason for requesting the TOIL and not Ms Needham's reason for refusing it.

86. We cannot find any connection between the refusal of the TOIL and the claimant's age. It was entirely service related.

i Ms Needham refusing a request for annual leave on 2 August 2019.

87. This is essentially the same reason as the above as it relates to the same date and our findings are the same. We also rely on the findings below in relation the taking of annual leave. Our findings as to the refusal of leave on the 2 August 2019 is that it was not because of the claimant's age.

j Ms Needham refusing leave on 29 August 2019

88. The claimant had originally booked a week's leave for the week commencing 26 August 2019. Monday 26 August 2019 was the bank holiday. The claimant originally asked for the whole week off and it was granted provisionally. Ms Needham checked if she needed the leave and the claimant said she did not, but as she said (email 27 August 2019 at 09:54 page 177) she had "*neglected to say that she still required the time off"* on Friday 30 August 2019.

89. The claimant said she neglected to say this because she felt Ms Needham was "*hassling"* her for information. Ms Needham said on 17 August 2019 at 10:11 that she was sorry if the claimant felt she was hassling her for information, but she did not feel that any of her emails were asking for anything other than clear information so that she could try to meet everyone's needs. She said she could not promise to accommodate the leave on 30 August as it was now very short notice, she herself was covering 3 Schemes on that date but would let the claimant know by 5pm if she could assist (page 178).

90. Ms Needham was unable to assist on this point so she did not reply by 5pm. On 29 August 2019 at 09:45 the claimant sent an email to Ms Needham saying "*I need to have the entire day off tomorrow. I have very important appointments. I have given you advance notice of this a.l. and I had previously provisionally booked this day off because of you are hassling me*

I incorrectly said I did not need the day off. I do not understand why I cannot have the day off." (page 181).

91. Ms Needham replied within about 15 minutes saying: "*Rema as stated you did not previously give me notice. It was never in my calendar, it was previously in Yvonne's. Everyone has previously been asked to send me calendar invites of leave so I could manage the rota. I am trying to meet you halfway by offering you half day which I will personally cover. Half a day is the best that I can do*." Ms Needham emailed later in the day asking the claimant which half of the day she would be taking as leave. The claimant replied that she had already told Ms Needham that she needed the full day. Ms Needham told the claimant that she would have to pass this to Ms Stoney.

92. The claimant was aggrieved that she had to chase up Ms Needham the day before she wanted the time off. The claimant agreed "*to a degree*" Ms Needham was trying to help by offering her half a day's leave but thought that if she had been "*genuine"* she would have responded without being chased up.

93. At just after midday on 29 August the claimant's union representative Ms Patsy Ishmael emailed Ms Stoney (page 232) to say that the claimant had requested annual leave and had an appointment to accompany her daughter. The union representative said that it was important for her to be available to support her daughter and asked that if it had been refused, it could be reconsidered. The nature of the appointment was not mentioned nor was any condition of the daughter mentioned (page 179). It was the union representative who, in this email, first mentioned the appointment with the daughter, although nothing was mentioned about a disability. There was no mention made by the union representative of the claimant's age.

94. The information about an appointment with the daughter or attending to support the daughter was not mentioned in any email correspondence from the claimant to Ms Needham.

95. Ms Stoney emailed the claimant at 15:33 on 29 August saying that she has spoken to her union representative. Ms Stoney said that she understood that Ms Needham had already explained that the claimant could not have the whole day off because they needed to provide cover. As the request was only made on the Tuesday, (27 August) this was not enough time for them to arrange cover.

96. The claimant replied that she had given enough notice, she had to have the day off and would not be coming in to work the following day. The claimant took the leave without authorisation. Ms Stoney said that as the claimant did not have agreement to take the day as leave, she would refer it to HR as being absent without consent for the leave. This email was sent within a matter of minutes of the claimant saying she would not be coming to work (page 237).

97. The claimant's response was to tell Ms Stoney not to threaten and bully her and saying that nothing would prevent her from attending an appointment with her family member the next day (page 241). The claimant said the leave was her entitlement, she had given enough notice and it was not something either Ms Stoney or Ms Needham were "*giving*" to her (page 242).

98. Clause 10 of the claimant's contract of employment dealt with Annual leave (page 318). This said "*All annual leave is subject to the exigencies of the Service. Except in emergencies, all applications for annual leave should be made at least 3 days before the leave is required."* The claimant approached this on the basis that she was entitled to annual leave and that she had given three days' notice so she should have been given the leave and it was age discrimination and disability discrimination not to grant this. We cannot agree with this.

99. The refusal had nothing to do with the claimant's age or her daughter's disability and was entirely connected with the needs of the service. Ms Needham herself was having to provide cover. She was trying to meet the claimant half way with the offer of half a day off. It was prime holiday season in the week of the summer bank holiday.

100. In submissions (paragraph 7) the claimant said that there was only one other person off that week, but we find it is necessary to look at the rota for both the north and south regions for that date. In the south they had three people off and in the north they had one person off. The rota showed the claimant as working on 30 August (including in the south), so she was not accounted for as being off. This meant that if she had the day off, there would have been 3 off work in the south and 2 off work in the north and Ms Needham herself was covering on 30 August in the south.

101. We have considered the reason for the refusal of the annual leave on 30 August and find that it was entirely operational. It was not because of the claimant's age or her daughter's disability.

<u>k Ms Needham and Ms Stoney disciplining the claimant for taking leave on 30 August</u>

102. Ms Stoney and Ms Needham decided to commence a disciplinary investigation because of the unauthorised leave on 30 August 2019.

103. An investigation meeting took place on 14 October 2019 (notes page 243) between the claimant, Ms Needham and an HR consultant. The claimant agreed that at this meeting she did not say that the relative, in respect of whom she was seeking the time off, was disabled. She referred to the relative as being "*vulnerable*".

104. After the meeting the claimant emailed Mr Arfaoui in HR. She explained that she had asked for annual leave which was refused, and said "*I had a family issue to deal with*" (page 258). The claimant did not say it was a

disabled family member. The claimant did not see why she should explain herself when she was seeking annual leave, by saying that she had a family member with a disability. As far as she was concerned, she had given enough notice and she was entitled to the leave.

105. The disciplinary hearing took place on 30 January 2020. The disciplinary officer was Ms Jacqueline Alexander, Head of Capital Delivery. The word disability was not mentioned during the hearing. The claimant referred to the need to support a family member and she accepted that she did not tell her managers that her family member had a disability. Ms Alexander gave the claimant a verbal warning which was recorded in an outcome letter of 4 February 2020 at page 570.

106. The issue for us was whether disciplining the claimant for taking the day off on 30 August 2019 was less favourable treatment because of her age. We find that the decision to discipline her was because she took the day off without permission on 30 August 2019. We accepted the respondent's witnesses' evidence that any employee of whatever age would have been disciplined for taking unauthorised leave. It had nothing to do with the claimant's age. If managers did not take action when unauthorised leave was taken, they would have a great deal of difficulty in managing their service.

107. There was an unfortunate error in a letter to the claimant referring to this as "*gross misconduct*" rather than "*misconduct*". We accept and find this was an error in failing to amend the template letter, it was not one of the issues relied upon in the List of Issues as age discrimination. The claimant knew it was an error and the word "*gross*" had not been removed from the template, as she said as much in her email to HR on 14 October 2019 (page 258).

<u>l Ms Needham and Ms Stoney failing to provide support when the claimant was abused by a tenant's family member in September 2019.</u>

108. On 24 September 2019 Mr TH came to the claimant's office and started shouting at her. The claimant reported this to Ms Stoney in an email on that date at 10:55am (page 189). The claimant asked Ms Stoney to write to him to tell him to stop verbally abusing her.

109. In relation to Mr TH, Ms Stoney made a file note of her conversation with him on 24 September 2019 (page 408), the same day as the issue arose. Ms Stoney told Mr TH that the way he spoke to the claimant was not appropriate and he should not have spoken to like this. The claimant accepted in evidence that Ms Stoney "*told him off*". We find that this was not a failure to support her. This allegation fails on its facts.

110. The issue for our determination, as confirmed by both parties at the outset of this hearing, related to a failure of support when "*abused*" by a "*family member*" in September 2019. In submissions the claimant said this referred to "*incidents which took place during August and September 2019,*

specifically with a non-resident S, who has threatened and verbally abused me since 2017". This was not the issue which we had been asked to determine. We heard evidence about the incident with S on 18 July 2018 (not 2019). We were also told that S was a 'friend' of the tenant and not a 'family member'. The issue for determination was set out in Judge Goodman's Case Management Order of 16 March 2020 at paragraph 8.1.12. The issue was clarified, but not changed, at the case management hearing before Judge Khan on 20 July 2020 to make it clear that the alleged perpetrators were Ms Needham and Ms Stoney. We did not hear evidence about alleged abuse by S in August and September 2019.

111. As we did not hear evidence about abuse from S in August and September 2019 and this was not the issue for our determination, we have not made findings on this.

m Ms Needham's dismissive attitude when the claimant reported sick on 28 October 2019.

112. On 28 October 2019 the claimant called in sick and spoke to Ms Needham. She told Ms Needham she had a swollen tongue and would not be at work that day.

113. During the call the claimant's daughter took the phone and asked why her mother was being questioned. Ms Needham replied that she was showing concern her mother's wellbeing. Ms Needham denied being dismissive towards the claimant.

114. Ms Needham's contemporaneous note of that telephone call was at page 569. It said:

> *"I received a phone call from RS stating she could not come into work because her tongue was swollen. I asked her if she had sought medical treatment as in my opinion having a swollen tongue for 1st time may be an allergic reaction to something, I asked if she had breathing issues and to please seek medical assistance 'go to hospital'. RS advised she will phone her doctor, I did comment that while RS must be in discomfort she could be understood very clearly, as I could not tell by listening to her voice there were issues. At this stage the daughter took over the phone conversation and questioned why I was asking questions. I tried to explain I was showing concern for her mother's health."*

115. We find that Ms Needham was expressing concern for the claimant and we find she was not dismissive. She expressly told the claimant to seek medical assistance. She questioned her to try to arrive at a full understanding of the position and we find on a balance of probabilities she would have done this with any employee who had phoned in sick with such symptoms and it had nothing to do with the claimant's age. The claimant did not appreciate Ms Needham's comment about not being able to tell by listening to her voice that there were issues. Ms Needham accepted this may have been wrongly worded but we find it had nothing to do with the

claimant's age.

116. We find that Ms Needham's response to the claimant calling in sick on 28 October 2019 was not dismissive and was not less favourable treatment because of her age.

The flexible working application

117. This allegation is relied upon as associative disability discrimination and not as age discrimination. On 6 January 2020 the claimant submitted an application for flexible working to Ms Needham (page 206). She wanted to change her working day from 9am to 5pm to 8am to 4pm. She considered it would have no impact on the service and might improve it because some tenants were early risers and came to the office before 9am.

118. In the section of the form headed "*Why are you requesting this flexible working arrangement"* the claimant put "*N/A".* The claimant did not give any reason in her application as to why she wanted the flexible arrangement. The form specifically said: "*NB if you are making this request under the legislative rights detailed in Section 2, please state so clearly and also detail your relationship to the child/adult".* The claimant did not do so.

119. Ms Needham refused the request on 6 January 2020. She said that only if there was a medical reason could this be processed as a permanent change (page 215). Ms Needham also took into account that if the working day started at 8am for the claimant then it would also necessitate a manager being on duty from that time because she was a lone worker and the manager would need to be available if the claimant needed assistance.

120. The claimant appealed against this decision on 7 January 2020.

121. On 22 April 2020 Ms Stoney had a telephone discussion with the claimant in relation to her appeal against the refusal of the flexible working request. This was during the pandemic so we find that this was the reason for dealing with the matter by phone. The notes of telephone call were at page 578 of the bundle. In that conversation, Ms Stoney asked the claimant for more information as to her reason for the application. The claimant said that she wanted to change her working arrangement to have a better work/life balance. She went on to say it was to support a family member. Ms Stoney asked if the family member was a dependent and the claimant said that the family member was not a dependent and was over 18. Ms Stoney told the claimant that a family member could still be a dependent even if they were over 18. The claimant did not mention disability.

122. On 24 April 2020 in the light of the additional information provided, Ms Stoney approved the claimant's application on a permanent basis (page 573). We find that Ms Stoney was doing her best to help the claimant despite not knowing that the claimant's daughter had a disability. The claimant did not mention in her witness statement that this application was granted on appeal. By 24 April 2020 the claimant was working from home

due to the pandemic.

123. When it was put to the claimant that her managers did not know that her daughter was disabled, she said she did not have that sort of relationship with her managers, so she had no reason to tell them. We find that the claimant's managers did not know that her daughter had a disability and therefore the reason for not originally granting the request was not because of the claimant's daughter's disability.

The relevant law

124. Direct discrimination is defined in section 13(1) of the Equality Act 2010 which provides that a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

125. In relation to direct age discrimination, section 13(2) provides that where the protected characteristic is age, A does not discriminate against B if A can show that A's treatment of B was a proportionate means of achieving a legitimate aim.

126. In relation to associative discrimination this was considered prior to the Equality Act 2010 in the leading case of ***Coleman v Attridge Law 2008 IRLR 722***, a decision of the ECJ. In that case, Ms Coleman, who was not herself disabled, complained that she suffered discrimination on the ground that she was the mother and carer of a disabled child. The ECJ stated that associative discrimination fell within the protection of the Equal Treatment Directive because the principle of equal treatment applies to the grounds of discrimination set out in Article 1, not simply to people who themselves have a disability. The position is now clear from the legislation under section 13 Equality Act 2019 because there is no requirement that treatment should be because of the claimant's protected characteristic.

127. Section 23 of the Act provides that on a comparison of cases for the purposes of section 13, there must be no material difference between the circumstances relating to each case

128. Section 27 provides that a person victimises another person if they subject that person to a detriment because the person has done a protected act or because they believe that the person may do a protected act.

129. Section 136 of the Equality Act deals with the burden of proof and provides that if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

130. One of the leading authorities on the burden of proof in discrimination cases is ***Igen v Wong 2005 IRLR 258***. That case makes clear that at the first stage the Tribunal is to assume that there is no explanation for the facts proved by the claimant. Where such facts are proved, the burden passes

to the respondent to prove that it did not discriminate.

131. Bad treatment per se is not discriminatory; what needs to be shown is worse treatment than that given to a comparator - ***Bahl v Law Society 2004 IRLR 799 (CA).***

132. Lord Nicholls in ***Shamoon v Chief Constable of the RUC 2003 IRLR 285*** said that sometimes the less favourable treatment issues cannot be resolved without at the same time deciding the reason-why issue. He suggested that tribunals might avoid arid and confusing disputes about identification of the appropriate comparator by concentrating on why the claimant was treated as he was, and postponing the less favourable treatment question until after they have decided why the treatment was afforded.

133. In ***Madarassy v Nomura International plc 2007 IRLR 246*** it was held that the burden does not shift to the respondent simply on the claimant establishing a different in status or a difference in treatment. Such acts only indicate the possibility of discrimination. The phrase "could conclude" means that "a reasonable tribunal could properly conclude from all the evidence before it that there may have been discrimination"

134. In ***Hewage v Grampian Health Board 2012 IRLR 870*** the Supreme Court endorsed the approach of the Court of Appeal in ***Igen Ltd v Wong*** and ***Madarassy v Nomura International plc***. The judgment of Lord Hope in ***Hewage*** shows that it is important not to make too much of the role of the burden of proof provisions. They require careful attention where there is room for doubt as to the facts necessary to establish discrimination, but have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other

135. The courts have given guidance on the drawing of inferences in discrimination cases. The Court of Appeal in ***Igen v Wong*** approved the principles set out by the EAT in ***Barton v Investec Securities Ltd 2003 IRLR 332*** and that approach was further endorsed by the Supreme Court in ***Hewage***. The guidance includes the principle that it is important to bear in mind in deciding whether the claimant has proved facts necessary to establish a prima facie case of discrimination, that it is unusual to find direct evidence of discrimination.

136. Section 123 of the Equality Act 2010 provides that:

> *(1) ……..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*
> *(b) such other period as the employment tribunal thinks just and equitable.*

137. This is a broader test than the reasonably practicable test found in the

Employment Rights Act 1996. It is for the claimant to satisfy the tribunal that it is just and equitable to extend the time limit and the tribunal has a wide discretion. There is no presumption that the Tribunal should exercise that discretion in favour of the claimant.

138. The leading case on whether an act of discrimination it to be treated as extending over a period is the decision of the Court of Appeal in ***Hendricks v Metropolitan Police Commissioner 2003 IRLR 96.*** This makes it clear that the focus of inquiry must be not on whether there is something which can be characterised as a policy, rule, scheme, regime or practice, but rather on whether there was an ongoing situation or continuing state of affairs in which the group discriminated against (including the claimant) was treated less favourably. The CA said: "The question is whether that is "an act extending over a period" as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed" (paragraph 52).

139. The burden is on the claimant to prove, either by direct evidence or inference, that the alleged incidents of discrimination were linked to one another and were evidence of a continuing discriminatory state of affairs covered by the concept of an act extending over a period.

Conclusions

Direct age discrimination

140. We made the following findings on the allegations of direct age discrimination:

141. Issue a: We have found that Ms Stoney did instruct the claimant to leave the door open at work after she complained of a tenant filming her in July 2018. We find that the instruction was given for operational and service reasons and not because of the claimant's age.

142. Issue b: We have found as a fact that Ms Stoney did not tell the claimant there was an expanding list of tenants' complaints about her:

143. Issue c: This issue was dismissed upon withdrawal on 20 July 2020.

144. Issue d: This issue was withdrawn during this hearing and is dismissed.

145. Issue e: This was Ms Stoney emailing the claimant about her whereabouts on the afternoon of 10 June 2019. We have found that this was a standard managerial email sent when Ms Stoney could not reach the claimant by phone and it was not sent because of the claimant's age.

146. Issue f: This was Ms Stoney requiring the claimant to cover for other SHOs at several different workplaces. We found that this requirement was entirely service related in a service that was under strain and that older workers such as KI, were also required to cover in the same way.

147. Issue g: This was the allegation that Ms Needham told tenants the claimant may have to apply for work as a caretaker. We have found that Ms Needham, in the context of a consultation meeting with residents, made general comments about what might happen to the SHO's within the different options under consideration and it was the residents who asked about the claimant personally. The discussion was about a concierge role and the word "*caretaker*" was not used. The reference to SHO's possibly applying for the concierge role was not because of the claimant's age.

148. Issue h: This was Ms Needham refusing TOIL on 29 July 2019. We have found that this was service related and was not because of the claimant's age.

149. Issue i: This was essentially the same matter as issue (h) as it was a request for time off on 2 August and the refusal was service related and was not because of the claimant's age.

150. Issue j: This was Ms Needham refusing leave on 29 August 2019. We have found that this was entirely service related within a stretched service during prime holiday season and was not because of the claimant's age.

151. Issue k: This was Ms Needham and Ms Stoney disciplining the claimant for taking leave on 30 August, resulting in a verbal warning. We have found that the reason for disciplining the claimant was because she took the time off without authorisation and not because of her age.

152. Issue l: This was Ms Needham and Ms Stoney allegedly failing to provide support when the claimant was abused by a tenant's family member in September 2019. We have found that Ms Stoney was supportive and this issue failed on its facts.

153. Issue m: This was Ms Needham's alleged dismissive attitude when the claimant reported sick on 28 October 2019. We have found that Ms Needham was not dismissive so this allegation failed on its facts.

154. The claims for direct age discrimination therefore fail and are dismissed.

155. As we have said above, we drew no adverse inference from any comment by Ms Stoney about the claimant seeing things "*in black and white"* or having communications issues. We could not see why those comments related to older people as they could equally apply to younger people. We found on a balance of probabilities that the other comments about being "*rigid"* or *"set in her ways"* were not made and even if they had been made, we found no basis for drawing any adverse inference from such comments.

The claim for direct disability discrimination by association

156. The claimant accepted in evidence that she did not tell her managers that her daughter had a disability. For those reasons, the treatment relied upon

cannot be because of this and the claim associative disability discrimination fails. The annual leave request for 30 August was not refused because of her daughter's disability, because Ms Needham did not know her daughter was disabled. Similarly the claimant's flexible working request was not refused because of her daughter's disability, because Ms Needham did not know her daughter was disabled. It was refused because of a lack of information and then granted on appeal by Ms Stoney, who was being helpful to the claimant even though she did not know about the daughter's disability.

157. The claim for direct disability discrimination by association fails and is dismissed.

The victimisation claim

158. For a victimisation claim to succeed a claimant has to show that she did a protected act as described in section 27(2) Equality Act 2010 and was then subjected to a detriment because she did the protected act. The protected act has to meet the requirements set out in section 27(2). The claimant found it difficult to explain what she relied upon as a protected act and relied generally upon things said by Ms Stoney at the meeting on 21 January 2019. The protected act has to come from the claimant and not from the respondent. We could not identify any protected act in the evidence before us and the claim for victimisation fails for lack of a protected act.

159. In submissions the claimant said she was victimised "*because [she] had raised several issues with [Ms Stoney] and as a result, [she] was discriminated against due to [her] age*". When asked to identify her protected act at the outset of the hearing, the claimant relied on things that Ms Stoney had said at the meeting which cannot amount to protected acts on the part of the claimant. She accepted that she did not mention discrimination.

160. In addition, any allegation predating 21 January 2019 was bound to fail as a victimisation claim, as it predated any protected act on the claimant's own case. This applies to issues (a) and (b).

161. We have also made express findings as to the reasons for the treatment of the claimant, where the factual allegation succeeded.

The burden of proof

162. Based on our findings of fact above, we find that the burden of proof in this case did not pass to the respondent. The claimant did not establish facts from which we could decide, in the absence of any other explanation, that there had been discrimination because of age or by association with another person's disability or victimisation.

163. Even if the burden of proof had passed to the respondent, where the factual allegation was proven, we find that the respondent gave a cogent and non-

discriminatory explanation for their treatment of the claimant.

Time limits

164. As our finding is that the claims fail, we did not find it necessary to consider the time limitation issue.

165. We also say by way of conclusion that we noted from the consultation document of 3 June 2019 (page 553) that the service had been subject to reductions in funding and the number of SHO's had been reduced over time. The managers and the staff in this service were all under pressure and our finding is that the requirement to cover for others and/or the refusal of leave or TOIL, was a reflection of the pressure on the service and nothing to do with the claimant's age.

Employment Judge Elliott
Date: 23 April 2021

Judgment sent to the parties and entered in the Register on: 26/04/2021 : :

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_____ for the Tribunal