



# EMPLOYMENT TRIBUNALS

**Claimant:** Lisa Traynor

**Respondent:** Elim Foursquare Gospel Alliance

**Heard at:** Plymouth      **On:** 04-08 October 2021

**Before:** Employment Judge Housego  
Tribunal Member Hewitt-Gray  
Tribunal Member Clarke

## Representation

**Claimant:** Simon John, of Counsel

**Respondent:** Anna Johns, of Counsel

## JUDGMENT

The claims are dismissed.

## REASONS

### Summary

1. The Claimant was dismissed shortly before the 2<sup>nd</sup> anniversary of joining the Respondent. The Respondent is a Christian foundation with a Plymouth Christian Centre in which (among other things) it runs a nursery. The Claimant was the administrator for that nursery. The Claimant says that she was harassed by her manager, and bullied, and she says this was connected with the needs of her son. She says that her dismissal was direct disability discrimination, because it was, she says, because the Respondent was not happy with the amount of time her son's needs took up during working hours. The Respondent accepts that the Claimant's son is disabled, but not that they knew of this at the time. They say that the Claimant was not performing her role effectively, and then relationships broke down and that was, or those were, the only reason(s) for her dismissal. They say the things she complains about were no more than attempts to manage performance issues, and all entirely proper.

They say that the Claimant was allowed to take every appointment she wished, without adverse consequence. There is an issue about whether the claim was lodged in time, and if not whether it is just and equitable to extend time. Other financial claims were withdrawn at the hearing.

## Law

2. As it is asserted that the dismissal was by reason of unlawful discrimination the Tribunal must be satisfied that in no sense whatsoever was the dismissal tainted by such discrimination<sup>1</sup>.
3. It is for the Claimant to show reason why there might be discrimination<sup>2</sup>, and if she does so then it is for the Respondent to show that it was not. The law about burden of proof in discrimination cases was analysed and clearly set out in Royal Mail Group Ltd v Efoji [2021] UKSC 33. The Tribunal has borne the case law in mind when making its findings. It is possible to elide the two stages – inference and rebuttal – in some cases<sup>3</sup>
4. This is a case where the claim is of associative discrimination, to which the Equality Act 2010 applies<sup>4</sup>. Not all aspects of the Equality Act 2010 apply to claims for associative discrimination. They are limited to direct discrimination<sup>5</sup> and harassment<sup>6</sup>. The Claimant makes claims of direct discrimination (relating to dismissal) and harassment.
5. It is not possible to bring a claim for associative discrimination from detriment which is something arising from the disability<sup>7</sup>, because such a claim specifically requires the disability to be that of the Claimant. There can be no claim for failure to make reasonable adjustments<sup>8</sup> <sup>9</sup> in a claim for associative discrimination.
6. Direct discrimination is defined in S13 of the Equality Act 2010:

*“13 Direct discrimination*

*(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”*

7. Counsel for the Respondent referred to *Warby* (below), for the proposition (which the Tribunal accepts is correct), that in evaluating the issue of whether a discrimination claim is made out on any given set of facts the Tribunal must consider context: as it was put in Commissioner Of Police Of The Metropolis v Maxwell (Race Discrimination : Direct) [2013] UKEAT 0232\_12\_1405:

<sup>1</sup> Barton v. Investec Henderson Crosthwaite Securities Ltd [2003] UKEAT 18\_03\_0304, paragraph 25, guideline 10, citing the Burdon of Proof Directive.

<sup>2</sup> Igen v Wong [2005] ICR 931, Madarassy v Nomura International plc [2007] EWCA Civ 33, Laing v Manchester City Council [2006] I.C.R. 159, and Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913

<sup>3</sup> Madarassy v Nomura International Plc [2007] EWCA Civ 33

<sup>4</sup> EBR Attridge Law LLP & Anor v Coleman [2009] UKEAT 0071\_09\_301

<sup>5</sup> S13 Equality Act 2010

<sup>6</sup> S26 Equality Act 2010

<sup>7</sup> S15 Equality Act 2010

<sup>8</sup> S20 & 21 Equality Act 2010

<sup>9</sup> Hainsworth v Ministry of Defence [2014] EWCA Civ 763

“10 ... In ... **Warby v Wunda Group plc** (Appeal No. UAEAT/0434/11/CEA) Langstaff J (President) referred to the judgment of Elias LJ in **Grant v HM Land Registry and Anor** [2011] EWCA Civ 769 where the importance of the particular circumstances were emphasised: “for example, it will generally be relevant to note to whom a remark is made, in what terms, and to what purpose”. Langstaff J added:

*“We therefore accept the Respondent’s submission that context is everything. It is for a Tribunal who hears the witnesses, whose job it is to determine the facts, and who considers the submissions made to it in the light of having heard these witnesses and determined those facts, to decide what the context is and to contextualise what has taken place.”*

8. Counsel for the Respondent also referred the Tribunal to Unite the Union v Nailard [2018] EWCA Civ 1203, part of the guidance of which is that it is essential to consider the motivation of the alleged discriminator (paragraph 110) in deciding whether any unfair treatment was discriminatory.
9. The Tribunal also raised Royal Mail Group Ltd v Jhuti [2019] UKSC 55, which, although an unfair dismissal case, has relevance because the Claimant’s case is in part that the elders were unfair in their handling of her grievance in part because, she says, they were influenced unfairly (and for discriminatory reasons) by Liz Crudgington and by Geoff Lee.
10. Harassment is defined in S26 of the Equality Act 2010:

*(1) A person (A) harasses another (B) if—*

*(a) A engages in unwanted conduct related to a relevant protected characteristic, and*

*(b) the conduct has the purpose or effect of—*

*(i) violating B’s dignity, or*

*(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

## **The issues**

11. These were set out in a case management order.

11.1. The Respondent accepts that the son of the Claimant has a disability, but they deny that they had knowledge of it at the relevant times, and say that they could not reasonably be expected to have known of it.

11.2. The claim for direct discrimination relates to the dismissal.

11.3. That for harassment is whether the Respondent or any of its employees engaged in unwanted conduct against the Claimant in any of the following ways:

- 11.3.1. On 27 March 2019 Ms Crudgington marking down her attendance and making negative comments about her attendance at her son's disability related appointments;
- 11.3.2. On 05 April 2019 leaving a confidential letter from CAMHS [an NHS mental health service for young people] relating to her son unsecured on top of a desk in an office used by others;
- 11.3.3. On 29 April 2019, Ms Crudgington questioning her about her son's appointments and making the comments "*your life is like an episode of Eastenders*" and "*I have no empathy for you*";
- 11.3.4. On 08 May 2019, Pastor Geoff Lee suggesting she consider leaving and then reporting that conversation to Ms Crudgington;
- 11.3.5. On 09 May 2019, telling her that she must make fewer appointments for her son going forward and make them outside working hours;
- 11.3.6. In September 2019, telling her to rearrange her working days/hours because of her son's appointments;
- 11.3.7. On 15 October 2019 overloading her proposed job description, thereby setting her up to fail,
- 11.3.8. On 31 October 2019, sending an unfair/ inaccurate email to her criticising her performance;
- 11.3.9. On 04 November 2019 shouting at her in a meeting and threatening her with solicitors;
- 11.3.10. In November 2019 producing inaccurate incomplete and one-sided notes of discussions with her;
- 11.3.11. In November and December 2019, failing to deal properly or fairly with her grievance, including interference by Mr Lee and Ms Crudgington;
- 11.3.12. In December 2019, after her dismissal, instructing staff to remove her contact details from their devices and to withdraw all support to her;
- 11.3.13. On 08 January 2020, issuing an inappropriate letter to all staff regarding her dismissal (the 1<sup>st</sup> data breach);
- 11.3.14. In January 2020 placing a copy of that letter onto a notice board where members of the public had access;
- 11.3.15. Not informing staff to destroy their copies of that letter until 20 January 2020;

There were three more allegations, but they were withdrawn during summing up, on the basis that although their factual accuracy was maintained it was not possible to establish any link with the Claimant's

son's disability (they were largely related to the Respondent's HQ in Malvern, and none of the people there had any connection with any disability related matter). They are set out for completeness.

11.3.16. On 28 January 2020, sending her an email refusing to pay her outstanding overtime;

11.3.17. On 30 January 2020 sending that email to her at the wrong address (the 2<sup>nd</sup> data breach);

11.3.18. Not sending a copy of that letter to her until 16 March 2020, and then sending it in a form that was so heavily redacted it told her nothing of the content.

11.4. Was any such conduct related to her son's disability?

11.5. If so, did it have the purpose or effect of violating Ms Traynor's dignity or creating an intimidating, hostile, degrading or offensive environment for her?

## **Evidence**

12. For the Claimant, the Tribunal heard oral evidence from the Claimant, and from Steve Kitto, formerly an elder of the Church. A witness statement from Julie Green (employed until August 2020) was not challenged (because some was hearsay and other parts on the basis of relevance to the issues). A witness statement from Nicky Kitto, an employee who left before the Claimant started work at the Respondent, was not challenged (on the basis of lack of relevance to the issues, or that the issue raised was accepted, as she left employment with the Respondent before the Claimant started). A witness statement from the Claimant's solicitor Karen Bussell concerning limitation issues was not challenged.

13. For the Respondent, the following people gave evidence:

- Liz Crudgington, nursery manager and line manager of the Claimant;
- Amy Relf, her deputy;
- Maria Treleaven; who manages the curriculum for the whole nursery and takes the pre-school room;
- Geoff Lee: pastor and CEO of the Respondent (and for those reasons an elder of the Church);
- Julie Nash: an elder of the Church, who was a lead person in the handling of the Claimant's grievance.

14. There was a very large bundle of documents, to which additions were made during the hearing, by consent.

## **The Hearing**

15. The hearing was in person. However, with 10 witnesses, and several interested members of the congregation wishing to attend not everyone could fit into the Tribunal room safely. The Tribunal permitted both sides to use tablets or phones to stream via telephone, zoom, WhatsApp or similar to those not able to fit into the Tribunal room.
16. The Tribunal records with appreciation that despite the depth of feeling these matters have created in the congregation, and Tribunal hearing everyone present conducted themselves with dignity and mutual respect.
17. Both Counsel prepared very helpful written submissions, which cannot be adequately summarised, and which can be read by a higher Court if required. While carefully considering all the matters and argument set out, and well argued in some detail, by the Claimant's Counsel (helpfully signposted with appropriate referencing to the relevant evidence), the Tribunal found convincing the submissions of the Respondent's Counsel, which are an elegant concise and incisive analysis of the matters to be decided.

### **Summary of the Claimant's case**

18. Her son has behavioural difficulties which amount to a disability (as the Respondent now accepts). They always knew about this. She had been trying hard to get a proper diagnosis, and after she started there was an increase in appointments, often at short notice. She could not turn down such appointments, otherwise help would be removed. She did her best to let the Respondent know in advance. This irritated her managers. Because of this, although capable she was given impossible tasks, and harassed in various ways, and her work load was fixed to ensure that she could not succeed and she was then dismissed on a pretext and in an unfair way, the real reason being, at least in part, their irritation and her need to have appointments about her son during work time. At an appraisal she was marked down for poor attendance and told to fix appointments other than at working hours. After that she was again criticised for having such appointments, and later that year she was intentionally overloaded with work, so that she would not be able to succeed and could then be dismissed for performance reasons. The criticisms made of her performance were either without merit, or related to a complex accounting package that she had no chance of being able to work, and that work was given to her in the expectation that she would fail to operate it well, so justifying dismissal. This all started because of the Respondent's irritation at multiple short notice appointments needed by reason of her son's disability, and that continued through to November 2019. She had 10 hours work a week in the school holidays, but she needed to take her own holiday then, to care for her son in his school holidays. As there were few hours work a week then, her annual holiday took up most of the school holidays, so that she came back in September to a big backlog. That was all related to her son's disability. When she raised a grievance about these things, and about comments made to her by Ms Crudgington, it was overly influenced by Liz Crudgington and Geoff Lee, whose close working relationship was such that he would support her whatever, was such that the elders who dealt with it (led by some who were close personal friends of Geoff Lee) would inevitably dismiss it. At the conclusion of her employment she says that she was harassed in the ways set out above.

### **Summary of the Respondent's case**

19. The Respondent did not make any difficulty for the Claimant over her son's appointments. The most that could be relevant was a perfectly reasonable request made in early 2019 for the Claimant, a part time employee, to make those appointments outside working hours if possible, as there was an effect on her attendance as a result of them. That was raised in early 2019 and was said in contemporaneous documents to be resolved by April. There had then been a multitude of low-level matters where the Claimant, while much liked as an individual, had needed far too much guidance in her role as administrator. The change in hours in September 2019 was in part to help and was consensual. Problems with performance, unrelated to her son led, in November 2019, to a decision to put in place a formal improvement plan, but there was then a meeting which led to a breakdown of relationships so that it was decided to dismiss the Claimant. But she then was off with stress and put in a grievance before that could be implemented. They were directed by headquarters to deal with that first. The elders did that, and then the Claimant was dismissed, because the working relationship was irretrievably damaged – the Claimant would not work with her manager. Her son's needs were just a background fact. There was no credible evidence of any connection between anything that happened and those needs, other than a very few where the Respondent's actions had been reasonable and not discriminatory. The account was inherently implausible. There were not facts that could lead to an inference of discrimination, and in assessing harassment claims there was, from all the evidence, a lack of any motivation. Any offence taken was not reasonable, even if genuine.

### Facts found

20. The Tribunal did not doubt the sincerity of any of the witnesses who gave evidence or who provided witness statements, who all told the truth as they saw it. The Tribunal directs the witnesses to Khan v General Medical Council (Rev 1) [2021] EWHC 374 (Admin), at paragraph 71 onwards for the considerations relevant to Courts and Tribunals when making findings of fact.
21. The Claimant had been involved with the Church all her life. Her family circumstances were known to Liz Crudgington and others, including the needs of her older son. While a diagnosis was not made until after the Claimant started work for the Respondent the special needs of her son were well known. Disability for the purposes of the Equality Act 2010 does not depend upon a diagnosis, but upon the effect on day to day activities. Plainly these were more than the required "*minor or trivial*" and were long term, and this was known by the Respondent.
22. It follows that at all material times the Respondent knew of the disability of the Claimant's older son.
23. The Claimant worked at Plymouth Christian Centre. This is part of the Respondent, a Christian foundation. Some 13 people are employed at the Plymouth Christian Centre. The Respondent has a headquarters in Malvern where there is a human resources function, and a specific individual advised the Plymouth Christian Centre about employment matters. There is also a solicitor at HQ.

24. The Plymouth Christian Centre has elders, responsible for running it. Some are lay members (that is members of the congregation of about 500), some are pastors, and Geoff Lee was a pastor and CEO, and an elder. He usually chaired the meetings of the elders.
25. The Plymouth Christian Centre runs a nursery. Liz Crudgington is its manager, and Amy Relf is her deputy. Liz Crudgington reports to Geoff Lee. Liz Crudgington and Geoff Lee have been close friends for many years. Their families have holidayed together. Their friendship was well known and extended to their work. There was a feeling in the staff that Liz Crudgington had the ear of Geoff Lee, such that it was felt that he would always back her up, and that if she made a request it would be granted. It should be noted that this finding of fact is limited to finding that such a perception existed amongst the staff at the time.
26. Liz Crudgington knew Lisa Traynor. When there was a vacancy for an administrator, she suggested Lisa Traynor applied for it, and she was appointed, starting on 19 February 2018.
27. While Lisa Traynor was well liked and had friendships in the workplace there were a series of issues with her work. None of these were other than low level matters. It is apparent that Lisa Traynor required more direction on tasks than Liz Crudgington thought satisfactory for her role as an administrator. Because she was so well liked, Lisa Traynor was given help with the things she found difficult, and it was hoped that she would gradually improve.
28. Lisa Traynor's timekeeping was not good, and she was usually late. Often this would be related to taking children to school, or discussion with teachers when doing so. While administration can be done anytime, and Lisa Traynor made up the time, part of the role involved dealing with parental queries, which tend to arise at the start of the day, so this was less than ideal. No action, formal or informal, was taken about this.
29. In early 2019 Lisa Traynor began to make progress with getting help for her son. This involved appointments between 9 and 5. There had always been such appointments, but the number increased considerably. In addition to this, her son's needs had always resulted in frequent telephone conversations with his school, in working time. Nothing had ever been said about these in the first year of Lisa Traynor's employment with the Respondent.
30. The Respondent has an annual appraisal, and two "supervisions", described as mini-appraisals, in each of the other two terms. On 27 March 2019 there was such a supervision, with Amy Relf and with Liz Crudgington. It was noted that Lisa Traynor's IT skills were basic and training was needed. She would also organise her work through a diary and work schedule, which she had not so far done, such that tasks were missed, or she needed reminding about them.
31. The record of the supervision rated her attendance as "*satisfactory*" which was the middle category of three - less than "*good*" but better than "*unsatisfactory*". A comment was added "*Appointments to preferably be made around working hours.*" (99) This was an accurate assessment for Lisa Traynor was frequently late arriving and had multiple appointments out of the office during working hours.



32. The supervision did not have the hoped-for effect as there is contemporaneous evidence of Liz Crudgington's concern about the issue in an email to the Nursery Committee Chair on 15 April 2019 (113/114). It says that there is rarely a week when the set hours are worked, that her changes to hours pass unrecorded, and meetings for both sons take place in work hours, sometimes with little notice. It reports on the supervision and sets out three matters – first *“incredibly limited”* IT skills, second the attendance issue, and third that her organisation was bad and this led to mistakes and that they had made suggestions as to practical solutions.

33. It is plain from this email that the first and third matters were long standing. A section headed *“Background”* reads:

*“Lisa joined us in February 2018 in an administrative role and took over from Emma who left in the summer of 2018. She came to us saying that she was experienced in admin as she had done the accounts and admin for her husband's business. We talked about the kind of things involved in the role and she was happy that she could do them.*

*The longer she was with us the more we saw that she was not very competent administratively but did our best to support her and build her confidence. Emma did a lengthy and efficient handover and Amy, Maria and I have all worked with her on different elements of the job to keep up to speed. In many instances we have actually done the work for her to get the job done.*

*I have spoken to Geoff repeatedly over the year about my concerns but have really swayed between thinking she is not up to the job and thinking that with time she will get there. She has fitted so nicely into the office team. We eat lunch together, have gone out socially, celebrate birthdays, cry... you know, all the usual office stuff. I really wanted to make it work. Whenever I have spoken to Lisa about workload she always says she is doing fine and coping.*

*I have kept this from you because I knew that you were good friends with her and I did not want to cause her any embarrassment, or any awkwardness between you. In hindsight, I suspect that I should have been more open with you. Though in reality, I was still trying to convince myself that we could make it work.”*

34. The Tribunal finds this to be an entirely truthful account of the issues. There was a long list of matters not done. The theme is set out in one point *“Lack of initiative – constantly being told what to do”*. It is simply not credible that this was all made up to lay the ground for a subsequent performance dismissal. Employment continued for 8 months. The email asked for help as to how to deal with the problems.

35. There followed a *“clear the air”* meeting on 29 April 2019, which Liz Crudgington felt was successful. Amy Relf prepared the notes of it, and they were supplied to Lisa Traynor about a week later.

36. Lisa Traynor did not share Liz Crudgington's view and asked to see Geoff Lee, which she did, on 08 May 2019. Geoff Lee has several roles. He said it was a pastoral meeting (his note 118 says so). Lisa Traynor says that she thought it was confidential. Geoff Lee says that the information imparted needed to be treated sensitively, but that was not the same thing.
37. Geoff Lee said that it appeared to him that both she and Liz Crudgington appeared equally unhappy with one another. He suggested that either she leave with a good reference and three months' severance pay, because things were not working out and it would be "*no shame and no blame*". His other suggestion was for Lisa Traynor to formalise her complaints and in tandem there would be a formal performance review. Lisa Traynor did not want to leave.
38. Geoff Lee therefore arranged a meeting for Lisa Traynor and Liz Crudgington to meet. While Geoff Lee and Liz Crudgington say the severance offer was not mentioned, on the balance of probabilities the Tribunal finds their recollection mistaken, as Lisa Traynor was clear (and the Tribunal accepted) that Liz Crudgington had used the same phrase in their meeting. It is likely that a manager would be told this in the circumstances. Nothing turns on the point.
39. No further action was taken about this, and in April 2019 the external meetings did result in an outcome favourable to Lisa Traynor and her son, so that subsequently their frequency declined. Thereafter it became less intrusive to her work, and the subject was not raised again other than in November when there was a change in hours.
40. The original role was quite basic. Lisa Traynor coped with it, and was offered the role permanently, on 23 May 2018.
41. Emma Marlow was to leave her role in admin, and it was hoped that Tania Vine would take over. In the meantime, Lisa Traynor did the work, helped by Emma Marlow. Her hours were increased, for a trial period of the academic year 2018/2019. This was recorded in an email of 11 September 2018 (87). They had been 09:00 – 13:00 daily. Her hours were changed to 09:15 – 15:00, four days a week, with Wednesdays off. She would work 10 hours a week in school holidays to try to keep up. Her holiday would be 110 hours a year. This was nothing to do with her son, although it was an advantage in that she would have a full day a week when she could book appointments.
42. However, on 03 October 2018 Liz Crudgington emailed Lisa Traynor (87) saying that Tania Vine (who eventually succeeded Lisa Traynor) did not want an admin role. Liz Crudgington asked if Lisa Traynor wanted the job split into two with someone else taking accounts and payments permanently or whether she thought she could manage the workload. Lisa Traynor then continued with the whole role. Lisa Traynor says that she asked for a job share, but the fact is that she opted to continue with the whole role when Tania Vine decided (at that time) that she did not want to join the admin team.
43. It was not always possible for Lisa Traynor to arrange for meetings to be on Wednesdays or after 15:00, and so interruptions to work continued. Nothing was said about this, and she told them when she was going to go to such appointments, rather than asking. There was a blanket permission for her to

attend any meeting she wished, whenever she needed to do so. She made up the time on other days.

44. At some point (it matters not when) Lisa Traynor came to work late, having had a series of misfortunes with domestic appliances and her car. Liz Crudgington made a comment about how you couldn't write it, and how it was like a soap opera. Lisa Traynor is adamant that Liz Crudgington said, referring to her son, that her life was like EastEnders. Plainly that is how she took it. Amy Relf heard the comment. Understandably she could not recall the detail as it was well over 2 years ago and had not then acquired the significance now attributed to it. Amy Relf was an impressive witness. She was direct in her answers. She was her own person, and gave evidence that was in some respects was critical of her managers. There is no reason to think that she was in some way in thrall to management and trimming her evidence. Her firm recollection was that the comment was one made in sympathy at the simultaneous occurrence of domestic issues, and was nothing to do with Lisa Traynor's son and his difficulties. The Tribunal accepts that evidence as accurate.
45. There was at some other point a comment made by Liz Crudgington about empathy. It is accepted that this related to Lisa Traynor's son. Lisa Traynor says that Liz Crudgington said that she had "*no empathy*" for her. Liz Crudgington says that the comment was made in the context of a sympathetic discussion about Lisa Traynor's sons, the younger of whom had an unfortunate incident<sup>10</sup>. The discussion was commenced by Lisa Traynor, and it was an indication by Liz Crudgington that it was impossible for her fully to empathise with Lisa Traynor's issues, as she had not herself the personal experience of coping with a child with such difficulties.
46. The comment as alleged is brutal, especially given the circumstances. There is universal appreciation from the witnesses that Liz Crudgington is not a brutal person (any criticisms of her are about other things), and her deeply sympathetic approach to the inadequacies of Lisa Traynor's work do not indicate a brusque approach to work issues. There had been no issue made about the effect on work of the appointments and interruptions to work related to Lisa Traynor's son in all the time she had worked there other than a change of hours and a request that, if possible, she try to arrange appointments outside working hours.
47. It is important to appreciate the difference between the words "sympathy" and "empathy". Sympathy is to feel sorry for someone. Empathy is to identify with them. The word was used in its correct context, and the comment was to express great sympathy – in essence, your situation is so difficult that I can't imagine how you cope with it.
48. While the Tribunal does not underestimate how Lisa Traynor feels about the remark, it was, the Tribunal finds, intended to be supportive.
49. At about this time, an external agency wrote to Liz Crudgington with details of the appointments for Lisa Traynor's son. When it arrived, Liz Crudgington was

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<sup>10</sup> As indicated in the hearing, this is a public document, and highly personal matters referred to in the hearing are dealt with deliberately obscurely. The parties fully understand what is meant, so that this lack of clarity does not mean that this decision is not "Meek compliant" – meaning that the parties must be able to know why they have won or lost.

away for a few days. Amy Relf opened the letter, and placed it, in its envelope<sup>11</sup>, in Liz Crudgington's in tray. There Lisa Traynor came upon it, and was unhappy that the letter could be seen by others.

50. Lisa Traynor says it was not in the envelope, Amy Relf says that it was. Amy Relf was not challenged on the point in her cross examination, but in any event the Tribunal finds that Lisa Traynor was mistaken on the point. The in tray was, plainly, available to office staff, as Amy Relf put it there, and Lisa Traynor saw it. There is no reason to think that any member of the public (whether parent of a child at the nursery or member of the congregation) would have access to the office to see it. The only members of staff who would see it were Lisa Traynor (who had requested the letter), Liz Crudgington, to whom it was addressed, and Amy Relf, her deputy, who correctly opened the letter in the absence of Liz Crudgington. The office was locked outside working hours.
51. There was an exchange of text messages between Lisa Traynor and Amy Relf which was amicable and (at the time) resolved matters between them(288).
52. At no time did Lisa Traynor say that she was not coping with the work itself, other than use of the DK accounting software. She did complain to others, but when asked by Amy Relf or Liz Crudgington would say that she was able to do her work tasks (apart from the DK system of accounting, and even for that in September 2019 she said that she was "*getting to grips*" with it).
53. No training was arranged for Lisa Traynor, but equally she asked for none. Emma had trained her at length on the DK system (which was accepted to be not an easy system) for some months before going down to one day a week and later leaving. Amy Relf had repeatedly helped Lisa Traynor with simple IT things. These were not high-level matters for which IT training would be expected.
54. There was a break July-September 2019 for school holidays. Much of that period was taken as holiday by Lisa Traynor. As she was entitled to 110 hours a year holiday, and was due to work 10 hours a week in the summer holidays in practice she did little to no work in that time, because she took her holiday then. Amy Relf and Liz Crudgington did anything that needed doing immediately.
55. At some point the day in the week that Lisa Traynor did not work was changed from Wednesday to Thursday. This was because a colleague had a dog, and a dog walker. There were some difficulties with the dog walker on a particular day and Lisa Traynor agreed to swap days off so that the colleague could have Wednesdays off, the day she could not arrange her dog walker. This is self-evidently unconnected with Lisa Traynor's son's disability.
56. Matters did not improve, in Liz Crudgington's opinion after the summer holidays. On 15 October 2019 she held a meeting with Lisa Traynor to say that matters needed to be addressed. An increase in hours was suggested, but not accepted. The Tribunal notes that Emma Marlow had carried out the role in 15 hours a week, and Lisa Traynor worked 23 hours a week.

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<sup>11</sup> The Claimant says that it was not in its envelope. Amy Relf was not challenged on the point. It is not of importance, as the in tray would be accessed only by those who would know about the issue.

57. Lisa Traynor says that the fact that she did the accounts and admin for her husband's business did not mean she was going to be able to cope with a nursery's accounts. It was a reasonable starting point, and there was extensive training from Emma Marlow over some months. In Autumn 2019 the Claimant opted not to reduce her hours and have someone else take over the accounts.
58. A further meeting was held on 05 November 2019. A list of matters was gone through, and while Lisa Traynor said that they were all extra matters added with a new job description the Tribunal went through them line by line with Liz Crudgington, and all but one (stationery, a grey area) were existing tasks not being carried out effectively.
59. This meeting became acrimonious, with Lisa Traynor becoming loud and assertive. She criticised Liz Crudgington for mentioning attendance when she had piano lessons at lunchtimes, which she called double standards. Liz Crudgington's response was firm. On the balance of probabilities the Tribunal finds that she did not shout at Lisa Traynor, and the vehemence of Lisa Traynor was the overriding impression on those who were there (again Amy Relf's evidence was clear).
60. Liz Crudgington took advice from HQ and decided on a formal warning and a performance improvement plan (pip), and the human resources person there, Jimmy van Santen, helped draft them. There is contemporaneous evidence of this – they are not later constructs.
61. On 12 November 2019 Lisa Traynor went off sick with work related stress, before this could be delivered.
62. Geoff Lee and Liz Crudgington sought advice from HQ. They decided to terminate Lisa Traynor's employment, as the 2 year anniversary was coming up and they could see no way to resolve the present impasse. (This is clear from contemporaneous evidence, an email of 03 December 2019 (179) to human resources saying that was being considered and then the "bombshell" of the grievance arrived.)
63. While off sick Lisa Traynor delivered a grievance, by email on 24 November 2019. It was sent to the elders who were not pastors or employees. It raised multiple issues, a dozen or so, and part of it was a complaint that she was criticised for appointments about her sons.
64. The elders sought advice from HQ. They told Geoff Lee that they would be meeting to discuss a grievance, but did not tell him what it was about. They told him because usually he would chair meetings of the elders, and they did not want to hold the meeting in secret. This was reasonable.
65. He guessed it was from Lisa Traynor, and he and Liz Crudgington saw the elders and briefed them as to the employment issues.
66. The elders asked HQ what to do and their human resources contact said that the dismissal must be put on hold until the grievance was resolved.

67. Julie Nash led this process. She is a friend of Geoff Lee. The elders involved comprised people who were close friends of Lisa Traynor as well as those who were close friends of Geoff Lee.
68. Julie Nash went to Lisa Traynor's home with Liz Curling (another elder and a friend of Lisa Traynor), and they spend several hours going through the grievance point by point. Human resources in HQ had set out that it related to four topics. There was no restriction to four points, as Lisa Traynor said, but rather four groupings of subjects to be discussed. While Lisa Traynor now says that this was at home starting at 7pm and inappropriate with her husband and sons (particularly given the needs of the elder) present this was not something she said at the time.
69. Julie Nash reported what her enquiries had found. The elders agreed with her that the grievance should not be upheld. Stephen Kitto, a friend of Lisa Traynor who was an elder, was one of those who so concluded. While he now says there were "holes" in the process, he was not coherently able to specify what they were, other than that Geoff Lee and Liz Crudgington should not have been allowed to address them (but he knew that at the time).
70. When the dismissal of the grievance was reported to HQ the human resources person sought the advice of the in-house solicitor, who said that it was now possible to dismiss for a reason connected with mutual trust and confidence. That was done, and the letter of dismissal (233) was prepared by HQ. It was read to Lisa Traynor by Geoff Lee on 23 December 2019 and ended her employment that day (with pay in lieu of notice). It says only that recent events had caused a breakdown in trust and confidence.
71. Opinions of those connected with Plymouth Christian Centre became polarised, and it became a divisive issue of some prominence. It is not the function of this Tribunal to comment further, or to make findings of fact not necessary to determine the issues before it.
72. David Beresford, Head of Pastoral Care, otherwise uninvolved, signed a notice placed on the notice board and placed on the staff coffee table. This was intended to be a neutral invitation not to comment about the situation, but gave too many details about the termination of Lisa Traynor's dismissal. She got to hear of it, and objected. It was removed and an apology sent, and a report made to the information commissioner. The apology was sent from HQ, but to the wrong email account – hotmail.com and hotmail.co.uk being confused. The notice was taken down on 20 January 2020.
73. Lisa Traynor attended every meeting she wished to attend. She never sought permission (rather it was that she told her managers that she would be attending them), and she was never disciplined or subject to any detriment by reason of attending those meetings (or dealing with other matters to do with her family, or other domestic matters, in work time).

## Conclusions

### Out of time issue

74. First, the out of time issue. The dismissal was 23 December 2019. There was a 12 day Acas period (26 February 2020 – 10 March 2020). The claim was filed by Lisa Traynor herself (not by a lawyer) on 28 April 2020. Anything before 17 January 2020 is out of time (3 months + 12 days before the day the claim was filed).
75. As the last 3 allegations were withdrawn the only matter in time is that the notice on the board was not taken down until 20 January 2020. That has no connection with Lisa Traynor's son. It was posted as the result of a rumour mill. The Tribunal makes no finding of fact (for want of evidence and because it is irrelevant) as to how that controversy occurred, but it is not in dispute that this caused great dissension in the Church community. The expression of that schism was the reason for the notice. The cause of the dissension is too far removed from the difficulties of Lisa Traynor's son to mean that the failure to remove the notice quickly was associative disability discrimination.
76. Accordingly, there is no series of matters extending beyond 17 January 2020 so as to mean that the claim was lodged within the time limit. The time limit is therefore the date of dismissal (23 December 2019, plus 3 months and the 12 day Acas period). That is 04 April 2020.
77. Lisa Traynor did not appoint a solicitor, though she consulted Karen Bussell on 20 January 2020. Lisa Traynor had legal expenses insurance and sought help through them. She also put the solicitor's name on the Acas form, although she had not instructed that solicitor (as is far from unusual). The legal expenses insurer contacted the solicitor in late March 2020. There was then a delay, and eventually Lisa Traynor put in the claim herself, on 28 April 2020, about 3 weeks late.
78. On 18 March 2020 the solicitor had ceased attending work by reason of Covid-19, before the legal expenses insurer contacted the solicitor's firm. That was entirely understandable. While the formal lockdown was not until 23 March 2020, the country effectively ground to a halt on or about 18 March 2020. There was a delay until the paperwork was forwarded from her office to the solicitor to deal with, and then it was not dealt with immediately. The solicitor was not instructed to act at this time. Knowing that there was a time limit the Claimant put in the ET1 herself.
79. Given that it has taken 18 months to get to this hearing, and given that background, and that to strike out a claim is to end it without any consideration of its merits, it would not be just and equitable to strike out the claim for this short period. It follows that it is just and equitable to extend time, and the Tribunal so decides.

### Background observations

80. The Claimant was well liked. She was a long-standing member of the Church (her parents had attended the Church). Liz Crudginton suggested she apply to become the administrator. She knew that Lisa Traynor's son had difficulties,

and needed more care than most children. It did not stop her suggesting that Lisa Traynor become the administrator.

81. There are others who have similar problems and they are accommodated. That included Emma Marlow and Tania Vine who preceded and succeeded Lisa Traynor in the same post. So was Nicola Kitto, who gave evidence for Lisa Traynor. Amy Relf had similarly been helped when she needed time and flexibility. This is an organisation which is customarily flexible in its approach to those of its employees with health concerns or caring responsibilities.
82. The purpose of an administrator is to look after things that need doing, so that others can perform their functions. The greater the degree of initiative shown, and the greater the capability of the administrator, the greater the value of what she does to the people who depend on what is being administered.
83. It is no criticism of Lisa Traynor to note that she is not, as she agrees, skilled at IT. She was not adept at organising herself. By way of example:
  - 83.1. She regarded her role for accounts reports being to input data and to print the resultant reports for Liz Crudgington. When the accounts showed an unexpected surplus of £50,000 Lisa Traynor did not notice and gave the accounts to Liz Crudgington without comment. A skilled administrator would notice the unusual figure and check the data to find the input error which caused it.
  - 83.2. Lisa Traynor was responsible for payslips, but was unable to print them other than double sided. The reason was that as well as selecting print single sided in the print option it is necessary to go into printer preferences and select single sided option there too. After showing Lisa Traynor several times, Liz Crudgington did this herself.
  - 83.3. Lisa Traynor handed round the payslips. The payslips were late one month: it would have been helpful for Lisa Traynor to remind Liz Crudgington about them.
  - 83.4. Amy Relf had to show Lisa Traynor the basics of email attachments multiple times.
  - 83.5. A substantial amount of money, £10,000, was not correctly claimed by Lisa Traynor through the Plymouth City Council portal. This was not entirely her fault, apparently other nurseries had the same issue, but it required others to notice and help get it remedied.
  - 83.6. She was responsible for filing, but it was not done well. Liz Crudgington and Amy Relf organised a traffic light coloured system with different boxes for urgent less urgent and not urgent. No one else doing the filing has needed such assistance.
  - 83.7. An error in the accounts report resulted in an unexpected £60,000 surplus. It was the result of a data inputting error made by Lisa Traynor. Whether or not her error, one would expect a competent administrator to cast an eye over the reports and if the outcome was, as here, widely



different from what was expected to look for why this was. Lisa Traynor's view was that she just printed them for Liz Crudgington.

83.8. Lisa Traynor, despite reminders from March and before, had not, by October 2019 really got a grip of how the work cycles occurred – some daily, some weekly, some monthly, some termly, some annually. Liz Crudgington got her a weekly planner to fix to the wall as a reminder. Lisa Traynor filled it in but spread tasks over the whole weeks, including the weekends. This typified the problem for Liz Crudgington. Much was made by her Counsel that this was a trivial reason to dismiss someone, and concealed a more sinister motive. It was simply something of a last straw: matters were not organised, reminders had not worked, she had not organised herself, they suggested a way of doing so, but even that was not done effectively or accurately. This was Liz Crudgington's view, based on experience, and based on the evidence it has accepted the Tribunal finds it was a genuine view.

84. These are but examples: it is not said that Lisa Traynor is someone who is not conscientious, but rather that she needed such guidance in the role that it was not satisfactory. In short, if you are a manager you have an administrator to do things and to tell you when you need to do things. You don't become the administrator of the person who is supposed to be your administrator.

### **Dismissal**

85. This is not a claim for unfair dismissal and the Tribunal made it clear that it was not going to decide how this dismissal might be categorised in terms of the Employment Rights Act 1996. If what happened was seen to be unfair that would be relevant to whether there was a discriminatory taint to it.

86. This dismissal was not tainted in any way whatsoever by the disability of Lisa Traynor's son. Some part (in fact a small part) of the background related to her son's appointments in work time. This had been one issue of three in March/April 2019, but the limit of the Respondent's actions was to ask if Lisa Traynor could try to make appointments outside her working hours, and to give as much notice as possible. This was an entirely reasonable request to make. Lisa Traynor was never asked to seek permission for these appointments, and was allowed to attend all of them. This was 8 months before she was dismissed. It was not a management resentment harboured for so long and a reason for dismissal, when there were many other reasons why dismissal was decided upon.

87. It is entirely sensible for an employer to review how an employee is performing before that employee attains two years' service with the attendant right to claim unfair dismissal. There was a long history of concern at how Lisa Traynor carried out her role, totally unconnected with her sons. This went back to March 2019. It reappeared as a serious concern in the autumn term. Lisa Traynor says that because her son required her to be at home in the school holidays by reason of his disability that meant she could not work, so that she returned to a backlog, and that was a reason the Respondent was dissatisfied with her work. That is not a chain of causation in a discrimination claim. The reason why she took all her holiday in the summer does not make failing to deal with the resultant backlog an act of discrimination. In any event the submission was not

made out on the facts, for during the summer Amy Relf and Liz Crudginton did much of the work.

88. The proposed warning and pip were genuine and evidenced by contemporaneous documents. There was not, even then, a decision to dismiss. When there was such a decision, because Lisa Traynor went off sick, they could see no way forward as the 2 year anniversary approached. That was not in any sense connected with her son's disability. It was all about the meeting in October, and a wish not to be in a position where dismissal would be much harder and carry higher risk.
89. The dismissal was actually because the elders considered that there was no outcome that would mean that Lisa Traynor would speak alone with Liz Crudginton, and wanted either email contact, to work from home, or to have a third person present. It is plainly untenable for the administrator in the team not to speak to the manager unless the deputy manager was also present. That was what it amounted to. While it was submitted that this was only until the grievance was resolved, since the resolution was its rejection, Lisa Traynor was not able to offer any way that normality could be resumed. That has no connection with Lisa Traynor's son or his disability. There is no motive of the decision makers in any way connected to the dismissal.
90. It was said that it was the Respondent's solicitor in Malvern who told Jimmy van Santen that dismissal for loss of mutual trust and confidence was possible and this was not fair. Those in Malvern could have no possible discriminatory motivation (which was why the last three harassment allegations were withdrawn). Fair or not, it is not discrimination for Geoff Lee to take the advice of the solicitor in Malvern, even if that was what he wished to hear. Nor can there be a *Jhuti* argument, for that advice followed the report of the elders.
91. It is not credible that the elders were in effect pawns of Geoff Lee who was taking Liz Crudginton's side. Many of them were friends of Lisa Traynor. All the elders thought she should be dismissed. Steve Kitto, a friend of Lisa Traynor and an elder, thought so at the time. His evidence to the Tribunal did not give any reason why he now thought it was not fair, save for unspecified "*holes*", but critically, even if he thought it was not fair, he did not suggest that it might have any connection with Lisa Traynor's son or his disability – and that is the issue.
92. For the same reason, even if the elders rushed the decision to get it done before the anniversary, that is not connected with disability. It is said that they should not have been told that Lisa Traynor was to be dismissed, but the fact that they were told meant it was stopped.
93. The elders were independent of Liz Crudginton and of Geoff Lee, and there is no prospect that there was any transference of motive to the elders from them.
94. It is said that Geoff Lee and Liz Crudginton should not have been told of the grievance when they were, but it was entirely correct to tell Geoff Lee as he would normally chair the elders' meetings. There was no reason for him to conceal that from Liz Crudginton, and she would have had good reason to be unhappy if he had not told her.

95. Whether it was fair or unfair for the elders to see Geoff Lee and Liz Crudgington is not of probative value for the direct discrimination claim about dismissal (or the harassment claim).
96. In summary, the *Nailard* and *Warby* cases remind the Tribunal that context and motivation are highly relevant to discrimination cases which are always highly fact specific. The motivation here by the decision makers was to try to get good performance while being as helpful to Lisa Traynor as possible, and then to deal with an impasse.
97. It is entirely understandable that Lisa Traynor saw – and sees – everything through the lens of the challenges with which she copes. She is not the first claimant not to appreciate that an employer’s concerns as to performance may be both genuinely held and to have substance.
98. In legal terms the Claimant has not shown evidence to prove facts from which a Tribunal could infer that disability discrimination was in any sense whatsoever a factor in her dismissal and so the burden of disproving it does not pass to the Respondent. (If follows from the Tribunal’s findings that had that burden passed it would have been met by the Respondent.)

## Harassment

99. Having set out a narrative history of events above, so far as relevant to the list of issues, the Tribunal’s conclusions as to the list of issues is set out below.

*99.1.1. On 27 March 2019 Ms Crudgington marking down her attendance and making negative comments about her attendance at her son’s disability related appointments;*

The findings of fact above mean that this is not made out. It was a fact that the attendance was correctly recorded as “*satisfactory*” rather than “*good*”. There were no negative comments. There was only a request to try, if it was possible, to arrange appointments out of work hours, but never was the Claimant prevented from attending any appointment, and she continued, without any form of sanction, to attend those appointments without first seeking permission. There is also a marked difference between Lisa Traynor’s allegations, and the sympathetic treatment accorded to Emma Marlow and to Tania Vine, who both had difficult matters to deal with in respect of their children, and of Amy Relf, who had personal issues in the past<sup>12</sup>. It is also hard to see how being described as having satisfactory attendance is negative. It is not a detriment not to be described as the best possible.

*99.1.2. On 05 April 2019 leaving a confidential letter from CAMHS relating to her son unsecured on top of a desk in an office used by others;*

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<sup>12</sup> This is referred to generically in Liz Crudgington’s witness statement at paragraph 14, with no detail. There was no evidence from either of them. When this was said by Liz Crudgington in cross examination it was a surprise to the Claimant’s Counsel. It is unfortunate that there was no evidence from them. Liz Crudgington was reluctant to give their names, understandably given the experience with the ICO over the Claimant: they then both authorised her to do so (post testimony) and she was recalled to be asked about it, necessarily in a limited way. Amy Relf’s statement sets out her experience of time off for personal reasons fully. The Tribunal considered this supported the other evidence that by and large there is a supportive working environment for those with personal problems of any sort. This was also the evidence of the Claimant’s own witness, Nicola Kitto.

This cannot relate to Liz Crudginton, because the letter arrived when she was not at work. It must be an allegation against Amy Relf, although immediately she raised it with Lisa Traynor it was resolved amicably. This is one of two unrelated allegations that Amy Relf was trying to create an intimidating or degrading environment, or humiliate her (or otherwise within the definition of harassment). There is absolutely nothing in it. All Amy Relf did was open a letter addressed to her manager, in her manager's absence, entirely properly, and leave it in its envelope, in her in tray to await her return, in an office locked outside office hours, and not used by people unlikely to read the letter in the course of work. That is not harassment.

99.1.3. *On 29 April 2019, Ms Crudginton questioning her about her son's appointments and making the comments "your life is like an episode of Eastenders" and "I have no empathy for you";*

The findings of fact above mean that the Tribunal did not find that this allegation of harassment was made out.

99.1.4. *On 08 May 2019, Pastor Geoff Lee suggesting she consider leaving and then reporting that conversation to Ms Crudginton;*

The suggestion is that this was the carrot of a financial incentive to leave (made because her son's appointments were an irritation to the Respondent). In the context of performance concerns and mutual discontent for an employee not yet with 2 years' service, an offer of a departure on 3 months' pay with a good reference and on the basis only that it hasn't worked out – in the context of Lisa Traynor being a member of the congregation – can be seen only as generous spirited. It would have enabled Lisa Traynor to continue to worship at the Centre without any form of embarrassment. The backdrop of a large number of disability related appointments and being asked to try to have as many as possible outside working hours does not convert that offer to harassment. The alternative was a more formal process, but in the end that became a "*clear the air*" meeting, without formal performance management. There was every reason for Liz Crudginton to know of it. That there may have been confusion as to whether this was a pastoral confidential discussion, or an employment matter again does not convert it to harassment. (There is indeed a tension between calling a meeting "*pastoral*" and it being about an offer to end employment on terms.) The underlying connection with her son's disability was only a background part of the matter, and what was said about appointments was entirely reasonable. That Lisa Traynor took offence at it (as she did) does not make it harassment. It was not, objectively, reasonable to be offended in this way.

99.1.5. *On 09 May 2019, telling her that she must make fewer appointments for her son going forward and make them outside working hours;*

She was not told that. She was asked to try to minimise the number of appointments that took place in working hours as there were a lot of them. There was nothing wrong with that.

*99.1.6. In September 2019, telling her to rearrange her working days/hours because of her son's appointments;*

She rearranged her hours for other reasons: she opted for a day off on Wednesdays (changed to Thursdays for reasons relating to another). This was entirely consensual, and was in part to allow her more time to undertake her work.

*99.1.7. On 15 October 2019 overloading her proposed job description, thereby setting her up to fail,*

There is, as was discussed during submissions, a tension here. Lisa Traynor says both that the performance concerns were unfounded, and were a pretext to dismiss her because her son's appointments were an irritation, and that her job description in September was intentionally overloaded so that she was set up to fail (and by necessary implication did so). It seems (understandably Counsel was not entirely clear) that the only way the Tribunal could make sense of it was that all the routine matters were said to be a pretext, and in addition there was the DK program to manage, which was known to be difficult and which she could not do effectively and for which she had no support. The performance concerns for routine matters were genuine. In her witness statement the Claimant says that she made it clear on 15 October 2019 that she was not coping<sup>13</sup>, and cited page 126 of the bundle. That refers to a meeting where this was raised, but records that Lisa Traynor responded that not coping referred to a busy day she was not helped as much as she should have been. This was her oral evidence as well. She said in that meeting that she was "*getting to grips*" with the DK software. Emma Marlow gave Lisa Traynor about 8 months of help with DK and other things while working 3 days a week. It was the case that Lisa Traynor was not performing well. There was in that time no complaint from Lisa Traynor to anyone in a management role about her workload. The job description was gone through in some detail in the Tribunal hearing. It is not an overloaded job description. There are clear tasks set out, with clear timeframes for each task. Emma Marlow was doing a similar role in 15 hours a week, and Lisa Traynor had 23 hours. Tania Vine has succeeded her, and fulfils the role. There are no facts that could lead to this being considered harassment.

*99.1.8. On 31 October 2019, sending an unfair / inaccurate email to her criticising her performance;*

It was not inaccurate.

*99.1.9. On 04 November 2019 shouting at her in a meeting and threatening her with solicitors;*

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<sup>13</sup> Paragraph 24

Amy Relf heard this. The evidence of Liz Crudgington is coherent and supported by objective evidence. Lisa Traynor had not herself sought advice from a solicitor. She had advice, but not from a solicitor. She did not say that she had been to a solicitor. There is no obvious reason why Liz Crudgington should threaten her with solicitors in response to Lisa Traynor saying that she had sought advice. It is far more likely that (as was her evidence) she said that if Lisa Traynor has sought advice she would have to do so too. She had been taking advice from Jimmy van Santen a human resources adviser at HQ. She would inevitably think of seeking advice from him. If a solicitor's advice is needed Jimmy van Santen gets it in-house. The evidence of those there other than Lisa Traynor and Liz Crudgington (again Amy Relf) was that it was Lisa Traynor who was out of order, perhaps somewhat overwhelmed at the concerns at her lack of performance, and seeing everything through the lens of what is for her a matter front and centre of her life. Amy Relf commented in an email exchange) to Liz Crudgington shortly after the meeting that she was impressed at how controlled Liz Crudgington had been in the meeting. In reply Liz Crudgington said she was surprised at how she had been able to do so. There was no reason for this contemporaneous exchange to be other than entirely genuine. Liz Crudgington was no more than definite at this meeting.

*99.1.10. In November 2019 producing inaccurate incomplete and one-sided notes of discussions with her;*

Amy Relf produced these. It took her a week to do so. The inaccuracy asserted related to the account that Liz Crudgington had threatened her with solicitors<sup>14</sup>. The Tribunal had not found this proved, but even if it was the case, the Tribunal could not see that Amy Relf would be trying to create a hostile (etc) environment by reason of the Claimant's son's disability. The motivation or causation is critical, and it is not credible that both Amy Relf and Liz Crudgington were acting in concert to do that, because of irritation at the meetings Lisa Traynor was attending in respect of her son.

*99.1.11. In November and December 2019, failing to deal properly or fairly with her grievance, including interference by Mr Lee and Ms Crudgington;*

This would require the elders who dealt with the grievance to be complicit in the harassment of the Claimant motivated by Liz Crudgington and Geoff Lee's asserted irritation at her attending meetings to do with her son's disability. There is no possibility of this. All the elders, including those who were friends of the Claimant agreed that it should not be upheld. The other part of this is that the grievance was said to be undermined by letting Geoff Lee and Liz Crudgington have the ear of the elders. They had not seen the grievance then. It was sent to Geoff Lee by email after that meeting. Their view would have been taken in any event. Lisa Traynor felt that the meeting at her home was not fair, and that it was rushed. If it was rushed to get it done before the two year anniversary that is not connected to the disability

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<sup>14</sup> Witness statement paragraph 31.

of the Claimant's son. There was no objection raised at the time to the meeting at the Claimant's home. None of this, whatever the merits or otherwise, has any connection to disability. Nor was any of it having the purpose or effect required by the Employment Rights Act 1996.

*99.1.12. In December 2019, after her dismissal, instructing staff to remove her contact details from their devices and to withdraw all support to her;*

This was done by Geoff Lee, but it was much more a result of the furore which had developed in the Centre. The staff did not want to be involved in this situation. Amy Relf and Lisa Traynor had been friends for years. They have not spoken since. That is not harassment by the Respondent, instead being an unfortunate consequence of the reactions to the dismissal becoming an issue for the Centre's community rather than a personal employment matter.

*99.1.13. On 08 January 2020, issuing an inappropriate letter to all staff regarding her dismissal (the 1<sup>st</sup> data breach);*

It was accepted to be a data breach, because it contained personal information about the Claimant. It was not harassment, but an attempt to limit the damaging gossip and rumour and schism that was developing in the Centre.

*99.1.14. In January 2020 placing a copy of that letter onto a notice board where members of the public had access;*

The public did not have access to the staff room where it was, but it was not done to harass the Claimant, and nor is there any causal link with the appointments of the Claimant's son.

*99.1.15. Not informing staff to destroy their copies of that letter until 20 January 2020;*

This was a matter of days, and not harassment, but a further later attempt to assuage the Claimant's indignation at the letter. See paragraph 74 above.

100. For all these various reasons the harassment claim is also dismissed. The Tribunal records that it not only assessed each matter individually, as is necessary to deal with the list of issues, but also assessed the matter in the round, looking at everything from the beginning. There are not facts proved which could lead to the inference of disability discrimination by harassment. (If the facts could so show the Respondent has discharged the burden of disproving that inference).

101. In summary, the matters relating to the Claimant's son are no more than background facts, nothing occurred directly as a result of those needs, and the other matters are too far removed from those needs for there to be any causal link. The context and evidence of the motivation for individual allegations supports, and is part of, that conclusion.

Employment Judge Housego  
Date: 12 October 2021

Judgment & Reasons sent to parties: 27 October 2021

FOR THE TRIBUNAL OFFICE