CASE NUMBER: 2304196/2019 (Hybrid V-CVP)

EMPLOYMENT TRIBUNALS

Claimant: **G**

Respondent: **H**

Heard at: **London South** **On:** **16, 18-20, 23-27 November 2020**

30 November, 1 & 15 December 2020 (In Chambers)

Before: **Employment Judge Corrigan**
Dr S Chacko
Mr D Wharton

Representation
Claimant: The Claimant's Husband
Respondent: Mr S Bishop, Counsel

RESERVED JUDGMENT

This was a hybrid hearing. The form of hearing was V – Video (CVP) with the Claimant and her representative present in a Tribunal room. A face to face hearing was not held because it was not practicable. We were referred to the parties' witness statements, Bundle, the Claimant's Supplementary Bundle, additional documents provided during the hearing and the list of issues, which was amended during the hearing. The parties also referred us to written submissions as set out below.

1. The Claimant was not unfairly dismissed by the Respondent.

2. The Respondent has not contravened the Equality Act 2010 in respect of the claims of discrimination on grounds of religion and marriage; discrimination arising from disability; and disability related harassment.

3. The Claimant's claim for unpaid accrued annual leave is not well-founded.

4. The Claimant's claim for unpaid notice pay is unsuccessful.

5. The Claimant's claims are dismissed.

REASONS

Introduction

1. The Claimant's claims are unfair dismissal, discrimination on grounds of religion and marriage; discrimination arising from disability; disability related harassment; unpaid accrued annual leave and notice pay.

2. This matter was originally listed as a 7 day face to face hearing. It was converted to a hearing by CVP due to the Covid-19 pandemic and the lack of resources to hear it face to face. In addition one of the Respondent's witnesses was shielding.

3. In the event the Claimant and her husband were unable to access the technology required and requested a face to face hearing in emails on 9 November 2020 and 11 November 2020. On 15 November 2020 the Claimant's husband emailed at 9.52pm stating that if the face to face hearing could not proceed they wished to access the CVP using Tribunal resources. Both the Claimant and her husband attended the Tribunal on the first day of the hearing.

4. It was agreed that the Tribunal would provide the Claimant and her husband with a Tribunal room, set up to access the CVP room, and with WIFI access so that the Claimant and her husband could access the shared folder created by the Respondent's Representative, and receive soft copies of documents via email. The Tribunal clerk provided assistance to ensure the Claimant was able to get access. As a result the hearing became a Hybrid hearing.

5. A hard copy of the bundle had been sent to the Tribunal and this was provided to the Claimant and her representative, along with a hard copy of the written note provided by the Respondent's Representative with respect to preliminary matters.

6. Throughout the hearing the Tribunal clerk also supported the Claimant by providing a print out of additional documents produced during the hearing by the Respondent that were otherwise available as soft copies in the shared folder and sent by email to the Claimant's representative. Where the Claimant provided further documentation the Tribunal clerk ensured it was copied to the Respondent's Representative. The Tribunal Clerk and the Employment Judge also assisted by turning the Claimant's additional documentation into an electronic supplementary bundle. The Claimant's witness statement had been sent to the Respondent and Tribunal but not in a form that could be opened so the Tribunal Clerk also assisted to ensure the Claimant's witness statement could be accessed.

Hearing and Adjustments

7. The accepted disability is cardiomyopathy. The email on 11 November 2020 did state, in addition to the technical issues, that "the [C]laimant has previously and repeatedly highlighted her complex disability health complications that makes communicating difficult for her and video link or telephone hearing is not helpful to her and she's seriously distressed at the moment and feels she will be disadvantaged by that mode of hearing". The Claimant referred back to an email on 9 November 2020 in which she had said she preferred a face to face hearing, though not on disability grounds, but because she wanted to see the Respondent "face to face" as part of the healing process she needs, and the lack of knowledge about who the Respondent might have in the background on video was "unnerving and distressing".

8. The parties had completed risk assessments. The Claimant answered this on 29 October 2020. One question asks whether there are any other difficulties that the party will have in attending as listed and if so what those difficulties are. The only difficulty mentioned by the Claimant was with respect to a witness's inability to attend. The claim form said in box 12 that the Claimant did not have a disability and no adjustments were requested in respect of the Tribunal process.

9. The Tribunal sought further information as to whether the Claimant was saying she was disadvantaged using CVP because of her disability. The initial reply was that she did feel uncomfortable using CVP because of the disability and requesting a face to face hearing.

10. Enquiries were made but a face to face hearing was not possible as there were no judicial resources available at London South.

11. Further details of what the issues were and whether any adjustments would assist were sought via the Clerk. The reply was that the Claimant's disability was "cardiomyopathy, postpartum complications, Chiari malformation type-1, Thyroid horn, Intracranial Hypertension, memory issues etc." It was stated that the adjustment needed was that the Claimant required a chair with a head rest due to a neck problem and that she was willing to proceed by CVP. The Tribunal provided a chair normally used by the judiciary, with a head rest.

12. Once the hearing commenced the Employment Judge checked that the Claimant was able to proceed and she agreed that she was. There was a discussion about adjustments and confirmation that the Claimant would be able to have regular breaks and that she should ask if she needed one at a particular moment.

13. The Claimant's representative said he did agree with the list of issues set out in the Case Management Order of 18 March 2020. However the Respondent's Representative was concerned that there had been a very lengthy document entitled further and better particulars and that the Claimant was not aware that if there were further claims or issues in that document that there would need to be an application to include them. The Respondent's Representative agreed to assist, by identifying the potential additional issues to the Claimant's Representative. The Tribunal was unable to sit on 17 November 2020, so the Claimant's Representative

was given a further opportunity to take that day to identify any additional claims and issues in the further and better particulars to then apply for them to be included on 18 November 2020. He also had that additional day to become familiar with the final bundle as he complained about additional documents and change of page numbers by the Respondent, although the Respondent said that both a hard copy and a soft copy of the final bundle had been provided, along with an index setting out the change in page numbers.

14. On 18 November 2020 the Claimant and her husband did not attend. The Claimant's husband called the Tribunal to say she was not well and would not be attending. There was no explanation for his own absence. We were also forwarded an email sent the day before dealing with outstanding issues in respect of the case preparation in which a rest day was requested for 18 November 2020 because the Claimant had pushed herself on the first day of the hearing without asking for a break or medication break and then overnight looking at the bundle. There was a further email at 10.19 on 18 November making the same request but saying, if the Tribunal insisted, the Claimant would "endeavour to get out of her sick bed and begin to make her way to the tribunal as soon as possible this morning." However the Claimant's representative said he was concerned that that may worsen her current situation. This was not passed to the Tribunal as in the meantime, the Tribunal had requested further information via the clerk about the Claimant's health position and whether it was possible to obtain medical evidence along with an explanation as to why her husband had not attended. The response was that the Claimant was suffering from severe headache, neck-pain and dizziness and was apprehensive of attending the GP based on previous employment experience. It was said the Claimant's husband as her carer could not leave her alone and if he had to come to the Tribunal he would need to bring the Claimant with him.

15. The Claimant was given a rest day and the Claimant's representative attended the CVP hearing by telephone so some progress was made to resolve the outstanding issues that were still being raised about the bundle and whether there were additional allegations being pursued by the Claimant in the further and better particulars. Due to connection issues the Claimant's representative attended via a landline, held up to the microphone by the clerk.

16. On the first day of the Claimant's evidence the Claimant took a long time over answering preliminary factual questions where she was being asked to agree matters that were plainly evident from a sentence in a document, as a prelude to a further question. Whereas where she did not agree with a substantial question and it was her opportunity to explain, she sometimes needed prompting to do so. This impacted the timetable significantly and so the Employment Judge did make comments about this, to encourage the Claimant to understand that where she agreed with a point it would be helpful to do so promptly and where she did not the purpose of the questions was to enable her to explain her case. The Employment Judge did not comment on the actual content of the answers, but the answering process, in an attempt to ensure cooperation with completing the case in the extended allotted time (the listing was extended with the parties' agreement more than once to take account of revised estimates in respect of length of hearing).

17. On the morning of 26 November 2020 the Claimant raised that she was concerned about the Employment Judge's comments and felt that she had needed more time reading documents because of short term memory loss, and could not remember what she had said moments after and that her husband would have seen the signs the day before but had not intervened. She was concerned that she had not fully put her case as she wanted although the examples she gave the Tribunal felt had been fully communicated the day before.

18. The Claimant was asked if she felt able to give evidence and confirmed she was, but she wanted to be able to go back over the questions answered the day before. She also said she had been writing what she wanted to say overnight. The Respondent's representative objected on the basis it would be prejudicial. He said he had not seen any mention or evidence of memory loss being an issue for the Claimant and was concerned that it was time wasting. The Claimant and her representative said they had raised this at various points in various applications, that it was mentioned in the risk assessment and the Claimant's husband's statement, and in her supervisions.

19. The alleged impact of the Claimant's health conditions on her ability to give evidence was not something that had been brought to the attention of the Tribunal panel before this. We noted that it had not been mentioned in either the risk assessment or the Claimant's husband's statement, as asserted, or the original ET claim form. We agreed that it would be disproportionate and prejudicial to go back over evidence from the day before and give the Claimant a second chance to answer. There had been no obvious indication that memory loss was an issue, neither the Claimant's representative or the Claimant had raised it the day before, and the Claimant had assertively asked for time to read at various times and been given it. The Claimant had already had a chance to do her witness statement and everything she had wanted to say should have been covered in that. We did not consider it appropriate to take a further written statement at this time.

20. We did discuss and agree to further adjustments. The Claimant said she had been making notes on her statement while giving evidence and we agreed that she could continue to do so. The Tribunal proposed to the Claimant's husband that he take notes on her behalf to assist her recall after the event. He was reminded about this during the hearing when it was noted he was not doing so. It was agreed the Claimant's husband should raise the issue if he had concerns at a particular part of the evidence. We also agreed to more frequent breaks if needed. The issue was not raised again.

List of issues

21. The Claimant's representative prepared a list of allegations, as he had been asked to do in respect of those arising from the further particulars. On 19 November 2020 the Tribunal made a decision about which further allegations would be included in the list of issues. We allowed the addition of the comment made by the Respondent's HR Consultant in a meeting on 20 March 2019, as the Respondent had come prepared to deal with it and effectively conceded this could be considered. We also allowed the alleged pressuring the Claimant to return to work on 16 March 2017, 29 March 2017 and 20 April 2017 as part of the alleged

disability-related harassment, the Respondent having conceded this was within the further and better particulars.

22. We took the view that the allegation in respect of the questions emailed to the Claimant on 22 March 2019 and comments made during the disciplinary process; the alleged refusal to reply to the subject access request; the Claimant's suspension, the alleged pressuring of the Claimant to work without pay and that she take annual leave instead of sick leave could all be considered to the extent that they were already listed in the list of issues.

23. We refused to include the remaining allegations as they were not in the further and better particulars and/or still not sufficiently clear.

24. The final list of issues agreed between the parties was therefore as follows. Those issues relevant to remedy have not been reproduced at this stage save in respect to chance of dismissal in any event and contribution (paragraphs 33-35 below) as these are better dealt with at the liability stage.

Time limits / limitation issues

25. Were all of the Claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA")? Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period; whether time should be extended on a "*just and equitable*" basis; when the treatment complained about occurred etc.

Unfair dismissal

26. What was the principal reason for dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")? The Respondent asserts that it was some other substantial reason.

27. If so, was the dismissal fair or unfair in accordance with ERA section 98(4), and, in particular, did the Respondent in all respects act within the so-called 'band of reasonable responses'?

28. Did the dismissal engage the Claimant's article 8 rights? It is suggested, and accepted, that the following were engaged.

29. As an employee the requirement to disclose to the Respondent:

    29.1 Allegations against her husband of abuse of her children and/or his arrest by the police for such matters.

    29.2 The involvement of Borough X concerning safeguarding issues as to the conduct of the Claimant herself.

    29.3 That her children were deemed at risk by Borough X.

29.4 That her children were made the subject of Child Protection Plans (CP Plan) by Borough X.

29.5 That her children were placed with foster carers and were looked after children under the Children Act.

29.6 As the Designated Safeguarding Lead of the Claimant's church (relevant to capacity in her role and trust and confidence):

29.7 That there were allegations of child abuse against her husband, the Pastor, leading to his arrest.

29.8 That there were allegations of child abuse against herself, an Associate Pastor and the designated safeguarding lead.

30. The legitimate aim was safeguarding of children. Was the Claimant required to provide this information:

30.1 under any statutory or common law duty; or
30.2 as part of her express or implied duties as an employee towards her employer?

31. Did the sanction of dismissal, involve a disproportionate interference with the Claimant's Convention rights?

32. If the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the Claimant would still have been dismissed had a fair and reasonable procedure been followed?

33. Would it be just and equitable to reduce the amount of the Claimant's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to ERA section 122(2); and if so to what extent?

34. Did the Claimant, by blameworthy or culpable actions, cause or contribute to dismissal to any extent; and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award, pursuant to ERA section 123(6)?

Direct discrimination – marriage

35. The Claimant is a married person.

36. Has the Respondent subjected the claimant to the following treatment:

37. Alleging that the Claimant was "controlled" by her husband, when he accompanied her to all meetings.

38. Taking action against the Claimant because of her husband's alleged conduct.

39. Was that treatment "less favourable treatment", i.e. did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The Claimant relies on hypothetical comparators.

40. If so, was this because of the Claimant's being married and/or because of the protected characteristic of marriage more generally?

Direct discrimination – religion

41. The Claimant relies on her Christian religion.

42. Has the Respondent subjected the Claimant to the following treatment:

43. Alleging that the Claimant and/or her husband beat their children and/or colluded in beating their children.

44. Quotations from, or reference to, the Bible at the meeting on 20 March 2019.

45. Was that treatment "less favourable treatment", i.e. did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The Claimant relies on non- Christian hypothetical comparators.

46. If so, was this because of the Claimant's being a Christian and/or because of the protected characteristic of Christianity more generally?

discrimination arising from disability

47. It is agreed that the Claimant is a disabled person by virtue of her condition of cardiomyopathy, a heart condition.

48. Did the following arise in consequence of the claimant's disability: the claimant's sickness absence record?

49. Did the Respondent treat the Claimant unfavourably as follows:

49.1	her suspension;
49.2	the disciplinary process;
49.3	the refusal to reply to her subject access request under data protection legislation;
49.4	her dismissal?

50. Did the Respondent do these things because of the Claimant's sickness absence record?

51. Has the Respondent shown that it did not know, and could not reasonably have been expected to know, that the Claimant had the disability?

harassment related to disability

52. It is agreed that the Claimant is a disabled person by virtue of her condition of cardiomyopathy, a heart condition.

53. Did the Respondent engage in conduct as follows:

    53.1 Pressuring the Claimant to work without pay and/or to take annual leave in place of sick leave?

        53.1.1 in the Respondent's letters of: 16/01/2017, 25/01/2017, 03/02/2017, 24/02/2017, 16/03/2017, 20/04/2017
        53.1.2 At a meeting on 29/03/2017 [It was agreed that the inclusion of this would be kept under review as to whether it was prejudicial to the Respondent]

    53.2 Pressuring the Claimant to return to work from sick leave in 2017.

54. If so was that conduct unwanted?

55. If so, did it relate to the protected characteristic of disability?

56. Did the conduct have the purpose or (taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

Unpaid annual leave – Working Time Regulations

57. When the Claimant's employment came to an end, was she paid all of the compensation she was entitled to under regulation 14 of the Working Time Regulations 1998?

Breach of contract

58. The Claimant was entitled to notice of her dismissal. Was the Claimant paid correctly in lieu of notice?

Evidence and submissions

59. The Tribunal heard evidence on the Respondents' behalf from Former Head of Quality Assurance and Service Improvement for Children's Services (Second Investigation Officer), Director of Children's Social Care (Suspending Officer), Head of Early Intervention and Family Support (Initial Investigation Officer), Director of Environment and Public Protection (Disciplinary Officer), and the HR Consultant. The individuals are not named as this would identify the parties in the

case. As has been referred to above, another borough was involved in this case and it is referred to only as Borough X so as not to risk identifying the parties.

60. The Tribunal heard evidence from the Claimant on her own behalf and from her husband on her behalf.

61. There was a 878 page bundle and additional pages were added during the hearing by the Respondent. The Claimant also provided a supplementary bundle of 72 pages.

62. The Claimant had recordings on a phone of two different conversations with two different social workers at Borough X on 31 July 2018 and 7 September 2018. She also had a recording of the meeting on 20 March 2019 and what is claimed to be religious discrimination in that meeting. The Claimant was informed that if relevant these should have been disclosed to the Respondent and she was invited to do so during the hearing. The Claimant did not do so when asked. The reason was that she realised that her children were recorded talking in the social worker meeting on 7 September 2018 and the Claimant did not want to disclose this part and had not edited it out. In any event the Respondent did not agree to it being edited. It was proposed that just the Respondent's Representative listen to it as a solution but the Claimant did not agree. She was not happy to share the children's private life. The Tribunal decided that the Claimant therefore would not be able to rely on the document at pages 111-113 as, despite the Claimant's disagreement, it clearly reads as a transcript of that recording. This document was removed from the final bundle.

63. With respect to the 31 July 2018 recording the Tribunal took the view that exactly what was said in that conversation was not relevant to the claims to be considered, the Tribunal having not allowed this allegation as it was not within the further and better particulars. The Respondent considered it relevant to credibility generally but the Tribunal's approach is not to make global credibility findings, but findings fact by fact, based on the evidence in respect of each fact. Having not been persuaded of its relevance the Tribunal ignored the evidence of this conversation.

64. In respect of the meeting of 20 March 2019 the Claimant disclosed 55 seconds of the recording of that meeting, and not the rest, on the basis that she had realized that the recording captured private conversations between herself and her husband outside of the meeting. The Respondent did wish to hear the lead up to the 55 seconds as the Respondent's case was that the Claimant had mentioned she was a Christian earlier in the meeting, giving context to the 55 second conversation. However he did not press for the rest to be disclosed and the Tribunal considered the 55 seconds only.

65. The parties made oral submissions. The Claimant's Representative provided five written documents in total as written submissions. We read the document entitled the Written Address (part 1) (25 pages), the written submission provided on 27 November 2020 (14 pages) and a submission written by the Claimant's solicitor (5 pages). We considered it disproportionate to read the other two documents, a commentary on the grounds of resistance (18 pages) and the schedule of loss (13 pages). We explained to the Claimant that normally one written submission is

provided. We considered that commentary on the grounds of resistance should already have been covered in one of the other documents or the witness statements, or covered in oral evidence. We also explained the schedule of loss is relevant to remedy, though to the extent it had been referred to in questions of the witnesses, we had already seen it. The Claimant's representative objected to this approach as he had been relying on our reading all of the documents and so we ensured he had an hour lunchbreak before giving his oral submissions to check whether there was anything in those additional documents he wished to add orally. He said that there was nothing specific he had been able to identify and he did not refer to them in his oral submission.

66. Based on the evidence heard and the documents before us we found the following facts.

67. The case did not complete in the allotted time and was extended by a further 5 days including in Chambers. This was mad epossible by the Respondent's Representative reorganizing a longstanding meeting he had been due to attend in France.

Facts

68. The Claimant worked for the Respondent as a Family Support and Parenting Practitioner from 11 March 2013. The Respondent is a local authority with safeguarding responsibilities. The Claimant was responsible for working with vulnerable families including providing support and training on parenting skills.

69. It is clear that safeguarding children was a fundamental aspect of her role (page 368). The safety of the child/young person was to be the central focus. She worked to support the childcare provision of the Local Authority and with the local community and partner agencies. As part of her role she attended multi-agency specialist meetings on safeguarding.

70. Contrary to the Claimant's assertion, although smacking is not necessarily illegal, it is not encouraged in the Respondent's training to parents, and parents are encouraged to consider alternatives when managing behaviour.

71. Working Together to Safeguard Children 2018 is national guidance on safeguarding of children. This underpins the Pan London Child Protection Procedures, which in turn underpin each London Borough's own policies.

72. The Claimant has also been a School Governor and the safeguarding lead of a church based at her home address (as per the reference dated 7 February 2013). In the latter role the Claimant had provided safeguarding training to others.

73. We accept that in her work role the Claimant was expected to be aware of the framework and content of the safeguarding policies and where to go to consult them either on the internet or on her employer's intranet. In particular she should

have known her own obligations as a frontline practitioner working with families and children. We also accept that in these two extra-curricular roles the Claimant would or should have been aware of the relevant policies within Working Together to Safeguard Children 2018. We accept that churches and schools, and practitioners within those, are subject to the same safeguarding responsibilities whether paid or volunteers (page 70 Working Together). They should have policies in place with respect to safeguarding children and individual practitioners, paid or voluntary, should be aware of how they respond to safeguarding concerns and how to make a referral to local authority children's social care or the police if necessary (page 71).

74. Within the Borough's own policy it is clear that all staff have duties to report any child protection concern "immediately" which the Respondent clarifies means 48 hours (page 3 of the policy). If there is an allegation against an adult in a position of trust including members of staff these should also be reported promptly (page 6 of the policy). The Claimant we accept had been at training about allegations against members of staff. The Respondent says this training occurred on a specific date and the Claimant says she cannot recall, but does not actually dispute it. She accepted she had had annual safeguarding training.

75. The Claimant had a period of sickness absence from October 2016 until 6 February 2017. She had had a similar length absence in 2015 (page 799). On 16 January 2017 the Respondent wrote to the Claimant with respect to her absence. This letter informed the Claimant that there would be an Occupational Health referral and invited her to a review meeting on 25 January 2017. In the review meeting there was a discussion about a phased return on proportionate pay and that the Claimant's sick pay would reduce to half pay by, they thought, 4 February 2017 (meeting was recorded in letter dated 3 February 2017 at pages 397-399). In the event, on her return to work the Claimant was initially on a phased return on full pay. There was a third formal review meeting on 22 February 2017, followed by the letter at pages 405-408 (dated 16 March 2017). That confirms that the Claimant was to continue on reduced hours and full pay until 27 March 2017. It remained unclear when the Claimant would be able to resume full duties. The Claimant was advised that under the Respondent's process HR might recommend taking the case to "Chief Officer" hearing and that this would be considered on 29 March 2017. The letter went on to clarify that the decision to go to Chief Officer hearing is only taken where it is not possible to obtain a sustainable return to work on full duties. There are a number of possible outcomes of a Chief Officer hearing including seeking further information from Occupational Health, an extension of the review period, and redeployment on medical grounds. Dismissal from the service on the grounds of continued absence due to ill health is only taken as a last resort where there is no foreseeable and/or sustainable return to full duties. She was also told that after 27 March 2017 the service would not be able to continue to pay full pay if the Claimant was unable to return on a full time basis. She was told that further absence would be at half pay as she had exhausted her full pay entitlement. She was also told that whether or not she would get her next merited pay increase was to be considered.

76. There was a fourth review meeting on 29 March 2017 which is recorded in the letter dated 20 April 2017 on pages 797-799. The letter records that the Claimant

arrived 25 minutes late and she was reminded of the impact and asked to try to make sure she arrived promptly in future. By this time the Claimant was working 30 hours and working towards a resumption of full time hours in 4-6 weeks. She had a caseload of 12 cases compared to an average of 22 cases. She was told that she would need to decide whether to have a reduction in pay to reflect the hours actually worked or use her annual leave to make up the shortfall. She had to decide by the end of the week commencing 3 April 2017.

77. There was a further reference to a potential referral to the Chief Officer hearing due to the impact of her absences as the impact had continued following her return due to her reduced caseload.

78. It was decided no decision would be made until after the next review meeting. It was also confirmed that the Claimant would receive the merited pay increase as the Claimant was working towards full duties and the Respondent wished to be supportive.

79. At both meetings it was recorded that the Claimant said things were working well and she and her husband, who accompanied her, were pleased with the support received.

80. The next review meeting was on 17 May 2017 when the Claimant was back working full time and managing a caseload of 18. It was agreed the formal review process would be suspended (805-806).

81. The next dates of relevance are in June 2018, when on 20 June 2018 the Claimant's husband was arrested following an allegation by their older daughter (aged 16) that he had hit her. He was then bailed on condition of not returning home or contacting the daughters. Overnight between 23-24 June 2018 the Claimant became unwell and went to A & E in the early hours, with her husband. The children were left at home. The Claimant then called in sick from 25 June 2018.

82. The first that the Respondent became aware of the above situation was on 6 July 2017 when the Claimant called her Line Manager to request time off to attend a Child Protection Conference in respect of the above situation with the Borough where the family live (to be known as Borough X). This led to the Line Manager calling the Respondent's LADO (Local Authority Designated Officer) and completing the "notification of allegation against a professional" stating "Dad hit one of his teenage daughters". The LADO advised that the Claimant's Line Manager needed to do a risk assessment with respect to whether the Claimant could continue in her role following the involvement of police and social services in her personal life. She was told to contact the social worker in Borough X to establish the concerns.

83. The multi-agency Initial Child Protection Conference (ICPC) took place on 11 July 2018 and both the Claimant and her husband were present and the Claimant eventually accepted in evidence that the outcome was that a Child Protection Plan was put in place.

84. On 12 July 2018 the two respective LADOs of each borough were in contact and it is recorded that it was communicated that the case was complex and involved concern that "the father …not only physically chastises his 14 and 16 years old daughters but also forces them to drink dirty water. …contrary to what [the Claimant] has told you, there are concerns that [she] has also emotionally harmed her children too. There were concerns that the [Claimant] would be aware of what her husband was doing but will walk out to allow him to beat the children." The case was being treated as a criminal case (p415). The record of this conversation was not provided to the Claimant in the process.

85. On 15 July 2018 the Claimant's Line Manager reported to the Respondent's LADO the conversation she had with the Borough X LADO. She reported that there was a Child protection plan for physical abuse and concern about emotional abuse from the Claimant. She reported the concerns included that there were regular physical abuse incidents, it was not one off, and had been going on for a long time. The concerns about the Claimant also included that she would leave the room, that she had left the children overnight to go to the hospital and they did not know where their parents were in the morning, and that she had no capacity to reflect on the emotional needs of the children. It was also reported that she had called the emergency duty social work team and the girls wanted to be in care and the Claimant said she could not look after them any more and was considered to be preoccupied with her own health needs (pp420-421). This was not provided to the Claimant in the process.

86. The Claimant was informed on 16 July 2018 of the need for a risk assessment to assess the implications on her return to work and was asked to give her authority for the Borough X social worker to share information about the referral to the Respondent (422). She was also asked on the same day to provide the medical certificate for her current absence. Also on 16 July 2018 there was a further message from Borough X social work team confirming both children were placed on a Child Protection plan in part because of the Claimant's failure to protect the children from the abuse she had witnessed and that concern continued about her lack of acknowledgement and the father's continued influence and control over the household despite not being present in the home (424). This was eventually provided to the Claimant in the disciplinary process.

87. There was an informal meeting between the Claimant and her Line Manager on 24 July 2018 before the Claimant was invited to a formal meeting on 26 July 2018 with the Director of Children's Social Care. She was told the purpose was to make a decision about whether there was any risk of the Claimant returning to her role as the Respondent had to ensure that no children in her work life would be placed at the same risk that had required her children to be put on a Child Protection Plan. The Claimant was again accompanied by her husband. The outcome was to

suspend the Claimant on full pay pending completion of an investigation under the disciplinary procedure. She was offered HR support. There was no mention of annual leave during suspension, but nor was the Claimant told to make herself available at any time (p441).

88. The Claimant had pre-booked leave from 30 July 2018 until 17 August 2018 which she did not cancel.

89. The Respondent organised a meeting entitled Initial ASV meeting about the Claimant's children, naming the Claimant as the alleged perpetrator. At that meeting were the LADO, the Head of Service, the Claimant's Line Manager and HR along with the social worker at Borough X. The minutes record more details of what the children had reported and how afraid they were said to be. The Borough X social worker said that they would be considering a child protection plan irrespective of the Claimant's husband due to the Claimant's own role. Their concerns in regards to the Claimant were that she failed to prioritise the safety of her children, failed to disclose the safeguarding concerns, turned a "blind eye" to her husband's behaviour and equally emotionally harmed her children. The Respondent did raise with Borough X the risks related to the roles the Claimant and her husband had in their church, which met in their home. It was recorded that they were refusing Child Protection visits. The Borough X social worker is recorded as saying she was going to visit the family following the meeting. It is also recorded in an action point that she would inform the Claimant of the need to ensure she had no unassessed or unsupervised contact with children as part of her church work (p446-451). These minutes were not provided to the Claimant as part of disciplinary. She was however provided with p445 which further listed Borough X's concerns including that her alleged failure to protect and complicity to the abuse further exacerbated the risk to the children. It listed a number of specific concerns about both parents' behaviour.

90. The Borough X social worker then contacted the Respondent's LADO on 31 July 2018 after her unannounced visit. She records having spoken with the siblings and their approval of the action being taken by Borough X. About the Claimant she said: "My meeting with [the Claimant] did not go well. .. This visit further indicated that the children [remain] at the risk suffering significant harm" (p444). This was provided to the Claimant in the disciplinary process.

91. As set out above, the Claimant had a different account of this meeting and a recording of it but it had not been disclosed and we considered what actually was said was not relevant. What is relevant is what the Respondent was informed by the Borough X social worker. We accept that the Respondent's information about that meeting is reflected in the contemporaneous email at p444 and in the minutes of the ASV meeting preceding it.

92. The Respondent completed the risk assessment and then the Claimant, by letter dated 15 August 2018, was invited to an investigation meeting with Head of Early Intervention and Family Support on 30 August 2018. The Claimant acknowledged it on 15 August but said it clashed with a hospital appointment. It was therefore rearranged for 5 September 2018. Again the Claimant attended with her husband.

93. The Claimant's position in the meeting was that the allegations did not involve her and all the allegations were unfounded and that that was the conclusion that had been reached by Borough X and no further action was being taken. They said there had been a complaint against Borough X which was being investigated. She said the daughters were not at risk and were at home and she had not been told whether they were then on a child protection plan. The Claimant is recorded as saying she and her husband reserved the right to smack and to show disapproval by silence for a short period. When asked about how these practices fit with her training at work to recognise safeguarding the Claimant said smacking is not illegal and it is about whether there were marks. The Claimant's husband is recorded as saying they had contacted social services for respite when the Claimant was admitted to hospital. They confirmed they had received a long report of about 70 pages from Borough X the night before the child protection meeting. The Claimant called the whole process a "debacle" and a "storm in a teacup" (pp461-467).

94. On 1 October 2018 the Borough X social worker communicated to the Respondent's LADO her view that the family was engaging and working towards positive change and she was recommending the family come off the child protection plan and be downgraded to "children in need" (recorded in the email on page 469). However she went on to say in the email on 3 October 2018 to the Respondent's LADO that there had been a review conference with the Claimant and her husband and this had changed her view because of their decision to totally disengage from all services. She recorded that she remained concerned about their poor insight to parenting around discipline and the girls' emotional well-being. She specifically said she had a concern about the Claimant returning to work and working with vulnerable parents. She confirmed the child protection plan remained in place (page 469). This was shown to the Claimant in the disciplinary meeting.

95. On 3 October 2018 the Claimant had sent an email to Borough X with letters attached from her children disengaging from all forms of intervention. The email contains a complaint that the review conference had discussed downgrading or closing the case but that this had been overridden by the Chair who had wanted the child protection plan to remain in place. By this time it had been confirmed the Police were taking no further action. She therefore knew that the outcome of that meeting was that the child protection plan remained in place (p468). This was before the disciplinary meeting.

96. She said in evidence that she thought her email of 3 October 2018 ended the child protection plan however we accept the Respondent's evidence that that is not possible. We also do not consider her email reflects that she believed that. The process is that either the matter is formally downgraded, or it progresses either by court order, parental consent or the children's consent, if they are considered old enough. Since none of the above had happened, the child protection plan remained in place, as confirmed by the social worker. The Claimant had received no information otherwise. We find she knew that it continued and that was her complaint against Borough X (that it had continued to be in place when in her view it should not have).

97. The Claimant's suspension was reviewed on 4 December 2018 and the decision was that it should continue as the investigation was ongoing (470).

98. On 19 December 2018 the Borough X social worker updated the Respondent's LADO that both children remained under a child protection plan but there was still a hope that this would be stepped down to the lower level of "children in need" after a second review due on 7 January 2019. The Respondent was informed that one daughter was in a placement as a looked after child since November 2018 due to allegations that her father had slapped her across the face. The other child was potentially to be placed and become a looked after child. She said that the parents continued to disengage and that their threatening behaviour and alleging false accusations continued against the teacher involved (471). This update was before the Claimant at the disciplinary meeting.

99. The Claimant was invited to a further fact finding meeting on 25 January 2019 but this did not take place. She was invited again to a meeting on 20 March 2019. The Claimant and her husband attended the meeting and wished to record it. The Head of Early Intervention and Family Support and the HR Consultant were in attendance. They did not agree to the recording and the substantive meeting did not go ahead. It is in this meeting that the Claimant and her husband say the HR Consultant engaged in aggressive "Bible Bashing". It is clear from the 55 second recording, and is accepted by the HR Consultant, that in the context of explaining why the meeting could not be recorded she said "actually the Bible says that you should respect authority" before going on to explain that as the Claimant's employer they did not consent to the recording of their voices. The Claimant's husband replied with words to the effect that "if you read your Bible properly you would understand that it is only to the extent that what the authority is doing is right". The HR Consultant said they were not doing anything wrong and there could be potential breaches of GDPR and data protection for example because names of other people would be mentioned. Her voice remained measured throughout and does not sound aggressive. The Claimant and her husband said that despite this the aggression was evident from her face. The Claimant's husband, but not the Claimant, said in evidence she had banged the table. There is no sound of a table being banged on the recording. We find from listening to the recording that we prefer the HR Consultant's evidence that she was not aggressive. We also find from listening to the recording that the Claimant's husband himself was speaking forcefully. We note that the evidence of the Head of Early Intervention and Family Support was that it seemed an even-handed exchange.

100. There is a dispute about whether or not the Claimant or her husband had said they were Christian earlier in the meeting. They say it was not mentioned and have not disclosed that part of the recording to enable the Respondent to check. The HR Consultant believes that Christianity was mentioned but in any event says she was aware from the paperwork that they had a church that met in their home. In the absence of the recording showing otherwise, we accept that something about Christianity was mentioned by the Claimant or her husband prior to the statement in question by the HR Consultant. Otherwise, there is no context to the statement

about the Bible being made and we find it more likely that there was some context. The meeting did not go ahead so the Claimant was not forced to participate in an unrecorded meeting. Instead it was agreed that the matter would be dealt with in writing in the form of the Respondent providing the Claimant with their questions.

101. The Claimant also made a subject access request on 20 March 2019. It was very broadly phrased to include in the request all information about her, including all external and internal sources that mentioned her name. Given her length of service and her role in the Respondent this was likely to be a lot of material. The Claimant said in evidence she wanted to understand the information behind the investigation but did not specify what in particular she required in relation to the fact finding investigation which was not even mentioned (p476). This was received by the Head of Early Intervention and Family Support who passed it on to the relevant department in accordance with policy.

102. The Respondent's questions were sent to the Claimant on 22 March 2019 and are at pages 483-485. Of relevance to the discrimination claims there were questions focused on the Claimant's husband and also whether there were any cultural or religious practices or approaches to discipline that she and/or her husband employed towards their children.

103. The Claimant responded at page 486. She accused both the Head of Early Intervention and the HR consultant of being "less than honest" and "rather disingenuous" as she had seen only a one page document of questions in the meeting. She said the questions were "vexatious" and "annoying" and even prejudicial. She questioned the relevance of the questions to her job and what gave the Respondent the right to intrude into her privacy and that of her husband and children. She said she had never witnessed any abuse and asked them to stop all the vexatious allegations. She said that the Borough X social worker had apologised unreservedly on behalf of herself and the Borough. She ended "please stop the witch-hunting and return me to my job forthwith". She did not go through and answer each of the questions.

104. The Respondent asked the Claimant to provide documented evidence of the unreserved apology the Claimant said she had received on behalf of Borough X.

105. The Claimant's suspension was reviewed again on 28 March 2019 and was continued. The suspending officer did say in writing that she would be prepared to explore the possibility of temporary redeployment. It was made clear that it would be a temporary measure pending the conclusion of the investigation.

106. In her emails dated 21 March 2019 and 3 April 2019 the Claimant referred to and complained about matters relating to the aborted meeting on 20 March 2019 but made no complaint about the alleged "Bible Bashing" to which she now refers. Also in the email dated 3 April 2019 the Claimant responded to the offer of redeployment saying it was preemptive and prejudicial and she preferred to await the conclusion of what she referred to as the "so-called "investigation"" which she said was a "complete sham and a charade and indeed…a Kangaroo Court".

107. The Head of Early Intervention completed her investigation report just before taking sick leave absence beginning 29 March 2019. This report recommended that there was a case to answer that needed to be taken to a disciplinary hearing (pp 496 to 503).

108. In the meantime the Claimant responded with respect to the Respondent's request for documentary evidence of Borough X's alleged apology on 3 April 2019 stating "I don't have to prove anything to you or anyone else; because I haven't done anything. The position of the law is clear: (s)he who alleges must prove. So, the burden of proof is (in fact) on you; not me."

109. A new investigator took over due to the previous investigating officer's sick leave. She introduced herself to the Claimant on 10 April 2019 and addressed a number of matters the Claimant had raised (pp513-514).

110. HR drafted the invitation letter to the Claimant dated 12 April 2019 based on the investigation report (pp534-535). That letter makes clear that the matter is considered Some Other Substantial Reason (SOSR) though this term was not explained. The allegations were set out to be that there had been "an irreversible breakdown in the working relationship in relation to the following matters:

    1. As a result of a social care referral by [Borough X] on 11 July 2018, allegations of emotional abuse were made by your children against you. This was further to an incident on the weekend of 23/24th June 2018, when your daughter disclosed to the police that her father had hit her;

    2. Allegations of emotional neglect of your children;

    3. You failed to protect your children from regular incidences of physical abuse in the family home from their father. As a result your children were placed on a CP plan for physical abuse; and

    4. Your style of parenting in the home is called into question as being in contradiction and incompatible with your role and duties as a Family Support and Parenting Practitioner in Children's Services.

    5. Failure to adequately engage in the process with the Respondent, including but not exclusively relating to your failure to provide a satisfactory explanation for the allegations made by your children."

111. The letter said that the Claimant would receive the management documents one week before. She was told she had to provide her own documents by 6 May 2019. She was given the right to call witnesses. She was warned that the Council considered the allegation to be serious and that one outcome, but not the only outcome, could be dismissal.

112. The documents were sent to the Claimant on 3 May 2019 by email and post but due to the bank holiday the claimant did not receive the hard copy until 7 May 2019. She raised this in an email and so the Respondent rescheduled the meeting. The Claimant then objected saying she had still wanted it to go ahead on 10 May 2019 and had spent some time preparing. The Respondent then accommodated this and reverted to the original date. The disciplinary bundle did not contain all contact that the Respondent had had with Borough X but it did contain those documents indicated above and in the disciplinary hearing index. The Claimant was provided with all the material considered by the panel. There is no evidence to support her contention that the panel referred to material that was not in the bundle provided to her or in her own documents.

113. The Claimant was not provided with the first investigation report but nor was it before the disciplinary panel. The second investigation officer had written her own management case, based on that report, which was provided to the Claimant. There was a brief reference to the Claimant having been on sick leave until 25 July 2018 and awaiting medical appointments. There was reference made to the Claimant's husband's alleged strong influence over the Claimant and that at both fact finding meetings he had answered for and spoken over the Claimant. The Claimant was also provided with her Line Manager's witness statement. This included the concerns that had been relayed to her Line Manager by the Borough X LADO both verbally and as referenced in the emails at pages 414-415 that had not been disclosed (see paragraphs 84-5 above).

114. The disciplinary hearing then took place on 10 May 2019 chaired by the Director of Environment and Public Protection. The Claimant took 57 pages of documentation with her to the hearing which she had not previously provided as requested (pp569-580). Nevertheless the Chair allowed it and considered it, apart from the transcript of the meeting with the social worker that we have also excluded from evidence. This was excluded by the Chair on the basis there was no consent from the social worker. The Claimant had the opportunity to ask questions of her Line Manager who was a witness.

115. Although the Claimant was not provided with every communication between Borough X and the Respondent we consider she had sufficient information by the disciplinary meeting to understand the case against her. The Respondent was constrained by the fact that it was a third party (Borough X) that was conducting and actively managing the alleged child abuse case, see for example the reference in the disciplinary hearing to not being able to disclose the report from the social worker due to confidentiality. It remains the case that the panel had everything the Claimant had. When asked in evidence if everything from Borough X was in the disciplinary hearing bundle the Second Investigation Officer said she was only aware of what was in bundle. The report for the Child Protection conference report not provided but the Claimant had a copy of this.

116. The Claimant's stance at the outset of the disciplinary hearing was that she would not answer questions verbally, but she was then encouraged to do so and did. The Claimant and her husband raised the fact that they had not had a complete response to the Subject Access Request, but not how that would, if at all, impact the disciplinary (p588).

117. The Chair expressly asked her if her children were still on a Child Protection plan and her husband answered that they were not. He was not corrected by the Claimant. This happened again later in the meeting. The answer "no" was given to this question three times. The Claimant said she had not been at a child protection meeting on 7 January 2019. It was explained during the hearing that Borough X can only share information in respect of the Claimant's employment, not her children.

118. The meeting was adjourned at 7pm and the expectation was that the meeting would resume for the Claimant to state her case on 14 June 2019. She was provided with notes of the meeting on 5 June 2019 and responded with her lengthy comments, stating there had been bias in the note taking. She said that she had said she had concerns about the independence of the Chair and the HR representative as he was a budget holder and HR were part of management. She noted that he had tried to assure her of his independence saying he would follow procedures strictly and that he was neutral. He had never met any of the parties before. She clarified that she had said the Subject Access Request remained completely outstanding. We note that this was an 11 page densely written document and many of the issues raised lacked substance. It is hard work to find the issues of substance buried within it. Nevertheless we accept that the Respondent did include it in the later stages of the disciplinary process.

119. There was a covering letter (p612). The Claimant said there that she would not be attending the resumed meeting on 14 June 2019 until a list of conditions were satisfied, as follows:

> "(1) I receive firm assurance of reasonable mitigation of the continued misrepresentation coupled with reasonable apprehension stemming from the way I was badgered and attacked at the last meeting which makes me uneasy about attending another meeting.
> (2) That indisputable audio records are permitted for reference purposes if what people actually said are ever disputed,
> (3) the continued breach of my SAR rights are rectified immediately
> (4) all my statements admitted in [their] entirety (including but not limited to pages 14-16) and I herewith attach the said minutes per omitted pages 14-16.
> (5) A copy of the said risk assessments and such other documents as I have repeatedly requested in my various representations are immediately sent to me
> (6) Assurance that the chair ….will also read all my presentations over and over just as thoroughly as he has read the management presentations."

120. She wanted to continue the meeting in writing.

121. In the meantime further information was provided on 11 June 2019 by the Borough X LADO as set out at pages 617-618. In essence it was reported that following an allegation that her father had slapped her across the face one daughter had been made a Looked After Child on 21 November 2018. It was also reported that on 24 January 2019 the other daughter was locked out of home and went to her sister's foster placement and alleged that her father had slapped and kicked her the day

before. She was taken into police protection. The Claimant and her husband were said to have refused to participate in the child protection investigation and the second daughter reported not feeling safe to return home as her father had said she would be beaten to death and she was asked to leave with her belongings. She had then become a Looked After Child on 28 January 2019. Both continue to be looked after under s20 Children Act 1989. As the parents had not consented the Respondent concludes that this was with their own consent, given their ages. Borough X reported that there had been home visits, telephone calls and letters sent to both parents and there had been no further communication. This information was not provided to the Claimant in advance of the resumed meeting.

122. On 12 June 2019 the disciplinary Chair wrote to the Claimant saying he believed it was in her best interests to attend the resumed meeting and that it would still be going ahead. He confirmed he had read everything she had presented and that he would like to ask further questions. He repeated it was in her best interests to have the opportunity to present her case and answer questions, which may be challenging but fair. He said that any points she raised would be given his full consideration. He reiterated that he was independent as he had had no prior knowledge of the case. He explained that if she did not attend he may go ahead with the meeting without her.

123. The Claimant replied claiming that he had not addressed her concerns. She said she was only happy to respond to his questions in writing and asked him to send his “challenging” questions to her. She proposed she would also send questions. She said his definition of independence was limited. The Claimant’s concern with the Chair was that he was an employee of the Respondent and a budget holder and part of the management team. She said he had already demonstrated significant compromise, bias and lack of independence, that the management case was “frivolous” and his decision was predetermined.

124. The disciplinary Chair confirmed in response that the hearing would still go ahead. The Claimant was invited to send further information. He reiterated that he was independent with no prior knowledge of her case and the hearing was her opportunity to put her case.

125. The hearing did go ahead although the start was delayed to see if the Claimant would attend and there were unsuccessful attempts to call her before the hearing proceeded in her absence. At that hearing the investigation officer presented the update from Borough X, which the Claimant would have heard had she attended. She confirmed that the Respondent’s LADO had provided an update from the Borough X LADO regarding the care status of the Claimant's children, namely that both were currently in foster care, under the care of Borough X, and both had 'looked after’ status since the end of January 2019. The investigating officer stated that this information had not been available to her at the last hearing on 10 May, and she had asked for an update as a result of the last meeting.

126. The outcome of the disciplinary hearing was sent to the Claimant on 27 June 2019. In that the Claimant was informed of the update from Borough X as follows:

"Information sent to the [Respondent] by [Borough X], prior to the second stage of the hearing, advised that that one of your children has been in foster care since 21st November 2018 and your other child has been in foster care since 28 January 2019. This is information that you would have been aware of at the first stage of the hearing on 10 May 2019, but you did not disclose this to us".

127. The update was provided in the decision letter along with reference to all the times the Claimant had made statements inconsistent with it. The disciplinary Chair found all the allegations proven for the reasons stated in the letter at pages 636-637. In conclusion he found that serious safeguarding concerns existed and would continue if the Claimant returned to her role. He emphasized the need for upmost trust and confidence due to the vulnerability of the client group. He considered this trust no longer existed. He considered she had deliberately withheld the information of her children being in foster care. He found an irretrievable breakdown in trust. The decision was to dismiss the Claimant but she was paid her six weeks' notice in lieu.

128. The Claimant appealed at pages 642 – 646. The basis of her appeal was that it was a predetermined decision and the disciplining officer was biased; her concerns had not been addressed; her Subject Access Request was not responded to; she was stopped and questioned at every word by the disciplining officer. She continued to say that the Borough X process was a witch-hunt and that the family including the children had exercised their right to withdraw, meaning they were never and were still not on a Child Protection plan. She complained about the additional information provided. She referred to letters from her children where she said they were clearly refusing being on a care plan and the apology in her recorded transcript that was not admitted in evidence. It is not clear whether the letters from the children were actually provided by the Claimant. The disciplining officer saw them for the first time, heavily redacted, in these proceedings. The Claimant said the decision to dismiss was purely and solely based on an alleged child protection plan that was completely null and void because all the allegations on which it was based are unfounded and therefore no plan existed.

129. The Claimant was invited to an appeal on 7 August 2019 chaired by the Executive Director of Environmental and Community Services. The disciplining officer was in attendance to present his decision. The Claimant was sent a hearing pack on 24 July 2019. She said at page 655 that she was unable to attend but had already said everything in writing. She made some additional points that were either repetition or not of substance. There was nothing factually new in what she raised at the appeal stage. There was no further evidence about what had happened to the children for example.

130. She was asked to reconsider the decision not to attend and invited to provide further information. The appeal went ahead in her absence. Despite the Claimant's non attendance this was a proper hearing and the Executive Director sought to understand her complaints and address them thoroughly. He highlighted four grounds of appeal as set out on page 663. Namely: breach of policies and

procedures; violation of fundamental rights under SAR, GDPR and human rights legislation; breach of the right to a fair hearing; and that the chair was biased. Having read the Claimant's submission and heard the disciplining officer's response he was satisfied policies and procedures had been followed and the disciplining officer had had no previous involvement or knowledge of the matter. He was satisfied the Respondent were right to request information from Borough X and only information relevant to the employment was shared. He noted the SAR request had been partially responded to and said it was not clear what the relevance was of the remainder. He was also satisfied the Claimant had had the right to a fair hearing but chose not to exercise it by not attending. He considered she had the opportunity to explain her children's care status but failed to disclose information which she and her husband were aware of and found that she deliberately sought to mislead the original hearing. He was satisfied there was no bias and the decision was reasonable in all the circumstances. The decision was upheld (pp 662-669).

131. On 16 August 2019 the Head of Information Management apologised for a lack of a response to the Subject Access Request. She said she would be responsible for handling it going forwards. She explained the magnitude of the request and asked, apart from information held by HR was there any particular information required (p670). The Claimant replied on 26 August 2019. She said she wanted everything that mentioned either her, her husband or her children. She said she did not really know what the information was, where it was held and who it had been shared with. This was an expansion of the request, rather than a narrowing down. The response from the Respondent on 13 September 2019 was to ask for the names and dates of birth of her children and for confirmation that she had her husband's consent. That email said the clock would stop on the request until she provided an adequate response. We are not told that there was a response from the Claimant or that she ever provided the required focus to assist with narrowing down the request.

132. The Claimant had a further right to appeal to a Panel of Councillors which she exercised by way of a further 10 page appeal on 26 August 2019. She took issue with the disciplining officer having been a witness at the previous appeal. She raised that the dismissal for some other substantial reason was a "red–herring" to achieve a longterm aim to dismiss her for sickness and sickness absence, budgetary pressures and lack of a social care qualification. She described the allegations as "bogus" and that it was "ridiculous" to say that they were proven. She said that her stance in respect of her own family had been "perfectly along the lines" of her job description. She accused the disciplining officer of lying (p678). She described Borough X's process as a witch-hunt. With respect to whether her children were still on a care plan, she did not provide any contradictory evidence to challenge this, but merely asked to see the evidence that she had known about this. She said that there should be a court order if the children were in Borough X's care and disputed that she had seen any court proceedings. She accused the disciplining officer's approach as "stinking of blind sightedness and pompous arrogance". She said the decision was oppressive and repressive and asked to be reinstated. She asked for the matter to be dealt with on paper and requested the panel write to her with any questions.

133. She was invited to a hearing with the panel of councillors on 27 September 2019. She was warned that they might hear the appeal in her absence if she did not attend. The meeting took place in the Claimant's absence (pp713-724). Again this was very thorough despite the Claimant's lack of engagement. The same grounds were looked at and an additional ground of "false cause, invalid premise, and inconsistencies". The outcome is at page 725. That clarified that the additional information provided in respect of the children's care situations was only provided orally as it would have been in breach of the Human Rights Act and Data Protection Act to share the document itself. The oral content had been recorded in the outcome letter dismissing the Claimant.

134. The Committee agreed that GDPR did not preclude the Council's access to information in respect of safeguarding decisions. They noted the correspondence in August about the SAR request and that the Claimant had had an opportunity to ask for specific information and could have included it in her appeal. They were satisfied that the documentation relating to sickness had not been a factor in the decision to dismiss. They said that although there had been passing reference to sickness and the length of suspension in the management report and/or the decision letter these were not the basis for dismissal. The reason for the dismissal was the evidence of serious safeguarding concerns and the irreversible breakdown of trust and confidence.

135. With respect to the assertion that the allegations were false the Appeal panel set out that there was a multi agency Child Protection Conference in 11 July 2018 and the children were placed on a child protection plan for physical abuse and this meant that the majority view of the conference was that the children were at risk of significant harm. The Claimant would have been aware of the child protection plan. They set out the Respondent's view that this was a multi-agency view and could be relied on. The Respondent did not have the conference report. The Claimant was asked to provide it and had declined. They stated that although the Claimant had provided a significant amount of written material and referred to other material which grossly contradicted the information from Borough X she either did not provide the evidence or provided only extracts meaning the information was not reliable. It was considered the Claimant had not cooperated with the investigation in this regard. The y considered in these circumstances it had been reasonable to rely on information from Borough X. In summary the appeal was rejected as the procedure had been fair and reasonable, the evidence supported the conclusion the Claimant had withheld information about the children's care status and that serious safeguarding concerns existed, and that it was reasonable to find that the Claimant's approach to the investigation and hearings had contributed to a loss of trust and confidence and an irreversible breakdown in the working relationship. They considered the breach so serious and fundamental that it would never be re-established.

136. We were provided an update from Borough X dated 18 November 2020. The younger child remained a looked after child with Borough X. The older child who is now 18 was a care leaver. The Claimant said she did not know the ongoing status of her children, although ultimately admitted she had known about the child protection plan at the time of the child protection conference. The Claimant's

evidence to us was that the child protection plan had then been brought to an end when she withdrew engagement with Borough X. She said that her belief was that her children were, with their parents' consent, staying with friends. However we do not accept that evidence. We prefer the overwhelming evidence that the plans continued until the children became looked after. We were told that a parent cannot simply bring a child protection plan to an end for the obvious reason that that would leave unprotected children at risk in the community. It would have to be a decision from the multi-disciplinary conference to scale down the intervention. There was no evidence this had ever happened, instead the matter had escalated with the children becoming looked after. With respect to the children becoming looked after there are three mechanisms for this. Either the parents, or the children themselves if the children are old enough, can consent. It is only if there is no consent that there would need to be a court order. There is no suggestion that there have been court proceedings, and the parents clearly have not consented. The reasonable inference therefore is that the children themselves have consented.

137. The evidence from the Respondent, which we accept, is that it is inconceivable that parents would not know and be kept informed of their children's status. The Claimant said that they remained in dispute with Borough X and had engaged a solicitor to seek information but otherwise she has never provided the detail of this dispute.

138. With respect to the Claimant's annual leave claim. She had booked annual leave prior to her suspension, for 30 July 2018 to 17 August 2018. She had not cancelled it, though her evidence was that she had not taken it. She said that when she had holiday during sickness absence she had cancelled it after the event, after her return to work, though in fact the system is accessible from home. The Respondent had said she should make herself available during suspension, and had not been specific about the implications for leave, though the HR number had been provided for any queries. The Claimant was not expected to attend a meeting during that period. She was sent an email on 15 August 2018 inviting her to the investigation meeting on 30 August 2018 (p456). The Claimant did reply on 15 August to say she had a hospital appointment and the meeting was ultimately rearranged. She could equally well have replied after the dates she had booked for leave. The rule is that untaken leave that is carried over is to be taken before the end of May the following year, so even if the 2018 leave had been cancelled it needed to be taken by 31 May 2019. It was not.

139. The Claimant was paid her accrued and untaken leave for the 2019 leave year up to the date of her dismissal of 30 June 2019. She was paid £700.73. This was based on her entitlement in addition to bank holidays and therefore did not take account of the fact there was a disproportionate number of bank holidays (4) in that period.

140. Her pro rata accrued entitlement was 7 days. She had had 4 bank holidays leaving 3 days remaining to be paid at a daily rate of £140.92 giving a total of £422.76. She was therefore overpaid.

141. The Claimant was also paid in lieu of notice. She was paid £4,216.34 which the Respondent said represented 6 weeks' notice. We calculate the Claimant's gross weekly pay as £704.61 based on her previous payslips (p752). So the notice pay should have been £4,227.66. There was a shortfall of £11.32 but this was compensated for in the overpayment of annual leave.

Relevant law

Unfair dismissal

142. The test in relation to ordinary unfair dismissal is contained in section 98 of the Employment Rights Act 1996. Section 98 provides:

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

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

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

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3). . .

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as

a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

143. In applying section 98(4) the Tribunal are not to substitute their own view for that of the employer. The question is whether the employer's decision to dismiss fell within the range of reasonable responses open to the employer, or whether it was a decision that no reasonable employer could have made in the circumstances. The range of reasonable responses test applies as much to the investigation as to the substantive decision to dismiss *Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23.

144. *Article 8* of the European Convention of Human Rights covers the right to respect for private and family life, home and correspondence. Article 8 (2) states "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

145. We were referred to the case of Q v Secretary of State for Justice (UKEAT/0120/19/JOJ) and the guidance where article 8 rights are raised. We had regard to paragraphs 54 and 57 and the guidance that is repeated there from the cases *X v Y* [2004] ICR 1634 and *Hill v Governing Body of Great Tey Primary School* [2013] ICR 691 (upon which the list of issues in this case was based).

Direct Discrimination – marriage/religion

146. Section 13 Equality Act 2010 states that A person (A) discriminates against another (B) if, because of a protected characteristic, including being married or having religious belief, A treats B less favourably than A treats or would treat others. When making the comparison between B's treatment and the treatment of other cases, section 23 provides that there must be no material difference between the circumstances relating to each case.

Discrimination arising from disability

147. Section 15 Equality Act states that a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability, and A cannot show that the treatment is a proportionate means of achieving a legitimate aim. The above does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

Harassment

148. Section 26 Equality Act 2010 defines disability related harassment as unwanted conduct related to disability, which has the purpose or effect of violating the employee's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee. In deciding whether the conduct has the required effect the Tribunal must take into account the employee's perception, the other circumstances of the case, and whether it is reasonable for the conduct to have that effect.

Conclusions

149. We considered the substantive issues first (rather than the issues in respect of time limits). Given our findings in respect of these it was not necessary to consider time limits, and apart from in respect to the harassment claim, we have not done so.

Unfair dismissal

What was the principal reason for dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")? The Respondent asserts that it was some other substantial reason.

150. We accept that the reason for dismissal was that the Claimant's children had been put on a child protection plan for physical abuse and then became looked after by Borough X, not just because of the allegations against the Claimant's husband, but also because of concerns about her own parenting, and this was considered incompatible with the Claimant's role working with the most vulnerable families. In addition she had not cooperated with either the investigations of Borough X nor those of the Respondent and the Respondent found she had deliberately misled them. It was also found that the way she had conducted herself during the Respondent's procedures evidenced an irretrievable breakdown in the working relationship. We accept these fall within the definition of "some other substantial reason".

If so, was the dismissal fair or unfair in accordance with ERA section 98(4), and, in particular, did the Respondent in all respects act within the so-called 'band of reasonable responses'?

151. The Respondent is a public employer and there was no dispute that the circumstances of the case fall within the ambit of article 8. We first considered the issues with respect to the Claimant's article 8 rights as follows.

Has there been any interference with the Claimant's article 8 rights?

Is any interference:

(i) *In accordance with the law? That includes statutory, employment contract and any common law duties.*

(ii) *In respect of a specified legitimate purpose? In this case safeguarding children.*

(iii) *Is necessary? I.e. no more than proportionate to the importance of the particular aim the interference seeks to serve.*

In the case of a public body, as here, the Tribunal must consider whether the employer has weighed the impact of the dismissal upon the Claimant's Convention rights, and whether it is proportionate.

152. In the parties' list of issues it was said that it was accepted that there was interference with the Claimant's article 8 rights in the requirements imposed on the Claimant to disclose the following, as set out in paragraph 29 above. Namely:

151.1 Allegations against her husband of abuse of her children and/or his arrest by the police for such matters.

151.2 The involvement of Borough X concerning safeguarding issues as to the conduct of the Claimant herself.

151.3 That her children were deemed at risk by Borough X.

151.4 That her children were made the subject of Child Protection Plans (CP Plan) by Borough X.

151.5 That her children were placed with foster carers and were looked after children under the Children Act.

151.6 As the Designated Safeguarding Lead of the Claimant's church (relevant to capacity in her role and trust and confidence):

151.7 That there were allegations of child abuse against her husband, the Pastor, leading to his arrest.

151.8 That there were allegations of child abuse against herself, an Associate Pastor and the designated safeguarding lead.

153. We note that the Claimant voluntarily contacted the Respondent and informed the Respondent of her husband's arrest and the multi-disciplinary child protection conference because she wanted the time off. Otherwise,

ultimately the failure to report the arrest of her husband promptly and the failure to raise the matter as the safeguarding lead of her church were not reasons for the dismissal.

154. We consider we only need to identify what article 8 rights the dismissal engaged. It did rely on material from Borough X raising very private matters about the Claimant's family which certainly engage article 8. We note the Respondent's Representative drafted the list of issues with reference to the case of Q which is about a failure to inform the employer about relevant personal matters. In the end that was not the reason for the Claimant's dismissal. We agree with the Respondent's list to the extent that the material upon which the dismissal was based included the allegations against the Claimant's husband and herself; the view of Borough X that the children were at risk, that the children were subject to a child protection plan, and placed in foster care. In addition to that the dismissal was based on what Borough X said about the parents' non-cooperation with their processes. The Respondent also took into account the Claimant's failure to provide mitigating material that involved very personal matters relating to her family life. There was very personal questioning of the Claimant and her parenting throughout the investigation and disciplinary process, including the list of question sent on 22 March 2019.

155. We accept that both the ongoing communication with Borough X, the questioning of the Claimant about her parenting and family life during the disciplinary process, and the expectation that the Claimant herself should disclose matters in respect of her personal life in her defence all interfere with her article 8 rights.

156. Turning to whether the interference was in accordance with the law. Plainly it was. Both Boroughs are under a legal duty to safeguard children and there is a process to follow when there are safeguarding concerns raised in respect of a staff member. The policies being followed were Working Together, the Pan London Child Protection Procedures, and the Respondent's own safeguarding policy, all of which are underpinned by legislation, for example the various Children Acts, which reflect the duties of local authorities to safeguard and promote the welfare of all children in their area. This includes ensuring children grow up in circumstances consistent with the provision of safe and effective care and taking action to enable all children to have the best outcomes. The concern here was in relation to the role the Claimant performed with respect to the most vulnerable families and whether she remained a suitable person to do that role.

157. The interference was for the legitimate aim of safeguarding children and this plainly falls within article 8(2) including public safety, the prevention of crime, and the protection of the rights and freedoms of others in a democratic society.

158. Turning to whether the interference was necessary and proportionate. It was necessary to gain information from Borough X and/or the Claimant given the Respondent's obligations in respect of safe guarding children and

procedures required when there is an allegation against a staff member. For the avoidance of doubt the safeguarding of children by a local authority is clearly a pressing social need. We do accept it was done in a proportionate way. The Respondent took care to use the process involving the LADO in each Borough communicating and then passing on information to the disciplinary and appeals process, which was carefully done to ensure only the necessary information was passed on. The background to this was the need to balance very carefully the competing interests of the welfare of the children and the need to fully explore the matter fairly with the Claimant and her chosen representative, who was the other alleged abuser. The questioning of the Claimant was to give her a fair opportunity to respond and explain how she could remain in employment despite the situation in her personal life, and offer any mitigation. It was also a way to ensure that the Respondent was not simply relying on Borough X.

159. We also do not find the sanction of dismissal itself disproportionate. The Claimant's role was part of the Respondent's fulfilment of their duty to safeguard and promote the welfare of children, especially the most vulnerable and it was proportionate to consider the Claimant was no longer suitable given the allegations against her by Borough X. By the time of the dismissal the decision was not just based on material obtained by way of interference with the Claimant's article 8 rights. It was the way the Claimant had handled herself during the process which evidenced an irretrievable break down in the relationship. This went far beyond a concern not to reveal personal information but included the insulting language against the Respondent's managers involved in the process, the refusal to participate at all and evident lack of trust in the Respondent generally. The Claimant was obstructive and uncooperative.

160. Turning to whether, in the case of a public body, as here, the Tribunal must consider whether the employer has weighed the impact of the dismissal upon the Claimant's Convention rights, and whether it is proportionate. This comes from paragraph 57 of Q, referencing the guidance from the case of Hill. What that actually states is that the Tribunal needs to consider whether the employer did such a balancing exercise in respect of the interference in the article 8 rights, but also come to its own assessment (as we have done above). However we had regard to paragraph 80 of Q which questions whether this is really necessary, our own assessment being decisive. Nevertheless, for completeness, we do consider this was considered by the Respondent in the appeals as set out at paragraph 130 above and page 729 for example.

161. It follows that we find the interference with the Claimant's article 8 rights justified and must then consider whether dismissal was reasonable in the usual way.

Was the dismissal fair or unfair in accordance with ERA section 98(4), and, in particular, did the Respondent in all respects act within the so-called 'band of reasonable responses'?

162. Whether or not the allegations were in fact true (and deciding that is outside our jurisdiction) the Respondent had reasonable grounds to believe that the Claimant's children were on a child protection plan, and later became looked after children, in part because of her own parenting. It was entirely reasonable to rely on information from Borough X, especially as fair opportunity was given to the Claimant to respond to and challenge that information. We agree with the Respondent that although the Claimant provided copious commentary on the situation and the process she did not at any stage offer any substantive evidence to undermine reliance on Borough X's information. There are also reasonable grounds to find the relationship was irretrievable based on the Claimant's own behaviour in the process including the language she used about the Respondent's managers.

163. A fair process was followed. The Claimant attended an investigation meeting. When she did not wish to participate in the next meeting without it being recorded then an alternative written approach was agreed. She was invited to two disciplinary meetings but chose not to attend the second. She had two stages of appeal, both of which looked into the matter thoroughly even though she did not attend. The Respondent never objected to the Claimant's choice of representative, namely her husband, against whom there were also allegations and which put the Respondent in a self-evidently difficult position, where there was a need to safeguard the children when information from Borough X was being discussed and the other accused parent was also present. The investigation was as thorough as possible without more cooperation from the Claimant.

164. We do not find any bias by those responsible for the conduct of the process. The disciplining officer gave evidence before us and we found he was independent of the circumstances and undertook his responsibilities with care. He was willing to allow the Claimant's late material. The Claimant's material was allowed at every stage with the exception of the recording of the social worker as it was felt that breached data protection as it was a covert recording. This was not unreasonable.

165. The Respondent also offered temporary redeployment during the suspension which we find reasonable and evidence that there was no prejudgment. The Claimant turned this down without any satisfactory explanation.

166. The Claimant was not provided with every communication with Borough X but she was provided with sufficient information to know the case she had to address and she had the same information as the dismissing officer and appeal panels. She was not informed in advance of the update provided at the resumed disciplinary meeting in June but she would have heard it if she had attended. She was informed of it in the dismissal letter, so she had opportunities to address it at both appeal stages. The Claimant likely had

much more detail about the allegations than the Respondent did, for example in the material provided in advance of and at the multi-disciplinary meeting which she did attend.

167. Whatever actually occurred between the Claimant and Borough X it was not unreasonable for the Respondent to infer that the Claimant was aware of the update provided in any event, as the normal expectation would be that the parents would be informed and the Claimant never substantiated her claim that she did not know about the status of her children.

168. It was well within the range of reasonable responses to dismiss the Claimant in the circumstances. It is hard to see what else could have been done. Although redeployment had previously been an option the way the Claimant behaved during the process meant it was no longer feasible as we agree the relationship had broken down.

If the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would still have been dismissed had a fair and reasonable procedure been followed ?

169. Even if (contrary to our view) for any reason the process was unfair the overwhelming evidence is that the Claimant's children were either on a child protection plan or looked after children, in part because of the Claimant's own approach to Borough X. The Claimant showed no insight into why these circumstances would impact on her role for the Respondent. She made statements about her attitude to parenting that were incompatible with the Respondent's values on parenting which she was trusted to promote with vulnerable families. She showed no insight into why her failure to cooperate in Borough X's investigation would impact on working with vulnerable families, evidenced by her arguments to the appeal that she had been working within her job description in her response to Borough X. We were told, and accept, that the priority is always where safe and possible to keep families together and what local authorities hope to see is parents willing to work with them to achieve that. In these circumstances we find dismissal was inevitable.

170. Moreover the way the Claimant approached the investigation and the disciplinary process and the descent of her language to being unnecessarily rude, hostile and antagonistic evidenced her own lack of trust and the irretrievable breakdown in the relationship. We agree that it is difficult to see how she could have continued in the Respondent's employment by that stage. She had turned down the chance to maintain and restore that relationship by rejecting the reasonable offer of redeployment.

171. It was not necessary to consider the other issues in respect to unfair dismissal.

Direct discrimination – marriage

Has the Respondent subjected the Claimant to the following treatment:

Alleging that the Claimant was "controlled" by her husband, when he accompanied her to all meetings.

172. The reference to "control" came from Borough X, see paragraph 86 above and mentioned on page 496 by the investigating officer. The investigating officer did in her report refer to the Claimant's husband's "strong influence", as was her genuine impression. This carried over into the second investigator's report and was before the disciplinary panel. It was not a factor in his decision.

Taking action against the Claimant because of her husband's alleged conduct.

173. The action taken was not specified in the allegation above, but the Respondent was careful to isolate the Claimant's own behaviour from her husband's. The allegations against her and the ultimate finding of dismissal were based on the allegations against her personally and her own conduct in the proceedings including her refusal to attend meetings and insisting on dealing with the matter in writing. She was not disciplined purely because of the allegation against, and arrest of, her husband. There were allegations made about the Claimant herself dating before the suspension decision.

Was that treatment "less favourable treatment", i.e. did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The Claimant relies on hypothetical comparators.

174. We do not find the reference to control to be unfavourable treatment. We accept it was the genuine impression of the investigating officer from her meeting with the Claimant and her representative and is relevant as the matter related to the Claimant's own ability to safeguard her children in the circumstances. It was not though a factor in the dismissal. We find that the investigating officer would have said the same about any employee representative who they perceived to be behaving that way, especially if they were also subject to the same accusations as those against the Claimant's husband.

175. We have not found that action was taken against the Claimant because of her husband's alleged conduct.

If so, was this because of the Claimant's being married and/or because of the protected characteristic of marriage more generally?

176. The reference to "control" was not because the Claimant was married. It was because she chose to have the other accused parent as her representative and it was the genuine perception of his conduct in the meeting by the Investigating Officer. Had she not had that perception of the Claimant's husband's behaviour she would not have made the comment.

177. We note that questions were asked of the Claimant as a married person. However this is because she is a married person and both she and her husband had allegations made against them as co-parents. We accept the Respondent would have asked the same questions of cohabiting or non cohabiting co-parents who were subject to similar allegations. It is not clear that these are relied on with respect to the above allegations in any event. There is repeated reference to the Claimant's husband as that is who he is and he was involved both as the other accused parent and as her representative.

Direct discrimination – religion

178. The Claimant relies on her Christian religion.

Has the Respondent subjected the Claimant to the following treatment:

Alleging that the Claimant and/or her husband beat their children and/or colluded in beating their children.

179. The allegation was not put in these terms. The allegation that the Claimant's husband had "hit" or "physically chastised" the children came from Borough X, who said it had come from the children themselves. As a result the Claimant was asked questions about her parenting style. She herself said she reserved the right to smack "in the right way" and defended it as legal. She agreed that she and her husband smacked the children. She was sent written questions about this (pp483-484) but did not answer them. We accept those questions or a suitably worded adaptation of them would have been asked of anyone facing allegations like those from Borough X in this case. The questions were set out in the way that they were because the Claimant declined to attend the meeting to discuss them. The disciplinary allegations were based on the information above from Borough X and referred also to "hitting" and "physical abuse".

Quotations from, or reference to, the Bible at the meeting on 20 March 2019.

180. The HR Consultant did say "actually the Bible says that you should respect authority" at the meeting on 20 March 2019. This was said in the context that either the Claimant or her husband had made a reference to being

Christian. It was not said to force the Claimant to do anything but rather to assert the decision the Respondent had made not to allow the recording of the meeting and the HR Consultant gave other reasons also.

Was that treatment "less favourable treatment", i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The claimant relies on hypothetical comparators – a non-Christian person.

181. We consider the comment unwise. It would have been better not to mention the Bible or divert from the reasons the Respondent had for not allowing the meeting to be recorded. The Claimant said she did not expect a reference to the Bible in the context of a meeting with her employer. There are circumstances where this comment might amount to less favourable treatment, for example if it amounted to manipulation of the Claimant, but we find it did not in this case. The Respondent did not agree to the recording. The meeting was not going to be recorded and the Claimant refused to continue so an alternative was agreed. The comment made no difference to that outcome. The Claimant's husband countered it with his own interpretation and the entire exchange lasted under 55 seconds. Given the Claimant's husband's quick response it is unlikely the HR Consultant's comment had any effect on the Claimant.

182. We have also taken into account that the Claimant herself has quoted the Bible in these proceedings so it is not limited to the church context for herself. The Claimant had never mentioned this as being discriminatory treatment despite all her other complaints to the Respondent, including correspondence following this meeting. We did not find that the HR consultant was aggressive when making the comment. The Claimant herself in evidence said if the HR Consultant had not been aggressive she would not have taken issue with this, which we find to be a concession that the comment alone is not enough to amount to less favourable treatment. In all the circumstances we do not consider the Claimant felt it was less favourable treatment at the time.

If so, was this because of the claimant's being a Christian and/or because of the protected characteristic of Christianity more generally?

183. The comment was made because the Claimant is Christian, as was essentially accepted by the HR Consultant.

discrimination arising from disability

Did the following thing arise in consequence of the claimant's disability: the claimant's sickness absence record?

Did the Respondent treat the Claimant unfavourably as follows: Suspension; disciplinary process; refusal to reply to subject access request under data protection legislation; dismissal?

Did the Respondent do these things because of that sickness absence?

184. We decided to address this third question first. None of the above (the suspension, the disciplinary process, the treatment of the subject access request, or the dismissal) had anything to do with the Claimant's sickness absence (either her historical absence or her absence at the time of suspension). It is very clear that the suspension, disciplinary process and dismissal only occurred because of the safeguarding concern and the Claimant's response to that. In respect of the subject access request we note the request was very wide. We do not know why it was not responded to initially but ultimately the documentation suggests it was stopped to await provision of further clarifying information from the Claimant which she did not provide. It had nothing to do with the Claimant's absences.

185. This being our decision in respect of the third question it was not necessary to consider the other issues in respect of this claim.

harassment related to disability

186. It is agreed that the claimant is a disabled person by virtue of her condition of cardiomyopathy, a heart condition.

Did the Respondent engage in conduct as follows:

Pressuring the claimant to work without pay and/or to take annual leave in place of sick leave:

In the Respondent's letters of: 16/01/2017, 25/01/2017, 03/02/2017, 24/02/2017, 16/03/2017, 20/04/2017?

At a meeting on 29/03/2017?

Pressuring the Claimant to return to work from sick leave in 2017?

If so was that conduct unwanted?

If so, did it relate to the protected characteristic of disability?

Did the conduct have the purpose or (taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to

have that effect) the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

187. We find there was no pressure on the Claimant to work without pay. When she first returned to work after lengthy sick leave her phased return was on full pay. After the third review meeting on 22 February 2017 the Claimant was to continue on full pay and reduced hours until 27 March 2017 (as confirmed in the letter dated 16 March 2017 at pages 405-408). She was warned there that the Respondent did not have the budget to continue to pay full salary after that date if she was still unable to return to work her full hours.

188. There was then a further review meeting on 29 March 2017 recorded in the letter dated 20 April 2017 at pages 797 to 799 of the bundle. By this time the Claimant was working 30 hours and working towards a resumption of full time hours in 4-6 weeks. She had a caseload of 12 cases compared to an average of 22 cases. She was told that she would need to decide whether to have a reduction in pay to reflect the hours actually worked or use her annual leave to make up the shortfall. She had to decide by the end of the week commencing 3 April 2017. She had a choice which option to choose. She was therefore to be paid for the work she actually did but the Respondent could not sustain paying her full pay if she did not resume her full working hours. She was not pressured into taking annual leave instead of sick leave. She had returned to work and was no longer on sick leave. She had a choice whether to use annual leave to supplement her pay until she resumed her full hours, once the Respondent began paying her for her actual hours worked, rather than her normal full time hours. In the same meeting it was confirmed that the Claimant would receive the merited pay increase as the Claimant was working towards full duties and the Respondent wished to be supportive. At both meetings it was recorded that the Claimant said things were working well.

189. With respect to the Claimant's return to work, the Respondent wanted to facilitate a return to work with a phased return but gave alternative options if she could not do so (letter dated 3 February 2017 confirming meeting dated 25 January 2017 at pages 397-399). She was warned that her case might progress to the next stage of the process if she could not return but with no adverse outcome decided. There was to be a further review meeting before taking that step. She was also advised that her sick pay would reduce to half pay. The Claimant did then return to work.

190. We find the conversation and correspondence reflect normal absence management and led to the Claimant's return to work without any longterm adverse consequences. Even if the Claimant did not agree with the Respondent's approach with respect to her absence, phased return and pay, and felt under pressure as a result of it, it was not reasonable to interpret this as creating the necessary environment for a harassment claim.

191. We have considered the time limits in respect of this claim, applying s123 Equality Act 2010. This claim is substantially out of time and completely

unrelated to any claim that is in time. We have had no explanation for why it was submitted so late and we do not consider it would be just and equitable to extend time.

Unpaid annual leave – Working Time Regulations

When the claimant's employment came to an end, was she paid all of the compensation she was entitled to under regulation 14 of the Working Time Regulations 1998?

192. We refer to our findings at paragraphs 139-140 above that the Claimant was overpaid in respect of her holiday entitlement.

Breach of contract

The Claimant was entitled to notice of her dismissal. Was the Claimant paid correctly in lieu of notice?

193. The findings in respect of the notice pay are set out above at paragraph 141. There was a shortfall of £11.32 but this was compensated for in the overpayment of annual leave.

194. The Claimant's representative takes issue with the notice pay as it is alleged there should have been further salary increments during her employment. However there is no claim in respect of the Claimant's rate of pay and so notice pay should be calculated on the basis of her final pay at the time, as we have done, which is the basis for calculating the underpayment above.

195. The other issue raised is that Claimant takes issue with whether too much tax was deducted but this is a matter to take up with HMRC.

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Employment Judge Corrigan
20 May 2021

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