EMPLOYMENT TRIBUNALS

Claimant: **Ms C Mackintosh**

Respondent: **Fusion Lifestyle**

Heard at: **Croydon and via CVP** **On: 1/12/2021 to 3/12/2021**

Before: **Employment Judge Wright**
Miss N Murphy
Ms N O'Hare

Representation:
Claimant: **In person**

Respondent: **Ms L Ford – HR Consultant**

JUDGMENT having been sent to the parties on 10 March 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimant was employed by the respondent, latterly as a Customer Relations Manager. She was employed from 1/5/1990 and transferred to the respondent on 1/7/2008. The respondent is a registered charity and it operates approximately 75 leisure facilities throughout the country. The

claimant was absent from work due to ill health and she resigned on 31/10/2019, her employment terminated on 30/11/2019. The Acas early conciliation certificate was issued on 28/2/2020 and the claimant presented her claim on 10/3/2020.

2. There were two preliminary hearings and the claims were identified as: constructive unfair dismissal; direct age discrimination and harassment related to age; if the claimant was disabled for the purposes of the Equality Act 2010 (EQA) – discrimination arising from disability and a failure to make reasonable adjustments; and unauthorised deduction from wages.

3. The Tribunal heard evidence from the claimant and from Alan Smith, a former colleague of the claimant. Mr Smith had worked for the respondent from December 1999 to September 2019; he was an Operations Manager/Team Leader. For the respondent, it heard from Duwaine Sinclair formerly Business Manager and Maria Speight (at the relevant time) HR Business Partner.

4. The claimant's evidence was hampered by her lack of recall. Mr Smith's evidence mainly focused on his view that the claimant was treated differently due to her gender. The Tribunal finds Mr Sinclair and Ms Speight were credible witnesses. Both were professional and they gave straight-forward evidence of the events they could recall.

5. The agreed bundle comprised of 351-pages.

6. Clearly, after such a long period of employment, which ended with the claimant's resignation; there were many issued which vexed the claimant. The Tribunal heard the evidence, however, its deliberations focused on the actual claims which had been identified arising from the actual allegations which the claimant had made.

Findings of fact

7. On 1/1/2013 the claimant was promoted to a Customer Relations Manager (CRM), originally this was a secondment; however it was made permanent in May 2013. It is also relevant to note by way of background, that on 5/9/2016 she took on the dual CRM role for Isleworth and Hanworth and was given a payrise (page 82). On 3/3/2017 she was absent due to ill health with stress and high blood pressure. Upon her return a stress risk assessment (SRA) was completed. For some reason, the respondent did not have a copy on its file and the claimant provided a copy to HR after the grievance appeal hearing. Unfortunately, only page one of three was provided. In June 2017 the claimant's role reverted to a single site temporarily.

8. The claimant then raised a grievance in respect of shift allowance on 26/7/2017. On 1/8/2017 she became dual CRM for Isleworth and Heston and later for Isleworth and New Chiswick Pools. Following a grievance hearing on 18/8/2017 the claimant was informed on 12/10/2017 that her grievance was not upheld. The claimant did not appeal that decision.

9. The claimant said that prior to January 2019 the dual site working had been cancelled after two-and-a-half years and she was now working on the single site of Isleworth.

10. On 29/11/2018 the claimant submitted a grievance in respect of discrimination (page 130). She referred to age discrimination and discrimination by reason of having transferred from the London Borough of Hounslow. By the 14/12/2018 the grievance was treated by the respondent as withdrawn as the claimant had not responded to HR (page 129).

11. The following events were relevant for the matters which the Tribunal had to determine. The claimant was absent with work related stress from 11/1/2019 to 22/1/2019. On 23/1/2019 a return to work meeting was held (page 132). At that meeting, the claimant's line manager Kirsty Landles (KL) recorded: the workload was causing the claimant stress; to monitor the workload; not exceeding contractual hours; to inform a manger if struggling; and to the claimant informing if she needed her work duties amending or decreasing. The claimant signed the note of the meeting. The claimant had a further sickness absence on 7/2/2019.

12. On 27/2/2019 the claimant attended a meeting with HR and she was accompanied by her trade union representative (page 146). She complained of issues with KL and in response, HR suggested different forms of mediation. It was noted that the claimant did not wish to raise a grievance at that stage. The claimant was asked to:

> 'liaise with [GM] as your trade union representative and come back to me to advise what you feel an appropriate solution may be, as it is important that we find a way forward as I was concerned following our discussion yesterday and support needs to be put in place asap.'

13. HR also said 'we can also conduct a risk assessment'. The claimant responded on the 4/3/2019 and said:

> 'Thank you so much for this email and your time at the meeting. I really do appreciate your support.
>
> I would like to meet with Regional CRM and discuss/train in any area I think is unclear and the working process and requirements of my role.

> Maybe after this meeting I could have an informal meeting with [KL] to discuss the issues that are relevant.'

Furthermore, the claimant did not in her reply request a risk assessment or take up the offer HR had made.

14. In response, HR referred to the claimant not being able to attend a CRM meeting due to 'stress', to not having informed KL or the Regional Customer Relations Manager, what was discussed at their meeting (on 27/2/2019) and was asked if there was anything that the claimant wanted HR to raise? There was no response from the claimant and HR sent a follow up email on 8/3/2019 (page 145). The claimant's trade union representative was copied in.

15. On 11/3/2019 the claimant emailed HR (copied to her trade union representative) and said (page 148):

> 'I have had a 1-2-1 with [KL]. We did discuss general issues raised and she said that if I wanted a Stress Risk Assessment I can request one at any time. I agreed to this.'

16. The claimant said her comment 'I agreed to this' was her requesting a SRA. The Tribunal finds the comment was intended to mean that the claimant agreed that she could request a SRA at any time in the future; not that she had requested one at this meeting. The claimant was forthright in her views and the Tribunal finds that had she requested a SRA at this meeting; when it was not forthcoming, she would have raised it sooner than she did, which was at the grievance hearing on 28/8/2019 (page 199). The claimant could have raised it with KL, HR, her representative or one of her colleagues.

17. The Tribunal was provided with file notes recording various conversations and observations KL had made regarding the claimant and her performance (pages 158-171). KL did not appear as a witness for the respondent and so it was not possible to test her evidence in respect of those notes. Mr Sinclair said the notes were sent to him in May 2019.

18. The notes were supplemented however by other external evidence. There were WhatsApp messages and other emails. On balance, the Tribunal finds that KL and HR were supportive to the claimant. The claimant was assertive and beside approaching HR, she had also raised grievances. The Tribunal finds that if as the claimant claimed, KL offered support and it was not forthcoming, that she would have raised that as an issue either formally or informally. She had the support of her other long-serving colleagues who had transferred with her in 2008. Furthermore, she was supported by her trade union representative.

19. On 30/4/2019 the claimant raised a grievance regarding overtime and sent it to Mr Sinclair (page 154). She did not include a lack of support or her request for a SRA; as matters about which she was aggrieved. There were further short periods of absence both before and after the claimant raised a grievance.

20. The claimant alleged harassment in respect of KL repeating her name. She said KL would say 'Carol, Carol, Carol' and talk over her until she stopped talking and KL would then be able to speak. There are no other particulars of this allegation. The respondent however accepts that KL did speak in this manner. Mr Sinclair said KL did the same to him. Mr Sinclair said he is the same age as KL. The Tribunal finds whilst this may have been irritating and even rude, that it was KL's manner and that her doing so had nothing whatsoever to do with the claimant's age.

21. On the respondent's case, there was a meeting in the creche in late May 2019. The claimant says this meeting took place in June or July 2019. The date of the meeting is immaterial.

22. It is not in dispute that the meeting took place in the creche. Mr Sinclair said it was a suitable venue for an informal and impromptu meeting, the creche was not in use at the time and that there were no other private spaces at the site. The claimant relies upon this meeting as a 'final straw' in terms of her constructive dismissal claim and as age related harassment. In hindsight, Mr Sinclair conceded that the creche was not a suitable venue and the grievance outcome made the same finding.

23. The Tribunal finds that the creche was not ideal as a meeting room, but that it was not so unsuitable to be the final straw as even an innocuous breach of the implied term of mutual trust and confidence. The Tribunal finds that the meeting was not overheard. It appears what the claimant was aggrieved about, was Mr Sinclair's suggestion at the meeting, that the claimant move to New Chiswick Pools to assist her with her work difficulties. KL had informed Mr Sinclair that she was struggling to manage the claimant, who was failing to carry out basic tasks. The Tribunal finds that Mr Sinclair genuinely was attempting to assist the claimant. He knew she had worked at New Chiswick Pools in the past and he thought a less pressurised environment would help her.

24. The claimant became upset at this suggestion[1] and left the meeting. Other members of staff saw that she was upset and enquired after her.

25. The Tribunal finds that Mr Sinclair did not prevent the claimant from leaving the meeting. That allegation was not put to him by the claimant

[1] The Tribunal finds that it was only ever a suggestion, even though the respondent had the contractual right to move a CRM with a month's notice.

and the claimant has not specified how she was prevented from leaving in order for Mr Sinclair to respond. The meeting was not designed to destroy or seriously damage the relationship of confidence and trust between the parties. In fact, the purpose of the meeting was the opposite. It was intended to be constructive and to address the claimant's issues. The claimant was affronted by the suggestion that she relocate, but Mr Sinclair was not to know that. The claimant raised difficulties with the commute when the proposal was made, yet she had worked at New Chiswick Pools before. There was nothing untoward about the meeting itself, or the location of it.

26. Furthermore, the Tribunal finds that there was no harassment related to age. There was nothing to link the meeting or the location of it to the protected characteristic of age. The claimant did not advance any evidence to suggest that age was a factor at all.

27. Following that meeting the claimant was unfit for work for 15 days due to 'stress' (page 180).

28. In respect of the grievance about overtime, on 12/6/2019 the claimant confirmed that she wished to continue with it (page 187). The claimant was contacted by HR about her and her representative's availability and emails were exchanged (pages 183-186). On 29/6/2019 the claimant said she was in discussions with the union. On 1/7/2019 HR emailed the claimant and said that the case had been closed in the interim period until the claimant resumed contact.

29. The claimant was absent from work from 22/7/2019. She was certified as unfit for work on 31/7/2019 for two weeks due to 'work related stress' (page 190). She did not return to work.

30. The claimant must have resurrected her grievance as on 22/8/2019 she was invited to a meeting on 28/8/2019 (page 195). The claimant confirmed she would attend with her trade union representative and did so. The grievance outcome was sent to the claimant on 30/9/2019 (page 210).

31. The grievance outcome recorded that the grievance now covered five areas and had moved on from the overtime issue, set out as:

> '1. Having to manage the sales across two sites
> 2. The role of management – felt bullied
> 3. Support on health
> 4. Stress risk assessment not received
> 5. Availability of contract'

32. The grievance was not upheld. It was proposed that as part of the return to work process that the working environment would be considered.

33. On 3/10/2019 the claimant appealed the grievance outcome (pages 213-215).

34. On 3/10/2019 KL reported to HR that the claimant informally told her that she did not intend to return to work nor to resign. KL also referred to the proposed move to New Chiswick Pools (page 217).

35. On the 6/10/2019 the claimant emailed HR and asked to be considered for early retirement (she was aged 60 at this point) and to be reinstated on reduced hours of 18 per week. She went onto explain that she could only reduce her hours if she could make up the reduction in pay with the pension (page 219). She proposed a position at Isleworth assisting KL, CRM and operations 'to work within management where necessary'. She asked for a discussion and if her proposal could be considered before the appeal meeting.

36. The proposal was passed for consideration and HR proceeded to arrange the grievance appeal meeting which took place on 24/10/2019 (page 223). The claimant was again accompanied by her trade union representative.

37. At the meeting, HR discussed the claimant's proposal and Ms Speight suggested a flexible working request. She said there was no part-time (16 hours a week) role and referred to vacancies on the website which the claimant could consider. She referred to a flexible working application and pointed out that if the claimant resigned, that the respondent would not then be able to consider a flexible working request. The claimant's trade union representative did contribute at the meeting; although not necessarily on this point.

38. The claimant said that she was told by KL that her grievance would not be upheld on appeal. The Tribunal finds it odd that the claimant would rely upon something KL told her, if on her case, the relationship had fundamentally broken down and she was accusing KL of bullying her (albeit that in the grievance meeting the claimant said that she did not think KL was a bully, but that she did not feel able to disagree with her[2]).

39. The claimant resigned on 31/10/2019 giving a month's notice (page 232). She said that even if she returned to Isleworth, it would be impossible for

[2] In her evidence, the claimant went onto say that whilst she did not wish to use that word in the meeting, she did feel bullied by KL and she went onto say that Mr Sinclair had also bullied her. In the grievance appeal meeting the claimant also said that she could resolve the relationship issues with KL (Page 213).

her to continue in her role. She referred to the toll on her health and said that:

> 'If I had received the reasonable support and consideration I received in my appeal meeting this result would not be the outcome.'

40. She said she had taken professional advice and concluded by asking for the pension details. Her last day of work was 30/11/2019 and she did not return to work.

41. Despite that, Ms Speight decided to conclude the grievance appeal investigation. The appeal outcome was sent to the claimant on the 13/11/2019 (page 239). The original decision was upheld.

42. The claimant claimed that she was disabled by reason of depression. The respondent pointed out that there had never been a diagnosis of depression. The claimant's response was that she had been prescribed anti-depressants (she said she had been on them for about one month), although the first time, the Tribunal finds, she mentioned this to the respondent was at the grievance meeting on 28/8/2019 (page 204). The grievance meeting post-dated the claimant's allegations of discrimination based upon the protected characteristic of depression and therefore the respondent did not have knowledge of the condition. The claimant did not seek to persuade the Tribunal that high blood pressure was a disability as referenced in the list of issues. Due to the lack of evidence, the burden being on the claimant, she has not satisfied the Tribunal she was disabled.

43. The Tribunal finds that there was no detriment to the claimant while she was on sickness absence. She was paid in full. There was no reference to performance management or to invoking the sickness absence procedure; although there was a concern how the claimant would manage when she did return to work. The only steps the respondent took, apart from continuing with the grievance appeal, were to get the claimant back to work. The Tribunal finds the respondent's actions were genuine and reasonable.

44. One of the claimant's allegations was that she was paid less than any other CRM right up to her resignation. The Tribunal accepts what the respondent submitted. In the Hounslow area, the claimant was the highest paid CRM of five, based upon the hourly rate (some CRMs worked a 40-hour week, whereas the claimant worked 36-hours) (page 346). It is also accepted that she was one of the highest paid CRMs nationally (page 347). Her rate of pay had nothing whatsoever to do with her age or any health condition.

45. The claimant's case that she was not offered opportunities for promotion that were offered to other CRMs was nonsensical. She referred to another CRM whom she said was 'slotted in'. It may well have been that that CRM was seconded, as the claimant was originally into the CRM role. The Tribunal finds that all vacancies were advertised on the respondent's website and were available to the claimant.

46. The claimant's unauthorised deduction from wages claim related to her saying she had never been paid a shift allowance following the transfer in 2008. At some point, the claimant had sight of a document relating to the transfer which indicated that she should have been paid a shift allowance. That was changed and corrected on the final version of that document. The respondent relies upon that and the fact that although she was given the opportunity to do so, the claimant never provided any evidence of being paid a shift allowance prior to the transfer, such as a payslip or a copy contract from a colleague who was in the same role as the claimant at the time of the transfer.

47. The Tribunal finds that the claimant transferred on her Customer Relations Advisor contract. Once she was promoted to CRM that contract was on the respondent's terms and did not include a shift allowance.

48. The Tribunal also finds that if the claimant had been in receipt of shift allowance for 18-years, then transferred to the respondent and no longer received that allowance; she would have raised it at the time and shortly after the transfer. She would not have waited nine years. Furthermore, it is noted that she did not appeal the grievance she raised about this issue.

The Law

49. Section 94 of the Employment Rights Act ("ERA") states that an employee has the right not to be unfairly dismissed by his employer.

50. As the claimant resigned her employment and relies upon a constructive dismissal, she must establish that she terminated the contract under which she was employed (in this case with notice) in circumstances in which she was entitled to terminate it by reason of the respondent's conduct (s.95(1)(c) Employment Rights Act 1996):

> (1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) only if)—
>
> …
>
> (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

> (2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if—
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> (a) the employer gives notice to the employee to terminate his contract of employment, and
>
> (b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire;
>
> and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

51. The relevant principles are found in Western Excavating (EEC) Ltd v Sharp [1978] ICR 221. The test of a constructive dismissal is a three-stage one:

> was there a fundamental breach of the employment contract by the employer;
>
> did the employer's breach cause the employee to resign; and
>
> did the employee resign without delaying too long and thereby affirming the contract and losing the right to claim constructive dismissal?

52. The House of Lords in Malik and Mahmud v BCCI [1997] ICR 606 described the implied term of trust and confidence as being an obligation that the employer shall not:

> 'Without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.'

53. In Woods v W M Car Services (Peterborough) Ltd [1981] IRLR 347 the EAT held that it is implied in a contract of employment a term that the employer will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. Any breach of this implied term is a fundamental breach amounting to a repudiation since it necessarily goes to the root of the contract. The Tribunal's function is to look at the employer's conduct as a whole and determine whether its cumulative effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.

54. In the case of Spafax Ltd v. Harrison & Spafax Ltd v Taylor [1980] IRLR 442 wherein the Court of Appeal ruled that lawful conduct is not something which is capable of amounting to a repudiation. Paragraph 17 states:

'I can find nothing in anything that the Master of the Rolls said in either of those cases to make lawful conduct something which is capable of amounting to a repudiation. There must, in my judgment, be a breach of some term of the contract, express or implied, and indeed it must be fundamental — so fundamental as to evince an intention not to be bound by the contract and to be capable of amounting to a repudiation.'

55. Section 98 ERA states:

(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) 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

56. Under the EQA, the claimant complains that she was subjected to unlawful discrimination based upon the protected characteristic of age (s. 5 EQA). She complains of the prohibited conduct of direct discrimination. Section 13 provides:

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

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

57. Section 26(1) of the EQA provides:

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

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

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

(i) violating B's dignity, or

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

58. The claimant must therefore show:

unwanted conduct;

that has the prescribed purpose or effect; and

which relates to a relevant protected characteristic.

59. Trivial acts will not constitute harassment and in considering whether any such harassment related to a protected characteristic context is all important. (Henderson v GMB [2015] IRLR 451)

60. The harassment need not be 'because of' the protected characteristic but the question of whether it is related to the protected characteristic is objective. (Hartley v Foreign and Commonwealth Office Services UKEAT/0033/15)

61. If the claimant is found to be a disabled person for the purposes of s.6 EQA, she complains of the prohibited conduct of discrimination arising from disability:

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

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

62. In addition, the claimant claims the respondent breached its duty to make reasonable adjustments contrary to s.20 EQA:

> (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
>
> (2) The duty comprises the following three requirements.
>
> (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
>
> (4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
>
> (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

63. The final claim is of unauthorised deduction from wages contrary to s. 13 Employment Rights Act 1996

> (1) An employer shall not make a deduction from wages of a worker employed by him unless—
>
> > (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
> >
> > (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

Conclusions

64. The burden is on the claimant to establish there has been a fundamental breach of her contract of employment, in this case the implied term of mutual trust and confidence. She has failed to discharge that burden. The Tribunal concludes that there was no lack of support or an unreasonable workload. It was the claimant's case that KL repeatedly

said she would take on the claimant's tasks, but did not do so. She also relied upon the failure to carry out a SRA.

65. The Tribunal found that this simply was not the case. KL and others including HR did support the claimant. KL did take on the claimant's tasks. The Tribunal found that had KL not delivered what she had said she would, the claimant would have raised it. The Tribunal also found the SRA was offered; but that the claimant did not request that it be carried out, despite what she now says.

66. The meeting in the creche was not a breach of the implied term. The motivation of the meeting was to assist the claimant and to address the matters which were impacting upon her performance.

67. The Tribunal concluded there is an issue with the claimant saying that the meeting in the creche was the final straw; yet she did not resign until 31/10/2019. She said the delay was that she was going through the grievance process. The issue is that on her own account, the meeting in the creche (in May or June/July) took place after she had already raised her grievance. She then did not pursue the grievance and in late July 2019 it was put on hold. Once the grievance was resurrected, the claimant then resigned before she had received the appeal outcome. She therefore did not conclude the process before she resigned.

68. The claimant also suggested, when she proposed to retire and to return on reduced hours, to working with KL or with management. That is inconsistent with her claim that the final straw was the meeting in the creche. The claimant also said that she could resolve her issues with KL. The Tribunal concludes there was no breach and no fundamental breach of the claimant's contract entitling her to claim constructive dismissal.

69. The claim of direct age discrimination fails. The claimant simply failed to demonstrate that her rate of pay was linked to her age. She referred to a group of younger CRMs who on her case, must have been paid more than her. The respondent's non-discriminatory explanation is accepted. The claimant was one of the higher paid CRMs.

70. In respect of vacancies, the Tribunal concludes that vacancies were advertised on the respondent's website and it was open to the claimant to apply for any vacancy. There was no link whatsoever to the claimant's age or to her younger colleagues.

71. The claim of harassment related to age also fails. Not only did the Tribunal find that there was nothing to link the treatment complained of to the protected characteristic of age; KL did not talk over people with the purpose or effect of violating the claimant's dignity, or to create an

intimidating, hostile, degrading, humiliating or offensive environment for her.

72. The same applied to the meeting in the creche. Mr Sinclair thought at the time that it was a suitable venue for a meeting although he later accepted it was not. Notwithstanding that concession, the Tribunal found the venue was not unsuitable. Mr Sinclair did not prevent the claimant from leaving the meeting. The purpose of the meeting was to address the claimant's issues and there was no violation of the claimant's dignity etc (accepting that she was upset in the meeting).

73. The Tribunal is not convinced the claimant had satisfied the burden of proof in respect of establishing her condition was a disability. It is not however proportionate to deliberate further on this issue. The reason is that the claimant relies upon all of the matters in respect of her constructive unfair dismissal claim and age discrimination claims as unfavourable treatment for the purpose of her s. 15 EQA claim. The claimant's case in respect of that treatment has not been made out and the claimant's version of events/allegations are not accepted. In any event, the Tribunal found there was no unfavourable treatment of the claimant in respect of her sickness absence.

74. The respondent did not fail in its duty to make reasonable adjustments for the claimant. The respondent, quite rightly took the view that it would make adjustments for its employees, regardless of whether or not they were disabled. It is correct to say that the respondent did not make the adjustments the claimant contended for; but that is not what the duty under the EQA requires. It requires that the respondent take such steps as it is reasonable to have to take to avoid any disadvantage. The Tribunal has found that the steps the respondent took, were reasonable so as to avoid any disadvantage to the claimant.

75. The claimant was never entitled to a shift allowance and so there was no unauthorised deduction.

76. For those reasons, the claimant's claims fail and are dismissed.

Employment Judge Wright
20/12/2021