EMPLOYMENT TRIBUNALS

Claimant: **Ms Sandra Ashley**

Respondent: Hertfordshire Practical Parenting Programme Community Interest Company

Heard at: Watford Hearing Centre **On**: 24, 25, 26, 27, 28, 31 January 2022 and 1 February 2022 (7 days)

Before: Employment Judge G Tobin, Tribunal Member Mr M Bhatti MBE and Tribunal Member Mr A Scott

Appearances
For the Claimant: Mr K Webster
For the Respondent: Ms J Gear

JUDGMENT

It is the unanimous judgment of the Employment Tribunal that:

1. **The claimant was at all material times disabled within the meaning of s6 Equality Act 2010.**

2. **The claimant was not discriminated against by the respondent, pursuant to s15 Equality Act 2010.**

3. **The respondents did not fail in its duty to make reasonable adjustments pursuant to s21 Equality Act 2010.**

4. **The respondent did not unfair dismissal the claimant pursuant to s94 Employment Rights Act 1996.**

5. **The claimant not being successful in any of her claims, proceedings are now dismissed.**

REASONS

The case

1. This has been a part remote or hybrid hearing which has been agreed to by the parties. The form of remote hearing was a video hearing through HMCTS Cloud Video Platform, and some participants were remote (i.e. not physically at the hearing centre). All witnesses gave evidence in-person at the Hearing Centre. The hearing was listed as a final hearing and all issues could be determined at this hearing.

2. The background to this case was summarised by Employment Judge Bedeau on 15 February 2020. The claimant pursued complaints of: discrimination arising from disability, pursuant to section 15 Equality Act 2010 ("EqA"); indirect disability discrimination, pursuant to s19 EqA; failure to make reasonable adjustments, pursuant to s20 and s21 EqA; and unfair dismissal, in breach of s94 Employment Rights Acts 1996 ("ERA"). From the Tribunal's preliminary reading, the claims of indirect disability discrimination were not clear and appeared to duplicate the discrimination arising and reasonable adjustments cases. The hearing judge discussed this with the claimant's representative, Mr Webster, during the case management discussion at the commencement of proceedings. Mr Webster thereupon discussed the matter with the claimant and advised the Tribunal that this aspect of proceedings was withdrawn. The modified list of issues, as drafted by Judge Bedeau, was as follows:

Disability: s6 EqA

1. Was the claimant disabled in accordance with s6 EqA at all relevant times because of the following conditions: dyslexia and/or depression?

2. If so, did the respondent know have or ought reasonably to have known that claimant had those disabilities at all relevant times?

Discrimination arising from disability: s15 EqA

3. Did the claimant's disability cause, have the consequence of, or result in, "something"? The claimant claims that the "something" was:

   (a) incapacity for work; and/or

   (b) delay in returning to work; and/or

   (b) difficulty preparing for and/or inability to attend disciplinary meetings

4. Did the employer treat the claimant unfavourably by dismissing her on or around 16 August 2019 because of that "something"?

6. Did the respondent treat the claimant unfavourably in that way because of the claimant's disability?

7. If so, has the respondent shown that the unfavourable treatment was a proportionate means of achieving a legitimate aim?

8. Alternatively, has the respondent shown that it did not know, and could not reasonably have been expected to know, that the claimant had a disability?

Failure to Make Reasonable Adjustments ss20 & 21EqA

14. Did the PCPs [provision, criteria or practice] above[1] put the claimant at a substantial disadvantage in comparison with persons who are not disabled and in relation to whom the same PCPs applied?

15. If so, did the respondent know or ought reasonably to have known of the claimant's disability at all material times?

16. If so, did the Respondent know or ought reasonably to have known that the claimant was likely to be placed at a substantial disadvantage?

17. Can the respondent show that the treatment was a proportionate means of achieving a legitimate aim?

18. Did the respondent take such steps as were reasonable to avoid any disadvantage?

Unfair Dismissal: s94 ERA

19. What was the reason for the claimant's dismissal (the respondent alleges the reason was conduct or some other substantial reason)?

20. Was this a potentially fair reason for the purposes of s98 ERA?

21. In deciding that, did the respondent:

    (a) reasonably believed misconduct occurred?;

    (b) have reasonable grounds to support this belief?; and

    (c) carry out a reasonable investigation prior to reaching this conclusion?

22. If so, was dismissal within the band of reasonable responses open to the respondent?

Remedy

23. If the claimant succeeds with her claim for unfair dismissal, is she entitled to:

    (a) A basic award?

    (b) An award of loss of statutory rights?

    (c) A compensatory award?

24. Should there be any deduction for contributory fault or a *Polkey* reduction?

25. If the Claimant succeeds with a claim for discrimination, is it just and equitable to award compensation for:

    (a) injury to feelings?

    (b) general damages for psychological injuries?

[1] These were:
(a) Failure to provide information relating to the disciplinary investigation in a timely way?
(b) Failure to offer the Claimant the ability to be accompanied to the disciplinary investigation?
(c) Suspending the claimant and preventing her from attending the respondent's offices?
(d) Contacting the claimant during her period of suspension and requiring her to contact HMRC and conduct banking transactions?

26. What amount of compensation would put the Claimant in the financial position she would have been in but for the contravention of the EQA?

27. Has the Claimant taken reasonable steps to mitigate her loss?

28. Did the Respondent unreasonably fail to comply with a relevant ACAS Code of Practice, and if so, would it be just and equitable in all the circumstances to increase any compensatory award, and if so, by what percentage, up to a maximum of 25%, pursuant to s207A of the Trade Union & Labour Relations (Consolidation) Act?"

The law

<u>Disability</u>

3. S4 EqA identifies "disability" as a protected characteristic. So, an employee should not be discriminated against on the basis of their disability. S6(1) EqA defines disability:

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

<u>Discrimination arising from disability</u>

5. S15 EqA precludes discrimination arising from a 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 a disability.

6. S15 EqA is aimed at protecting against discrimination arising from or in consequence of the disability rather than the discrimination occurring *because of* the disability itself, which is covered under direct discrimination. The term *unfavourably* rather than the usual discrimination term of *less favourably* means that no comparator is required for this form of alleged discrimination. So, for example, where a disabled employee was viewed as a weak or unreliable employee because she had taken periods of disability-related absence and this had caused her dismissal, the person may not suffer a detriment because they were disabled as such, but because of the effect of that disability.

7. In *Hall v Chief Constable of West Yorkshire Police UKEAT/0057/15* the EAT emphasised that it was not necessary for the disability to be the cause of the unfavourable treatment. The burden on a claimant to establish causation in a claim for discrimination arising from disability is relatively low. It will be sufficient to show that there is some causal link, and that the unfavourable treatment has been caused by an outcome or consequence of the disability. The employer's motivation is irrelevant. The EAT in *Charlesworth v Dransfields Engineering Services Limited UKEAT/0197/16* said that s15 EqA requires unfavourable treatment to be *because of something* arising in consequence of the disabled person's disability. If the *something* is an effective cause – and influence or cause that operated on the mind of the alleged discriminator to a

sufficient extent (whether consciously or unconsciously) – the causal test is satisfied. However, even if a claimant succeeds in establishing discrimination arising from disability, the employer can defend such a claim by showing either that the treatment was objectively justified, or that it did not know or could not reasonably have known that the employee was disabled.

Failure to make reasonable adjustment

8. Under ss20-22 and schedule 8 EqA an employer has a duty to make reasonable adjustments in 3 situations:

i. where a provision, criteria or practice puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. This covers cases on *how* the job, process, etc is done;

ii. 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. This covers the situation of *where* the job is done;

iii. 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. This covers those cases where the provision of an *auxiliary aid* (e.g. special computer software for those with impaired sight) would prevent the employee being disadvantaged.

A failure to comply with any of these requirements renders that omission actionable as discrimination under s21 EqA. This claim is focused upon the first provision identified above.

9. It is important to note that the duty to make reasonable adjustments arises only where the disabled person in question is put at a “substantial disadvantage" in relation to a relevant matter in comparison with persons who are not disabled. In order to undertake the comparative exercise, the EAT held in *Environment Agency v Rowan 2008 ICR 218 EAT* that a Tribunal must identify the: (a) the provision criteria or practice (PCP) applied; (b) the identity of the non-disabled comparators (where appropriate); and (c) the nature and extent of the substantial disadvantage suffered by the claimant.

10. Possibly counter-intuitively, s212(1) EqA states that "substantial" means more than minor or trivial. Although substantial disadvantage represents a relatively low threshold, the Tribunal will not assume that merely because an employee is disabled, the employer is obliged to make reasonable adjustments. The Tribunal is obliged to consider the nature and extent of the disadvantage in order to ascertain whether the duty applies and then what adjustments would be reasonable, see *Environment Agency v Rowan*. We should avoid making generalised assumptions about the nature of the disadvantage and failing to correlate the alleged disadvantage with the claimant's particular circumstances.

11. The duty to make adjustments arises only in respect of those steps that it is reasonable for the employer to take to avoid the disadvantage experienced by the disabled person. The reasonableness of the adjustment is an objective test: see *Smith v Churchills Stairlifts plc 2006 ICR 524 CA*.

12. The duty to make reasonable adjustments arises where a disabled person is placed at a substantial disadvantage "in comparison with persons who are not disabled": s20(3)-s20(5) EqA. There is a requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled persons: see *Fareham College Corporation v Walters 2009 IRLR 991, EAT*.

<u>Unfair dismissal</u>

13. The claimant claims that she was unfairly dismissed, in contravention of s94 ERA. S98 ERA sets out how the Employment Tribunal should approach the question of whether a dismissal is fair. First, the employer must show the reason for the dismissal and that this reason was one of the potentially fair reasons set out in s98(1) and s98(2) ERA. If the employer is successful at that first stage, the Tribunal must then determine whether the dismissal was fair under s98(4):

> Where the employer has fulfilled the requirements of subsection (1), the determination of the question of 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.

14. The s98(4) test can be broken down to two key questions:
   a. Did the employer utilise a fair procedure?
   b. Did the employer's decision to dismiss fall within the range of reasonable responses open to a reasonable employer?

15. The respondent said that it dismissed the claimant for a conduct-related reason, pursuant to s98(2)(b) ERA. The respondent also pleaded that, in the alternative, the claimant's dismissal was for *some other substantial reason* such as to justify dismissal in the circumstances, pursuant to s98(1)(b); specifically, that there was an irreparable loss of trust and confidence caused by the claimant in carrying out her position as Chief Executive Officer. In these circumstances, this alternative defence is nonsense, because the breakdown in trust and confidence arose from the claimant's alleged misconduct, so the dismissal is conduct-related. Although the claimant denied the misconduct in question, there was no dispute between the parties that the issues raised by the respondent were conduct-related matters. For misconduct dismissals, the employer needs to show:
   a. an honest belief that the employee was guilty of the offence;
   b. that there were reasonable grounds for holding that belief; and
   c. that these came from a reasonable investigation of the incident.

These principles were laid down in *British Home Stores v Burchell [1980] ICR 303.* The principles were initially developed to deal with dismissals involving alleged dishonesty. However, the *Burchell principles* are so relevant that they have been extended to provide for all conduct-related dismissals. Conclusive proof of guilt is not

necessary, what is necessary is an honest belief based upon a reasonable investigatory process.

16. Accordingly, the emphasis of the case at the hearing was whether the Tribunal could be satisfied that, in all the circumstances, the respondent was justified in dismissing the claimant for the reasons given, i.e. in relation to her purported misconduct.

17. ACAS has issued a Code of Practice under s199 Trade Union and Labour Relations (Consolidation) Act 1992. Although the Code of Practice is not legally binding in itself, Employment Tribunals will adhere closely to the relevant Code when determining whether any disciplinary or dismissal procedure was fair. The ACAS Code of Practice represents a common-sense approach to dealing with disciplinary matters and incorporates principles of natural justice. In operating any disciplinary procedure or process, the employer will be required to:

- Deal with the issues promptly and consistently;
- Established the facts before taking action;
- Make sure the employee was informed clearly of the allegation;
- Ensure that the nature and extent of the investigation reflect the seriousness of the matter, i.e. the more serious the matter then the more thorough the investigation should be;
- Allow the employee to be appropriately accompanied to any disciplinary interview or hearing and to state their case;
- Keep an open mind and look for evidence which supports the employee’s case as well as evidence against;
- Make sure that the disciplinary action is appropriate to the misconduct alleged;
- Provide the employee with an opportunity to appeal the decision.

18. In *West Midlands Cooperative Society Limited v Tipton [1986] ICR 192* the House of Lords determined that the appeals procedure was an integral part of deciding the question of a fair process. Indeed, a properly conducted appeal can appropriately reinstate an unfairly dismissed employee or remedy some procedural deficiencies in the original hearing.

19. In judging the reasonableness of the employer’s decision to dismiss an Employment Tribunal must be careful to avoid substituting its decision as to what was the right course of action for the employer to adopt for that which the employer did, in fact, chose. Consequently, the question for the Tribunal to determine is whether the respondent’s decision to dismiss the claimant fell within the band or range of reasonable responses open to a reasonable employer: see *Foley v Post Office; HSBC Bank plc v Madden 2000 ICR 1283*. The range of reasonable responses test applies not only to the decision to dismiss but also to the procedure by which that decision was reached: *J Sainsbury plc v Hitt 2003 ICR 111 CA* and *Whitbread plc (t/a Whitbread Medway Inns) v Hall 2001 ICR 669 CA.*

The witnesses and documentary evidence

20. The respondent went first and on behalf of the respondent, we heard evidence from the following, who also provided witness statements:

- Mr Geoff Ogden, director of the respondent organisation, who provided a signed statement dated 17 January 2022.
- Mr Andel Singh, director, whose signed statement was dated 18 January 2022.
- Ms Elizabeth Barroeta, director, who provided a signed statement dated 17 January 2022.
- Mrs Dawn Kemp, a human resources practitioner, who worked as a volunteer for the respondent. Mrs Kemp gave a statement signed and dated 17 January 2022.
- Ms Jacqueline Gear worked as an external consultant for the respondent and subsequently became the Managing Director. She provided a statement, which she signed at the hearing.

21. The claimant, Ms Sandra Ashley, provided 3 statements: dated 4 August 2020, 21 May 2021 and 27 January 2022. The first 2 statements dealt with the claimant's disabilities. The third statement addressed liability issues and, very briefly, compensation. The claimant's third statement attached various documents, which were provided very late and outside the normal disclosure rules. The claimant did not provide a clear explanation as to why these documents were not provided during the timetable and steps set out by Judge Bedeau following the Preliminary Hearing. Nevertheless, Mrs Gear (on behalf of the respondent) did not object to this late provision of information, and such late disclosure was provided a few days before the final hearing so the respondent was not completely taken by surprise. I said to Mrs Gear that the Tribunal would afford her some latitude if she wanted to address the "new" documents in the respondent's evidence.

22. The claimant initially watched proceedings remotely although she attended the Tribunal to give her oral evidence. We (i.e. the Tribunal) also heard evidence from Mrs Tracy Swain, the claimant's friend, who also had provided a written statement, which she signed and dated at the hearing. Mrs Sawin similarly disclosed late documentary evidence, and this was permitted on the same basis as that of the claimant.

23. We were provided with a hearing bundle of 686 pages. Most of the material in the hearing bundle was not relevant to the issues to be determined at the hearing. At the outset of the hearing the Employment Judge confirmed to the parties that, as a matter of course, we do not read hearing bundles. The Tribunal will (and did), of course, consider documents referred to in witness statement or brought to our attention during the course of the hearing. However, the parties were to assume that if a document was important and they wanted to rely upon that document, then this needed to be brought to our attention.

Our findings of fact

24. We set out the following findings of fact, which were relevant to determining whether or not the claims and issues identified above have been established. We have not determined all of the points of dispute between the parties, merely those that we regard as relevant to determining the issues of this case as identified above. When determining certain findings of fact, where we consider this appropriate, we have set out why we have made these findings. In assessing the evidence and making findings of fact, we placed particular reliance upon contemporaneous documents as an

accurate version of events. We also place some emphasis (and drew appropriate inferences) on the absence of documents that we expected to see as a contemporaneous record of events and also on the absence of evidence which give an interpretation of what occurred. Witness statements are, of course, important. However, these stand as a version of events that was completed sometime after the events in question and are drafted through the prism of either advancing or defending the claims in question. So, we regard them with a degree of circumspection as both memories fade and the accounts may reflect a degree of re-interpretation.

25. The claimant was the former Chief Executive Officer (CEO) of the respondent organisation and had been employed since 23 June 2002. Prior to this, the claimant had set up the respondent organisation originally as the Broxbourne Practical Parenting Programme, which had developed into the Hertfordshire Practical Parenting Programme or HPPP.

26. The respondent had developed from a charity initiative to become a registered company benefitting from local authority and charity funding sometime around 2002 to 2004. Mr Geoff Ogden and Mr Andel Singh were initial directors selected by the claimant. The claimant said that she had set up Broxbourne Practical Parenting Initiative in 2000 and by 2002 this had become a registered company. In any event, the claimant selected the directors and both Mr Ogden and Mr Singh described a harmonious working relationship with the claimant throughout the vast bulk of her time with the respondent. Ms Elisabeth Barroeta joined the Board of Directors with effect from 1 April 2013. Again, she was selected by the claimant to become a director of the respondent's company.

27. Around November 2014 Mrs Dawn Kemp joined the management committee of the respondent company. Mrs Kemp was not invited to be a director, nor at any stage was she a director of the respondent. Mrs Kemp was a human resources practitioner. The claimant approached Mrs Kemp in order to utilise her useful skills to assist the charity and Mrs Kemp was happy to volunteer her help.

28. At the outset of the hearing the respondent accepted that the claimant had suffered from dyslexia at all material times. The claimant's position was that her dyslexia was constant and profound. The respondent's disputed this and contended that the claimant's dyslexia was not of a magnitude to impede her work and although Mr Singh and Mr Ogden said they were aware of the claimant's dyslexia, both contended that this did not cause any particular or significant disadvantage to the claimant in the workplace. Neither Mr Singh nor Mr Ogden reported any difficulties raised by the claimant in the conduct of her duties, nor did the claimant raise any serious struggle or disadvantage. Mrs Kemp said that she did not know that the claimant had dyslexia. Mrs Kemp said that she worked closely with the claimant on occasions and there was no sign that the claimant could not read or interpret documents without difficulty.

29. In December 1999 the claimant was given a Student Specific Leaning Difficulty assessment by Ms Nicola Durr who was a Specialist Teacher at Hertford Regional College [Hearing Bundle pages 415-424]. This assessment reported that the claimant's literacy skills were not very strong, particularly in the phonological areas. Her auditory skills in these areas were uneven. The test results showed that the claimant displayed many characteristics of a dyslexic nature and she required support

to continue her education. It was recommended that she have extra time for reading for her exams and it appeared that she suffered from low confidence in relation to producing written work. There are some recommendations for teaching, which do not look us to be onerous and the bulk of these appear oriented towards the claimant student developing her approach towards studying. The college's recommendations did not appear to have significant general application or application to future employers and did not appear to indicate a need for ongoing or long-lasting adjustments. The absence of any further correspondence suggests that the college was able to accommodate the recommendations and adjustments for the claimant's studies without problem.

30. In 2013 the claimant was again assessed as a student [HB424]. The note said the writer (Kirsty) was not sure that the claimant's dyslexia report could be accepted as it was from 1999 and the claimant had tests which could be showing underlying ability but was not sure. The note recorded literacy were all fine. The note says that the claimant's cognitive abilities had been tested, but it is unclear what this implies.

31. In evidence, Ms Barroeta said that was aware of the claimant's dyslexia, but she said she did not think that this was a problem. The claimant's relevant disability impact statement is at page 398 to 399 of the hearing bundle. The statement is brief, the claimant provided no corroborative evidence in the form of medical notes or occupational psychologist assessments or reports for her dyslexia. The claimant contended at the hearing that she suffered from "severe dyslexia". The claimant also provided some evidence in respect of an award of Personal Independence Payment on 11 May 2020 (which was after her dismissal) [HB400-411]. There is no mention in the claimant's PIP assessment as to her disability in respect of her dyslexia or her depression.

32. The claimant's second witness statement dealt with her depression [HB426-428]. The claimant disclosed her medical notes from August 2017. This showed no history of depression prior to her father's death in January 2019. There was no reference in the claimant's medical notes to any difficulties at work. She was subsequently prescribed with anti-depressants, but this appears to have stemmed from her father's bereavement.

33. In November 2018 3 family support workers ("FSWs") resigned from the respondent's employment. Mrs Kemp conducted some exit interviews with these 3 departee as follows: RC on 21 November 2018, FB on 22 November 2018 and DM on 27 November 2018 [See HB:184a-184q].

34. The claimant was away from the office at this time as she was nursing her father who had a terminal illness. The claimant's last day in the office was during mid-November 2018.

35. Around this time Mrs Jacqueline Gear was undertaking a consultancy review as some allegations in respect of lottery funding had been raised by the FSWs who had mentioned office irregularities and Mrs Gear was commissioned to undertake an audit.

36. On 13 February 2019 Mr Ogden wrote to the claimant highlighting a number of areas which the respondent said it wanted to investigate further [HB185-187]. The

claimant had been away from work for around 3-months at this stage. These concerns included:

- allegations of bullying and intimidating behaviour towards employees by you;
- allegations of malpractice involving allocation of funding streams and how these were allocated to families from 2016 onwards;
- Data protection breaches with inappropriate storage of sensitive personal information and the keeping of copies of ID and other personal documentation once it was no longer required for business purposes.
- An explanation of why a significant number of self-referrals were declined, and the decision making processes/rationale for declining these.
- The decision making procedure/rationale for closing down a number of referrals.
- An absence of expenditure records (ie journey details to substantiate mileage claims and motor running expenses) and an absence of family records. In particular identification and reports for families who were funded using BLF monies family files where they were funded through the BLF.

37. Mr Ogden proposed a meeting on 13 March 2019 (i.e. 1-month later) he referred to sending 'evidential paperwork' at least 1-week prior to the meeting date to allow the claimant time to review and consider her responses. Any material that could not be sent, because of its sensitivity, he said would be made available to the claimant at the meeting. Mr Ogden referred to the claimant being medically unfit for work because of her doctor's certificate but proceeded to suspend her pending the outcome of the investigation. Mr Ogden said:

> You remain a director of the business during this period and therefore any duties commensurate with your role as a Director, such as authorising salaries or other payments, will continue.

38. The claimant was told she would remain on full pay during the period of her suspension. The letter proceeded to say:

> This suspension recognises the seriousness of the allegations, however it does not indicate any decision has been made regarding your future within the Company. In light of the nature of the complaints received, including bullying and intimidation claims from staff, we have taken the decision to now suspend you as we do not believe it is appropriate for you to be in the office whilst we conclude our investigations.

39. On week before the investigatory meeting Mr Ogden sent the claimant some documents following his review. This documentary evidence consisted of:

- Salient points from the 3 ex-employees which include allegations of poor management practice, including bullying behaviour. We wish to hear your response /comments to the allegations raised in this document.
- A letter from you to the parking control management in Slough appealing against a parking ticket issued on 20th June. This indicates that you were visiting a family in the area however we are unable to find any record of such a visit and request details of the family visited, and the outcome notes of that visit.
- Photographic evidence of documentation found in breach of GDPR storage requirement (x7). We would like an explanation of why such items were not stored securely, or were not destroyed once they had served their purpose in line with statutory obligations.
- Photographic evidence of inadequate office furniture (eg broken chairs – included in the above documents); we would like to understand why employee's request for improved facility/equipment were not actioned.
- BLF Evaluation 2015 to 2018 Report which states: "We have received 387 referrals over the last 3 years of this figure 129 were self-referrals and 248 were professionals". We would like to see the records and outcomes relating to the families helped, as we have ben unable to locate any detailed information for the families assisted prior to James' employment commencing.

40. Of the above documentation:

a. the salient points document was a 4-page document that the claimant had not seen before [HB190-193].

b. The parking appeal letter was 1-page and had been allegedly authored by the claimant [HB194]. The claimant said in evidence that this letter had been written by James Paul, we do not believe her because this was a simple and straightforward letter that if the claimant was unable to write then this would have featured in 1 or more of her 3 statement or in the contemporaneous documents. We are not convinced that appealing the claimant's parking fine was within Mr Paul's duties. Generally the claimant appeared to answer this question *on the hoof* as her evidence appeared markedly uncertain and hesitant, even allowing for her nervousness and any possible difficulty reading this.

c. The photographic evidence consisted of was in the hearing bundle at page 195-200.

d. The photographic evidence of the broken chair was 1 photo [HB201].

e. The BLF evaluation report was authored by the claimant, and she confirmed at the hearing that she was familiar with this document. This was 39 pages. [HB202-240].

41. So, the claimant had seen most of the material sent to her except the "salient points" from the 3 ex-FSWs. This document was a summary of Mrs Kemp's interview notes, which she said, and we believe, that she typed during the course of questioning these 3 ex-employees [HB184(a)-184(q)]. The claimant had not seen the photographs at pages 190-195 of the hearing bundle.

42. Mr Ogden said that the meeting was 'informal' by which he said it was investigatory and not necessarily leading to a formal disciplinary process. He said it was an opportunity for the respondent to address the initial concerns from the audit finding directly with the claimant before deciding what, if any, more formal action may be appropriate. He said it was an opportunity for the claimant to respond to those concerns and address what had happened.

43. The claimant did not respond to Mr Ogden's letter of 13 February 2019 to indicate that she could not attend the meeting of 13 March 2019 and she did not raise any concern that she did not or could understand the content of his letters and/or enclosures of 6 March 2019.

44. 2-days before the investigation meeting, and almost 4 weeks after receiving notice of the meeting, the claimant booked a holiday and departed to Portugal. She had not requested annual leave prior to absenting herself. The respondent rescheduled the investigatory meeting to 27 March 2019 [HB241].

45. The claimant attended the investigatory meeting on 27 March 2019 between 3.30pm to 4.05pm [HB243-246]. Part-way through this meeting the claimant left without any further reference to her employers. In effect, she walked out leaving her co-directors and Mrs Kemp sitting in the meeting puzzled where she had gone.

46. On 4 April 2019 Mr Ogden wrote to the claimant to invite her to a formal disciplinary meeting set for the 9 April 2019, which he said the claimant was advised of the day before [HB261-261a]. He referred to his earlier letter in which he said that if the claimant failed to attend the meeting, the directors could proceed on the information and documentation available to them and that as the claimant walked out of the last meeting before they had a chance to conclude their questions, the directors now invited her to a formal disciplinary hearing. Mr Ogden sent the claimant a copy of the company's disciplinary procedure and he set out the allegations of misconduct and/or gross misconduct which were as follows:

> 1. Failure to adequately and securely store personal ID and other data in breach of GDPR, including file storage at your home address as mentioned by you during the investigation meeting;
> 2. Failure to supply Family File paperwork and funding and outcome records to substantiate BLF Year 1 Funding received
> 3. Potential double funding or misappropriation of funding for families, using both HCC and BLF (Years 2 & 3) monies
> 4. Failure to supply Family File paperwork in relation to BLF Years 2 & 3
> 5. Inflated or fraudulent mileage expenses claims – we required details for the journeys and dates undertaken to substantiate the claims submitted and which family/meetings /training these relate to.
> 6. Fraudulently claiming a refund for a parking ticket issued 28 June 2018 in Slough against which no family visit is recorded.
> 7. Poor management practices.

47. Mr Ogden advised the claimant that she had a right to be represented by a work colleague or trade union representative and asked her to confirm her attendance and that of any representative. He also said that in view of the distance he has to travel that he would appreciate if the claimant was unable to attend if she would notify him as soon as possible or on the date itself.

48. The claimant requested the disciplinary hearing be postponed and Mr Ogden acceded; he wrote to the claimant on 5 April 2019 [HB263] as follows:

> I acknowledge receipt of your request via a text yesterday for a postponement of the disciplinary meeting in order for you to secure the services of a trade union representative, or fellow employee, as is your statutory right. Please note you do not have to bring a representative if you do not wish to do so, or you are unable to secure the representation of a trade union official. If you wish to bring a companion, eg friend or relative we will allow this to better support you, however such a person cannot be a lawyer and we will require, in advance, the full name and occupation of the representative you intend to bring.
> We are keen to ensure the matters arising from our audit, which formed the basis of this disciplinary meeting following your refusal to continue with the investigatory meeting last week, are not necessarily delayed and to this end we are prepared to postpone the meeting until Monday 15th April…

49. On 10 April 2019 Zoe Brown of Hertfordshire Partnership University NHS Foundation Trust Crisis Assessment and Treatment Team ("CATT") wrote an initial assessment and care plan for the claimant [HB522-523]. This indicated no difficulties at work, although it highlighted difficulties arising from the claimant's father's bereavement. This assessment was not shared with the respondent until during the course of proceedings.

50. On 12 April 2019 Dr Rogowski, Consultant Psychiatrist, from CATT [HB264] wrote:

> To whomever it may concern
> 'Sandra is currently under the care of the Crisis Assessment and Treatment Team (CATT). The CATT role is to provide mental health care to patients who are acutely unwell and at risk of requiring admission or would benefit from intensive support to facilitate early discharge from hospital. Sandra has been under the Crisis Team since 04/04/2019. As a consequence, unfortunately Sandra is too unfit to attend your planned meeting on Monday 15th April 2019.

51. Dr Rogowski's letter was passed on to the respondent. The letter paused the process.

52. On 10 May 2019 Mr Ogden acknowledge receipt of the claimant's sick note [HB265-266]. This letter asked the claimant for her consent to get more information from her medical advisors. Mr Ogden told the claimant to take a complete break from work. He requested the return of the respondent's computer, provision of passwords, the return of company bank cards, approval card and the card reader for internet banking, the key fob and all other company property. He offered to collect this.

53. By text dated 17 May 2019 the claimant indicated that she was unwilling to share her medical records and wanted to discuss this with Mrs Kemp [HB267]. Mr Singh responded later that day saying that the Board of Directors wanted to receive as much information as was necessary to understand the claimant's illness and how to assist her. He referred to the claimant indicating previously she would share reports with the directors and that this was a method to avoid contacting the medical experts independently. As far as sharing the information, Mr Singh said that he noted the need for confidentiality and only directors would see medical reports and only where it was absolutely necessary would they share the report with Mrs Kemp. Mr Singh also said that they were finding it difficult to run the company without having access to the information and property requested and he asked for this to be returned.

54. On 18 June 2019 Mr Ogden wrote to the claimant following her latest sick note [HB296-297]. The claimant had been away from work for 7-monrths by that stage. He said that it was in no-one's interest to have the disciplinary process still on hold after that length of time (i.e. 4-months after the claimant was first told of the disciplinary issues). He said that the claimant may not be well enough to attend the meeting, but he asked that she provide written comments on the matters which he had previously written to her about. He asked for those comments within 14 days. In addition, Mr Ogden raised 2 further matters about the use of the company debit card for what appeared to be groceries at a supermarket on a specified date and a secondly in relation to an overtime payment of £13,000 made in June 2018. He repeated his request for the claimant to return all company property.

55. The claimant sent a reply to Mr Ogden's letter [HB298-300] with some notes in respect of: (1) GDPR; (2) BLF; (3) Double funding; (4) Supplying families paperwork; (5) Mileage; (6) Parking fraudulently claimed; (7) Poor management practice; and (8) Letter – 18 June 2019. This was received at the company's office on 1 July 2019.

56. A "disciplinary review" proceeded with Mr Ogden and Ms Barroeta on 4 July 2019. Also present was Mrs Kemp who was noted to be in assistance [HB301-302 although part of this document was not photocopied].

57. On 20 July 2019 Mr Ogden wrote to the claimant with the outcome of the disciplinary investigation [HB305-312]. The letter was detailed. It set out the background to matters and then made specific findings in relation to allegations of misconduct and/or gross misconduct.

1) In respect of failure to adequately and securely store personal ID and other date in breach of GDPR, including file storage at home, Mr Ogden in his findings said that the claimant committed numerous breaches of GDPR. He referred to bin-bags of sensitive information in the offices, the inability to find family files and the claimant refusal to return all company property.
2) For the allegation of failing to supply family file paperwork and funding and outcome records to substantiate BLF year 1 funding received, Mr Ogden said the internal audit could find no trace of files to substantiate the statistics on the Year 1 BLF Report.
3) Regarding the potential double funding or misappropriation of funding for families, using both HCC and BLF (year 2 and 3) monies. Mr Ogden made a finding that in the absence of proper family records they had no way of identifying which funding pot was used for which family nor whether funding was used from both pots for the same family.
4) Mr Ogden made a finding that there was a lack of information of journeys taken to substantiate extensive milage claims. He identified an unauthorised receipt for a spa break and personal supermarket spending for which there was no explanation or reimbursement.
5) For the allegation, fraudulently claiming a refund for parking tickets issued 20 June 2018 in Slough against which no family record is received, notwithstanding Mr Ogden accepted that the claimant had paid that parking fine personally, he found that she appeared initially to try to avoid payment by sending a work-related letter to the parking authority which appeared to fabricate the reason for the car being parked there.
6) In respect of poor management practices, Mr Ogden found that the claimant had a controlling and bullying style of management producing fear and tearful responses from staff. He set out the basis for this conclusion based upon the recent resignations of 3 staff members, which he said was misreported to the management team. He determined that the claimant mislead the management team and that these questioned other resignations. Furthermore, Mr Ogden also noted the claimant's failure to co-operate with her co-directors in respect of keys to open office cabinets and failure to return all company property including laptops, key fobs, debit cards etc.

58. In respect of his conclusion Mr Ogden reported as follows:

> Having taken a thorough examination of every file and all paperwork stored within the Company's offices, it is the Directors' reasonable opinion that whilst there may have been acts of Misconduct, and potential Gross Misconduct in relation to alleged misappropriation of funds and management practices, there is insufficient paperwork or information received from you to confirm this. We have taken into account your current ill-health.
> We do consider, however, that there is evidence to uphold the complaints of bullying and poor management practices based on testimony from ex, and current, employees.

> Whilst the Directors have determined they do not intend to make findings in relation to misconduct/gross misconduct, the findings taken as a whole have led the directors to conclude that there are potential grounds to terminate your employment. Regrettably as a result of your management practices there is now a complete lack of trust and confidence in you carrying out your position as CEO from staff and Directors.

59. Mr Ogden’s outcome letter does fully make sense because it is quite clear from the foregoing that he did make findings of fact yet, in his conclusions, he purported not to make findings of fact. When this was put to Mr Ogden by the Tribunal he said that he was concerned with lottery funding and the effects that a finding of possible fraud, misappropriation of money and/or chaotic management practices might have for the future of the respondent charitable organisation. By talking about an irreparable breakdown in the relationship and the claimant’s return to the organisation as being untenable, he said that he hoped to avoid making explicit the financial irregularities and organisational mismanagement.

60. He went on to say that the relationship has irretrievably broken down:

> It is apparent that the relationship between you and the staff and your co-Directors in HPP has irreparably broken down. Your return to the organisation is therefore potentially untenable as there is a risk that it could result the immediate resignation of the directors, consultants and employees resulting in the company’s likely closure and the real risk of failing the families we are currently supporting. The future security and viability of the Company and its fulfilment of its Contractual obligations to HCC, are at stake.

61. The claimant was invited to a further meeting on 12 August 2019 (over 3 weeks later) to discuss these further matters and her continued employment. The claimant was reminded of her right to be accompanied at this meeting. The claimant was advised that the meeting was to consider terminating her employment and directorship. The claimant was also advised that if she was unable to attend then the directors would consider comments and/or representations up until the day after the meeting. Mr Ogden lifted the claimant’s suspension, and the claimant was moved to statutory sick pay from that day forward. This had the effect of lifting an ongoing and significant financial obligation to the respondent company in respect of the claimant’s salary.

62. The claimant responded on 23 July 2019 to say that she would not able to attend meetings or reply to emails until advised by her doctor [HB314]. The claimant produced 2 sicknotes during this period stating “Anxiety” from 19 July 2019 to 18 August 2019 and 7 August 2019 to 6 September 2019. She did not produce a letter from her GP or other medical practitioner regarding her engaging with the disciplinary process.

63. The claimant was discharged from CATT on 8 August 2019 [HB514] and the Transfer/Discharge Notification gave a diagnosis of “moderate depressive episode”. The respondent witnesses did not know of this diagnosis and there is no evidence that they were made aware of the developments in the claimant’s mental health.

64. The claimant did not attend the meeting on 12 August 2019. Ms Kemp attended the venue and Mr Ogden participated by telephone as he lived some distance away and the claimant had not confirmed her attendance and indeed communicated her

likely absence on both 23 July 2019 and 31 July 2019. Mr Ogden decided to dismiss the claimant, with pay in lieu of notice and Ms Kemp concurred.

65. By letter dated 16 August 2019 the respondent dismissed the claimant with immediate effect [HB319-320]. The claimant was paid 12 weeks salary in lieu of notice. The letter confirmed that the claimant had been invited to attend an "outcome meeting" but that she confirmed that she would not be attending. The meeting proceeded, as predicted, in the claimant's absence and she was given the opportunity to provide comments or representation in writing, but she did not do so. The dismissal letter enclosed a copy of the minutes of that meeting. The letter continued:

> The findings were as stated in our letter dated 20th July 2019. Regrettably, you have lost the trust and confidence of the Board of Directors and staff of HPPP in you carrying out your position as CEO. This makes the continuation of your employment untenable and therefore the decision is to terminate your employment on notice [sic].

66. Notwithstanding that it was Mr Ogden's decision to dismiss the claimant, The letter was signed by all of the claimant's co-directors: Mr Ogden, Mr Singh and Ms Barreota. The dismissal letter who offered the claimant the right of appeal and extended the time restriction on this.

67. The claimant instructed solicitors who made certain stipulations in respect of the appeal, which were accepted by the respondent. Despite the respondent chasing the appeal, the claimant and her advisers did not pursue this avenue.

68. Following the claimant's dismissal, a full Psychological Services Assessment was undertaken by Dr Alice Gardner, Chartered Clinical Psychologist for the Hertfordshire Partnership University NHS Foundation Trust and her colleague on 16 October 2019 and 2 December 2019. Dr Gardner's report of 24 December 2019 [HB519-521] did not indicate any difficulties, concerns or experiences that were relevant to the claimant's work. Furthermore, Paul Walsh, of the Arden MH Acute Team, Coventry and Warwickshire Partnership NHS Trust conducted a mental health assessment of the claimant on 8 January 2020 which attributes the claimant's depression/ anxiety or mental health difficulties to specific factors other than her work [HB515-516].

Our determination

Disability: issues 1 and 2

69. The respondent conceded that the claimant suffered from dyslexia. The extent of the respondent's knowledge was disputed as was the degree of the claimant's difficulties. Mr Singh said that he knew that the claimant had dyslexia and that sometime in the past the claimant had been referred for a formal assessment on behalf of the respondent in respect of this specific learning difficulty. Neither the claimant nor the respondent's witnesses (in particular Mr Singh and Mr Ogden) were aware of when the report was undertaken. The claimant said that following the Hertfordshire Regional College Report [HB415-423] she spoke to Mr Singh about another report being undertaken by her employer. The claimant said that this was around 2000 but we doubt the accuracy of this date because, at that stage, the respondent organisation was not a registered company, and it was therefore unable to commission reports in its own

right. Mr Singh suggested that these enquiries may have been made in the very early years of their professional relationship and that he asked the claimant to commission a report which both Mr Singh and the claimant think was undertaken by Bedford Autism. The claimant said that this report involved an assessment of possible autism and her balance problems (which may or may not have been related to dyspraxia). In any event, both the claimant and Mr Singh think that a report was commissioned about 20 years ago or more. Mr Singh said he did not write for the report; he said that he told the claimant to commission such a report on behalf of the respondent company and that the report should have been retained by the claimant in her employment file at the office. In contrast, the claimant said the report was produced for the Board and that Mr Singh should have kept it and its non-production meant it had been deliberately withheld or lost by the directors.

70. We prefer Mr Singh's version of events that he instructed the claimant to write for the medical report because this is entirely consistent with his evidence and surrounding approach. He did not believe that the claimant had a pronounced or demanding disability. Indeed, it would be appropriate that the report was kept at the respondent's offices, and it also reflects the rather haphazard approach to administration of the directors (including the claimant) of this organisation. In any event, the claimant wrote to commission such a report, which we have not seen. We asked the claimant a number of questions about to whom this report was addressed, and we determined that the report was addressed to either the claimant in her own name or as Chief Executive Officer of the respondent company. In any event, the report was sent to the respondent's address (and not to any director's home) and the claimant was responsible for opening the report because she opened the post. So, we are satisfied that any report came to the office and was opened by the claimant. Mr Singh was very clear that he did not see the outcome of any such report, but the claimant did mention to him that she required some reasonable adjustments.

71. Mr Ogden offered a different perspective. He said that he was aware of the claimant's dyslexia but that this was not problematic. He said he thought a report was commissioned sometime around 2007. He said that he recalled that the claimant had obtained a report and that she required some additional help with software. Despite the later chronology, Mr Ogden's account was consistent with both the claimant and Mr Singh's recollection because both agree a report had been produced which recommended or was said to recommend the provision of specialist computer software. Mr Singh said that he authorised the claimant to purchase any software that she felt that she needed. The claimant says that she utilised her software from her Open University ("OU") course, which had been provided to her earlier. So, the claimant was able to access some form of specialist provision around this time. The question of who provided this software is not too relevant because the provision of such software seemed to have satisfied all concerned.

72. The claimant utilised OU software. Mr Singh contended that the claimant had bought this with the respondent's funds, hence he believed the respondent provided the software. The claimant said, and we accept, that she did not utilise the respondent's funds for the provision of the software she already had. If there were any adjustments in respect to any additional provisions, then we would have expected the claimant to have raised these further requirements with her co-directors, which she did not.

73. The respondent's board members and senior employee were lax in their approach to the oversight of operational management of the organisation. This arose from the way that the organisation had been set up and the trajectory of individuals selected by the claimant to join the respondent organisation. The management committee consisted of the claimant and the directors and occasionally included someone else co-opted for a meeting, for example Mrs Kemp or, infrequently, the company accountant. The management committee met fairly regularly but not frequently. Management committee meeting were often meetings of board members only, so we use the term management committee meetings widely to incorporate the board meetings also.

74. The claimant had set up the charity. She had identified a social need and exerted considerable effort in developing an organisational response. She was very firmly in charge, particularly operationally but also strategically in setting the agenda for future development. The claimant identified individuals who might support the charity and some of these became more involved. The claimant offered some individuals who could offer desirable skills a more formal role, which included eventually becoming a director. So, the claimant personified the organisation, and the board was selected (by the claimant) to support the claimant in her role.

75. Mr Singh had been involved in legal services and presented as an intelligent and supportive director. Mr Ogden had business skills and was equally supportive of the claimant. The relationships flourished until late 2018. Mr Ogden remained as a director even though he had moved some considerable distance away from the respondent's organisation. He said (and we accept) that he thought of retiring from the charity when he moved to the West Country but that the claimant persuaded him to stay with a reduced input. He did not visit the office instead holding meetings at a proximate location easy for motorway access.

76. Mrs Kemp was involved with the claimant in her capacity as CEO in relation to HR issues, for example recruitment, but she never saw the claimant's work in respect of commissioning reports etc. Mrs Kemp said that she corresponded with the claimant usually by email and these emails could be long and were responded to promptly. We believe Mrs Kemp's account that at no stage had the claimant raised with her difficulties that might arise from her dyslexia and that she saw nothing to indicate that this might be a problem.

77. Mrs Barroeta had only become a director relatively recently and she was unaware of the claimant's dyslexia. Mrs Barroeta had some experience with the claimant in her role of offering her family support (i.e. as a FSW). She said that the claimant was effective in the support she offered, but she did not notice any signs of dyslexia. This is surprising given that the FSWs would attend meetings alone with the family they supported and were then required to write detailed notes on visits for future reference. Such reports were also confidential.

78. Mrs Gear had regular, intimate knowledge of the claimant's working regime. She said that prior to her audits of the respondent the claimant had written reports for her when she worked in Hertfordshire County Council. The reports were linked to funding the respondent's work and there were quarterly meetings to review cases undertaken and progress made with families. During the period around 2016 to 2018

Mrs Gear said that she met with the claimant approximately 6 times and during these meetings on all occasions the claimant had sufficient documentation, she was well briefed and referred to the documents with apparent ease. This was part of a rigorous examination process undertaken by Mrs Gear with 2 additional colleagues. In questioning by the Tribunal, Mrs Gear satisfied us that there was nothing that raised any concerns about the claimant's inability to read or comprehend information or to discuss cases from the paperwork reviewed at the meeting. The claimant's response that she put on a brave face to the organisation's funders is rejected.

79. Mrs Gear was subsequently commissioned to undertake work within the respondent organisation following her departure from Hertfordshire County Council. We regard this as an indication that the claimant and the organisation had confidence with Mrs Gear (at least at that time and there was nothing to indicate that the claimant had subsequently lost confidence in her). Again, Mrs Gear said that whenever she came into the office the claimant was able to review documentation, discuss files and take notes of meetings without apparent difficulty.

80. The claimant said that she was particularly reliant on James Paul to provide all of her support in correlating reports, which was not known to the management committee. The claimant said that she never mentioned any of this to her co-directors or raised this at the management committee meetings because she was "embarrassed". This is notwithstanding the fact that Mr Singh was already aware that she did have dyslexia and Mr Ogden vaguely so.

81. Mr Paul was not a support worker. He was employed as an Administrator in line with the respondent company's expansion. The management committee were not aware of any disability support role or reasonable adjustments undertaken by Mr Paul and the respondent disputed the claimant's contention. The claimant did not refer to this in her statement; nor did she call Mr Paul to give evidence. There was no statement from him nor did the claimant produce any correspondence from Mr Paul to confirm this. However, most importantly, the Tribunal went through the documents in the rather extensive 2 lever-arch files hearing bundle and could not see any direct or indirect reference to this level of Mr Paul's support in any contemporaneous or near-contemporaneous evidence. Even the 3 exiting FSWs did not make any reference to the claimant's contended additional support. Indeed, in contrast, they complained of the claimant nit-picking over reports that they had written. The 3 original complainants give no indication that the claimant had difficulties with dyslexia.

82. The claimant was used to accessing funding for the respondent organisation. She was able to access funds to get the original computer software, and although she was able to deal with accessing funds for clients, the claimant confirmed that she did not access funds for a support worker commensurate with the level of her contended disability.

83. It was a strong element of the claimant's role that she was promoted by the organisation. This in turn raised the profile of the organisation. The claimant said that she had not drafted the Mercury and Observer Community Awards 2015 nomination statement [HB133-134] but that she was aware of this. No one on the management committee or other employee had prepared this statement so it is difficult for us to see who else would have done so other than the claimant. In any event, there is no

mention of the claimant overcoming dyslexia in a statement that we would otherwise have expected to refer to.

84. We note from the Tribunal paper's that the claimant did not indicate that she had particular difficulty in comprehending papers as contended by Mr Webster at the hearing. Indeed, her solicitor did not indicate that she had substantial difficulties at section 12 of her Claim Form [HB10] nor was this raised at the Preliminary Hearing of 16 February 2021 or during the 2 years it took to progress proceedings to the final hearing. In her evidence at the hearing, the claimant contended that she had huge difficulties reading the large font affirmation card prior to giving her evidence. She laboured over the hearing bundle. The Tribunal asked the claimant to identify all of the correspondence in the hearing bundle that she had written herself without support. Other than the short email at page 314 and the text messages, the claimant said that she could not write any other single document without the input or substantial support of colleagues, mainly Mr Paul.

85. The claimant's difficulty in both reading and comprehending letters and documents was made obvious to even the casual observer. This contrasted with both parts of the claimant's own evidence and with the respondent's evidence set out above. With the apparent difficulties displayed by the claimant when she gave her evidence, the respondent witness could not possibly have failed to notice that this was a person that presented with conspicuous problems. Having thought about this carefully, we do not believe the claimant in this regard. We make this determination not because the claimant evidence contrasted with that of 4 of the respondent's witnesses but because of the level of the claimant's pronounced difficulties in reading the documents at the hearing were such that this would have been incontrovertible and contemporaneous evidence would have been extensive to support such visible difficulties in with this prominent individual. We prefer the evidence of the respondent witnesses, which was consistent with each other but, more importantly, consistent with the contemporaneous evidence. Consequently, we conclude that whilst the claimant did have some form of dyslexia, at the hearing the claimant had exaggerate her condition considerably.

<u>Discrimination arising from disability: issues 3 to 7</u>

86. In respect of issue 3(a), we believe that the claimant's dyslexia did not form any significant incapacity for the claimant to work. Indeed, we do not feel that the claimant was to any extent incapacitated for work of for participating in the respondent's enquiries, investigations and disciplinary process due to her dyslexia. Her dyslexia did not preclude the claimant returning to work in issue 3(b). We are not satisfied that the dyslexia gave rise to a difficulty in preparing for or any inability to attend disciplinary meetings for issue 3(c). As can be seen from our findings of fact, the respondent's decision to dismiss the claimant had nothing to do with the claimant's dyslexia.

87. So far as the claimant's depression, we have gone through the claimant's General Practitioner's notes in some detail. There appears to be some reference to earlier incidences but from January 2018 onwards the claimant appears to have suffered from a significant depressive illness. If this is not entirely related to her father's death, then it is largely because of this unfortunate occurrence. There is a surprising lack of reference to the claimant's work in any medical assessment or correspondence. So, we conclude that her depressive illness was not caused by work

and there is no evidence to suggest this was aggravated by the respondent's treatment of her. Indeed, at every stage the respondents sought information and offered to make reasonable adjustments to accommodate the distress that the claimant was obviously feeling for her father's loss.

88. So far as the claimant's depressive condition, this created an incapacity for the claimant to work significantly after January 2019. There is some medical evidence of the claimant's incapacity prior to her father's death. Indeed, the substantial evidence of the claimant prior to her father's death was not related to depression, it was more related to the time required to care for someone with a terminal illness although we recognise that there may well be a significant strain involved in this.

89. The respondents were entirely supportive of the claimant around her father's illness and his bereavement. She was allowed considerable paid leave. The respondents were not by any means intrusive in the enquiries, particular given the claimant's key position in this small organisation.

90. The dismissal itself is, of course, unfavourable treatment so dismissing the claimant on 16 August 2019 amounted to unfavourable treatment. The claimant was not dismissed because of her incapacity for work because the respondent's letter goes into some considerable detail to explain her dismissal was occasioned by a breakdown in relationships between the claimant and the directors and this was due to conduct issues. Any incapacity to work or delay in returning to work does not feature in the respondent's decision to dismiss, however, nor did any difficulty in preparing or inability to attend disciplinary meetings. The respondents gave the claimant a considerable benefit of the doubt by not drawing conclusions where conclusions ought to have been drawn. However, the respondents clearly indicated that the claimant had been off for a substantial period, which is why the directors needed to bring matters to a head as was set out in Mr Ogden's correspondence. So this is why the disciplinary process and eventual dismissal proceed. However, the claimant's depression (such that the respondent was aware of) was not an influence or cause that operated in the minds of Mr Ogden or his co-directors. We find that the claimant was dismissed because of the conduct matters set out in Mr Ogden's letter of 20 July 2019.

<u>Failure to make reasonable adjustments: issues 14 to 18</u>

91. As far as making reasonable adjustments are concerned, the respondent did, if fact, provide information to the claimant in relation to the disciplinary investigation in a timely manner. The respondent gave the claimant 1 week to consider the documents prior to an investigatory interview. It was made abundantly clear that no disciplinary sanction was to be provided at this meeting, it was purely investigatory. The documentation provided was not extensive and only 1 document and some photographs were new to the claimant. The new document was a breakdown of the statements of the 3 FSWs. Although the summary was not prepared as a reasonable adjustment, Mrs Kemp said it was prepared because the 3 individuals did not want their full details to be provided to the claimant so, a summary document was provided with the substance of the allegations. In any event, this had the effect of breaking down 3 separate interviews into 1 single document which summarised the salient points. If a reasonable adjustment was required in such circumstances, then this had the effect of being a reasonable adjustment as it amounted to providing consideration time for the claimant for 1 3-page document and some photographs of a week.

92. The claimant said throughout the process that she wanted a representative to assist her but when she was asked by the Tribunal for the identity of that representative, she could not say who it was. The claimant said that she wanted to bring someone from CATT but contradicted this evidence subsequently by saying that CATT staff could not be involved in her disciplinary process. The respondent's witnesses said that they did not know of the claimant's mental health breakdown and the support she sought and other than sick notes and the letter from Dr Rogowski, which came as a surprise and which they immediately responded to by pausing the process. The respondent sought to obtain further information, but this was ignored by the claimant. All attempts to find out more about the claimant's anxiety and/or depression were rebuffed. If the claimant wanted her friend Mrs Swain to attend any meeting, then she should have asked for this, so that the respondent could address the point. We believe the respondent would have permitted this, because of the general supportive attitudes of Mr Ogden (and Mr Singh) in particular and also Mrs Kemp. In addition, the invite to the formal disciplinary meeting dated 4 April 2019 suggested that the claimant could bring a friend or relative, but this was made explicit by Mr Ogden in his letter of 5 April 2019. The respondent's only concern was that a claimant's solicitor should not be involved in any internal process, and this was reasonable in such circumstances. If the claimant had turned up to her disciplinary hearing with Mrs Swain or another friend, then we are convinced that this would have been permitted as Mrs Swain was not a solicitor. The claimant's complaint in this regard has no merit.

93. The claimant's complaint about suspension and not being allowed to attend the offices is difficult to understand as at this point the claimant had been off work for 4-months and she showed no inclination to return to work throughout this whole period. The allegations were serious, and suspension was explained to be a *neutral* act. Under the circumstances this complaint is rejected.

94. Mr Ogden, in his suspension letter, asked the claimant to assist with HMRC processing and banking transactions as this work was exclusively undertaken by the claimant and the directors and staff had not previously undertaken the work and did not have the requisite access details. The respondent previously asked the claimant for the appropriate passcodes. The claimant had been absent from the business for some time and the work was now pressing. Both Mr Ogden and Mr Singh asked on a number of occasions for the appropriate passwords so that they could undertake this work themselves. The claimant did not provide this information and we could see no reason as to why not. She was annoyed by her co-directors and chose to be deliberately uncooperative and thereby disruptive. There was no failure to make reasonable adjustments in this regard.

95. In the above and in all respects the respondents treated the claimant in a proportionate manner. We do criticise the respondents for their lack of knowledge and possibly a lack of support of the claimant as the nature of the working relationship for this small organisation was that the claimant has set up the charity and she was very firmly in the driving seat. The claimant set the agenda; if the claimant had wanted additional support, we have no doubt at all that her co-directors would have given it. We reject the claimant's complaints of failures to make reasonable adjustments.

Unfair dismissal: issues 19 to 22

96. Notwithstanding Mr Ogden's conclusion in his letter dated 20 July 2019 that he did not make any findings of fact that misconduct occurred. As identified in our findings of fact above, the Tribunal is quite clear that he found misconduct at the heart of the claimant's behaviour. This was set out in the appropriate findings contained in that letter. We find that there were reasonable grounds to support such a belief. The respondent's findings were measured in not jumping to conclusions. Mr Ogden was unwilling to make findings of fact in respect of misconduct because of the lottery funding and possible reputational damage. Whilst we consider this an irregular and ignorant approach, it is understandable in the circumstances and displays a genuine desire to act in (what he perceived to be) the best interest of the business. The claimant was dismissed for a conduct related reason, pursuant to s98(2)(b) ERA.

97. We find that the employer utilised a fair process and this was in line with the ACAS guidelines as set our above. A reasonable investigation was carried out by Mr Ogden and Mrs Kemp. Indeed, the claimant's written response of 1 July 2019 were considered by Mr Ogden with Ms Barroeta.

98. Mr Ogden set an investigatory meeting for March 2019 and the claimant snubbed her colleague by booking and departing for a holiday just before the meeting. This was rude, deliberate and designed to unsettle a long-standing colleague. It was unacceptable behaviour. We were struck by the 3 FSW statements referencing the claimant walking out of meetings. This appears to be an occasional outburst of petulant behaviour which was displayed by the claimant at the investigatory meeting of 27 March 2019. The claimant refused to attend at her disciplinary hearings of 20 July 2019 and 12 August 2019, which fitting into a pattern of refusing to explain herself.

99. We were concerned with Mr Ogden's role, and that of other directors, in both the investigation and the claimant's dismissal. There was no clear distinction of the separate strands of investigation and dismissal to this disciplinary process. Had the claimant responded to the allegations with more than a cursory rejection then the respondent might have been in trouble on this point. However, we note that the appeal was offered before a wholly independent human resources consultant, so the respondent was keen to correct this procedural irregularity.

100. So far as the *Burchell* test is concerned, we are satisfied that: the respondent directors had a genuine belief that the claimant was guilty of misconduct; there were reasonable grounds for holding that belief; and this had come from a reasonable investigation.

101. The claimant was the CEO of this organisation. She wrote or imported the disciplinary procedures, and we heard that in the past she had recourse to these procedures in respect of other staff. So, there is little excuse for her not following the respondent's procedures.

102. Dismissal was within the range of reasonable responses. It was based upon findings of bullying by the claimant of the 3 FSWs and evidence of unacceptably poor management practices from the Chief Executive Officer. This was set out fully in Mr Ogden's letter of 20 July 2019. The respondent sought the claimant's participation in a further hearing, yet the claim still refused to engage. The claimant was dismissed on 16 August 2019. The claimant had lost the trust and confidence of the Board. This

dismissal letter was signed by Mr Ogden, Mr Singh and Ms Barroeta. The claimant was offered the right of appeal. Reference was made to the staff handbook and that the appeal should be received within 5 working days. In the circumstances the respondent extended this right of appeal to 10 days.

103. The claimant's solicitors appealed on her behalf – 14 days after the date of the claimant's letter of dismissal and outside the additional time allowed by the respondent [HB323-324]. This was the very first time that the claimant's dyslexia was raised during the correspondence. The claimant's solicitor requested that the appeal be conducted by an external and wholly independent HR consultant and suggested that they agree with a short list of 3 consultants from which to agree who is the most suitable.

104. By letter dated 11 September 2019 the respondent's solicitors agreed to an appeal by way of a re-hearing and confirmed that they would make arrangements for an independent HR consultant to hear the appeal [HB326-328]. A neutral venue was accepted and that any reasonable request for a chosen companion would be accepted. The respondent's solicitors requested substantive grounds for appeal and agreed to the claimant having supervised access to the office. The respondent said that they would preserve documents and evidence, but they made the point that the absence of documentation was one of the concerns arising from the disciplinary investigation. The respondent's solicitors then provided a list of 3 HR consultants for the claimant's approval on 27 September 2019 [HB329].

105. Almost 3 weeks later the respondent's solicitors chased in respect of hearing back from the claimant in respect of her appeal [HB330] and on 16 October 2019 the claimant selected one of the individuals [HB331] and ignored the other outstanding matters. On 26 November 2019 [HB332] Mr Singh chased up the claimant's solicitor in respect of the claimant's appeal. There appears to be no further substantive response thereafter. The Tribunal queried this with the claimant, the claimant said that she had run out of money at this point so she did not wish to pursue her appeal because she could not afford to pay for solicitors to act on her behalf.

106. Irrespective of whether or not the claimant was able to afford solicitors, this is not a satisfactory explanation as to why she did not pursue her appeal. Indeed, the respondent made it quite clear that her solicitors would not be permitted to represent her during the appeal. The respondent made every effort to accommodate an appeal and pursued the claimant's outstanding appeal diligently. The claimant's criticism of the respondent for her own failure to pursue her appeal is nonsense in the circumstances of this case. The respondent sought to accommodate the claimant's solicitors' terms for the appeal which most employers would rebuff. Mr Singh also chased the claimant's solicitors in respect of their tardiness. Failure to adhere to a proper appeal process is a significant breach of the ACAS guidelines, and this was the fault of the claimant.

107. In summary, the claimant was not discriminated against for reasons of her disabilities. The respondent did not fail in its duty to make reasonable adjustments. The claimant was not unfairly dismissed

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Employment Judge Tobin

Date: 28 April 2022

Sent to the parties on: 29 April 2022

For the Tribunal Office