



EMPLOYMENT TRIBUNALS

Claimant: Ms K Kaler

Respondent: Insights ESC Ltd

Heard at: London Central (by CVP)

On: 2, 3, 4, 7, 8 & 9
February 2022

Before: Employment Judge H Grewal
Mr A Adolphus and Ms J Cameron

Representation

Claimant: In person

Respondent: Ms H Platt, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1 The Tribunal does not have jurisdiction to consider the complaints of direct disability discrimination and harassment related to disability about acts or omissions that occurred before 27 November 2017;

2 The complaints of direct disability discrimination and harassment related to disability about acts or omissions that occurred on or after 27 November 2017 are not well-founded;

3 The complaint of discrimination in consequence of disability (section 15 of the Equality Act 2010) is not well-founded;

4 The complaint of failure to make reasonable adjustments is not well-founded;

5 The complaint of victimisation is not well-founded;

6 The complaint of breach of contract is not well-founded;

7 The complaint of unauthorised deductions from wages for the period 1 to 3 January 2018 is well-founded.

REASONS

1 In a claim form presented on 30 March 2018 the Claimant complained of disability discrimination, victimisation under section 27 of the Equality Act 2010, unfair dismissal for having made protected disclosures, breach of contract and unauthorised deductions from wages. Early Conciliation (“EC”) was commenced on 27 February 2018 and the EC certificate was granted on 27 March 2018.

Procedural history between March 2018 and February 2022

2 The claim was served on 13 June 2018. The Response was received on 9 July 2018. A final hearing was listed for 21 to 27 November 2018.

3 At a preliminary hearing on 18 July 2018 the Claimant withdrew her complaint of unfair dismissal and the claim was dismissed on withdrawal on 24 July.

4 At a preliminary hearing on 17 September 2018 the Claimant was given permission to amend her claim to include complaints of post-termination victimisation.

5 The hearing could not go ahead on 21 November due to lack of judicial resources and was relisted to start on 8 July 2019. As disability was still in issue at the start of that hearing, the Tribunal (EJ Elliott) took the view that as much of the case was about disability discrimination, it made sense to determine the issue of disability first. The disability relied upon by the Claimant was Asperger’s Syndrome. The Tribunal heard evidence and submissions on the issue of disability on the first day and gave its decision orally on the following day. It concluded that the Claimant had not been disabled (as defined in the Equality Act 2010) at the material time. At that stage the Claimant said that she could not go on with the hearing. The Respondent objected to the hearing being postponed. The Tribunal postponed the rest of the hearing.

6 On 22 July 2019 the Claimant applied for reconsideration of that decision and on 14 August 2019 submitted a report from Chartered Clinical Psychologist, who had assessed her two days earlier. His conclusion was that the Claimant had Autism/Asperger’s. The Tribunal refused the application for reconsideration. The Claimant appealed to the EAT.

7 On 16 October 2019 the Claimant presented another claim against the current Respondent and four of its employees and its legal representative at the previous hearing. That claim was listed for a preliminary hearing on 13 January 2020 to determine the Respondent’s application to strike out that claim. I heard that application. Shortly before that hearing the Claimant sent the Tribunal the report of the Clinical Psychologist who had seen her on 12 August 2019 and asked for certain adjustments to be made. The Tribunal’s decision (which was in the bundle of documents before us) records that all the adjustments requested were made. It also records that the Claimant said at lunch-time that she could not take it any more and was leaving and that I could make a decision without her input. I reserved my decision and it was sent to the parties on 11 February 2019. The decision was that

the Tribunal did not have jurisdiction to consider some of the complaints and the others were struck out. That decision was not appealed.

8 The Claimant's appeal against the decision of the Elliott Tribunal was allowed by the EAT on 25 September 2020 and the case was remitted to the Tribunal to consider afresh the issue of disability.

9 The hearing took place on 1 February 2021 and the Tribunal concluded that the Claimant had been a disabled person at the material time by reason of having Autism Stress Disorder ("ASD").

10 At a preliminary hearing on 23 July 2021 the case was listed for a liability only hearing for 7 days from 2 to 10 February 2022.

Discussions at the start of the hearing

11 We had a discussion at the start of the hearing about how we would deal with various matters, having regard to the Claimant's disability, its impact on her and the need to make reasonable adjustments. We had read the report prepared by Charles Parkes, the Clinical Psychologist, who assessed the Claimant on 12 August 2019. He diagnosed her with Autism Spectrum Disorder and had set out how that affected the Claimant's communication and language skills and social interaction skills. It described her as being very articulate, but as someone who could become quite focused on specific details. We had also seen a report from another Clinical Psychologist, Dr Lacerda, dated 29 September 2020. This report stated that the Claimant was suffering from depression and anxiety which were exacerbating the difficulties caused by the ASD. We did not have any more up to date reports.

12 The Claimant's complaints of disability discrimination were of direct discrimination, discrimination for a reason arising from disability and failure to make reasonable adjustments. The parties had produced a draft list of issues which had been arrived at in the following way – a first draft produced by the Respondent, comments made on it by the Claimant and the Respondent's comments on the Claimant's comments. It appeared to us that there were no fundamental differences between the parties as to the main issues that we had to determine – the differences related to setting out further details of what we had to consider. We indicated to the parties that we did not consider it necessary to hear arguments about and to resolve disputes about minute details at the start and that we would use it to set out the issues in our decision.

13 The Claimant objected to the admission of 21 pages of documents that had been sent to her on 6 January 2022 on the grounds that they had been sent late. We noted that relevant documents often emerged after disclosure had taken place. The number of documents was relatively small and the Claimant had had them for about a month before the hearing started. We said that we would look at them when we did our reading and, if they were relevant, we would admit them.

14 The Claimant wanted the Respondent's witnesses to give evidence first. The Respondent objected to that course. The normal order in discrimination claims is for the claimant to give evidence first because she bears the burden of proof. There was nothing in the Clinical Psychologist reports to indicate that giving evidence first would be more stressful for the Claimant than cross-examining the Respondent's witnesses first. Both are equally stressful and difficult for a litigant in person. We were also

concerned that if the Respondent's witnesses gave evidence first, and the Claimant then raised matters in evidence which she had not put to them (not uncommon among litigants in person) then a number of the Respondent's witnesses might need to be recalled to deal with that evidence. We decided that the most efficient way to deal with the hearing, and one that would not put the Claimant at any disadvantage, would be for her to give evidence first.

15 We asked the Respondent's counsel to provide to the Claimant later in the day a list of topics that she would cover in her cross-examination and the order in which she would cover them. That was done before the Claimant started evidence. We also told the Respondent's counsel to ensure that her questions were short and that they avoided legal jargon.

16 We also told that parties that we would have breaks every hour and that the Claimant was free to ask for a break at any other time if she needed a break. We also told the Claimant that we would ensure that there was a break between her concluding her evidence and starting cross-examination of the Respondent's witnesses. I explained to the Claimant the process that would be followed by the Tribunal in the course of the hearing.

17 The Respondent's counsel had produced a chronology but the Claimant objected to that because she said that it unsettled her if documents were suddenly sprung on her. We agreed that we would not accept that document.

18 The Respondent asked the Claimant to clarify what the protected act was for her victimisation claims. This was a question that the Respondent had first asked her sometime ago. The Claimant was not able to give a clear answer. Having read the documents on the first day, we clarified that for the Claimant at the start of the second day. I said that it was clear from the Claimant's witness statement (paragraph 55) that what she said at a meeting on 11 December 2017 was a protected act, as was the fact that she had engaged in Early Conciliation between 27 February and 27 March 2018 and presented a claim form on 30 March 2018. We also amended the list of issues to accurately reflect the Claimant's section 15 claim. Her claim, as set out in paragraph 73 of her statement, was that she had been dismissed because of the way that she had communicated, and she had communicated in that way because of her Asperger's.

Events after the start of the hearing

19 On 2 February 2022 (the first day) the hearing adjourned at 10.25 a.m. for the Tribunal to read the documents. The process was explained to the Claimant and she was told that her cross-examination would start the following morning at 10. The Respondent's counsel sent her a list of the topics that she was going to cover and the order in which she was going to cover them.

20 The cross-examination of the Claimant commenced at 10.15 on 3 February. We had a break from 10.57 to 11.13. I offered the Claimant a longer break but she declined. At 11.42 the Claimant said that she was getting stressed and we had a 10 minute break. We started again at 11.53 and broke for lunch from 12.50 to 2 p.m. In the afternoon we had a break from 2.51 to 3.05 p.m. and finished for the day at 4 p.m. The Respondent told the Tribunal the order in which it would call its witnesses.

21 On 4 February we started at 10.05 a.m. The Claimant said that she had had a difficult night and had not gone to bed until 6 a.m. She asked if it was alright for her to drink orange juice. I said that it was and that she should ask for a break whenever she needed one. At 10.40 the Claimant said that she needed to swear and she did. She said “*for fuck’s sake*” and “*I don’t give a fuck*” and “*I don’t care if there is a judge sitting in the room*” etc. I said that we would have a 10 minute break. At 10.50, when we came back I said that if the Claimant wanted a longer break we could break until 2 p.m. The Claimant said that she did not want a break. She wanted to continue so that she could finish. She wanted to be able to relax. We had another break at 11.28 until 11.45. At 12.40 the Respondent’s counsel said that she had another 45 minutes of cross-examination. I gave the Claimant the choice of a short break or a long lunch break until 2 p.m. The Claimant said that she preferred a short break. We had a break until 1 p.m. and the Claimant’s evidence concluded at 1.43 p.m. 4 February was a Friday. We adjourned at 1.43 until 10 a.m. the following Monday, when the Claimant was to start cross-examining the Respondent’s witnesses. The Claimant, therefore, had a break of 2.5 days before concluding her evidence and starting her cross-examination.

22 The Claimant did not attend the hearing on 7 February. She had sent a number of emails to the Tribunal over the weekend which were passed on to us on Monday morning. They were as follows:

a. On 5 February at 15.44 the Claimant sent an email in which she set out matters that she wanted to add to her evidence after the conclusion of her cross-examination. Further information was added in an email sent at 21.55 the same day.

b. On 5 February at 22.13 she sent an email that she wanted to make an application to amend her claim. It was not clear what claims she wanted to add, but they included claims that had been struck out.

c. On 6 February at 15.48 the Claimant sent an email in which she asked for the Respondent to be struck due to abuse of process, leave to amend her claim to add claims further claims of “*emotional and economic abuse*” and for all her original claims to be reinstated. She also requested a postponement of the rest of the hearing on the basis of her applications and because of “*a severe deterioration*” of her health between Thursday morning and then. She said that she was “*in the middle of a meltdown*” and she thought that it would last at least a week. She also requested that the Respondent be ordered to pay £50,000 to her immediately, not as compensation, but so that she could get a full-time carer. She said that she thought a postponement of six months would give her time to recover and also to collect the rest of the evidence which the Respondent along with others had hidden from the Tribunal.

d. On 6 February at 22.59 the Claimant sent an email to our clerk which was headed “*Protected disclosure – this is a whistleblowing disclosure.*” In that email she stated, among other things,

“I have become so ill that I am now non-verbal. I can only communicate in text and images and I am finding text difficult now.”

I can speak but it is so overwhelming and traumatic repeating myself I cant do it anymore. I've been saying the same things and reliving the trauma every day for four years to hundreds of people. I have lost faith in the whole of humanity now."

"I can't explain the abuse anymore and will let a solicitor take over as soon as I can find one."

I'm pressing criminal charges and maximum penalty is 10 years prison."

23 We decided that the statement made in the Claimant's first email would be admitted as evidence given in re-examination. The Respondent did not object to that. We did not consider that the Claimant had put forward any valid grounds for striking out the Response. We could not consider the Claimant's application to amend her claim to add complaints of emotional and economic abuse because we do not have jurisdiction to consider any such claims. We do not have the power to reinstate claims that have been dismissed just because a party asks for that. We considered the Claimant's application to postpone the case. The application was made in the middle of a part-heard hearing. The acts of which the Claimant complained had taken place between September 2017 and May 2018. It was nearly four years since the claim had been issued. The Claimant had not produced any medical evidence to demonstrate that she was not well enough to continue with the hearing. It was not in the interests of justice or in accordance with the overriding objective for there to be any further delays in this case. Having considered all the above circumstances, we decided not to adjourn the hearing but to continue with it.

24 Two of the Respondent's witnesses – Ms Quartey and Ms Ramshaw – gave evidence and we then had a short break. After the break the Claimant joined the hearing. She did not have her camera on or speak but posted messages in the chat room. The messages said that she was "*in the middle of a meltdown*" and "*struggling to speak*." There were also the following messages "*I'm asking my neighbour to call 999*", "*If that is the only way you will accept I'm unwell I have to call regency services*" [sic] and "*Cam somebody call them for me okease*." [sic] I told the Claimant that the Tribunal could not call the Emergency Services for her. The Claimant's neighbour told us that he had called the Emergency Services and they were waiting for an ambulance. We adjourned the hearing at 11.30 to 10 a.m. the following morning. I told the Claimant that if she wanted to apply for a further adjournment on the following day it would have to be supported by medical evidence that she was not well enough to continue the hearing, the reason for that and an indication of when she would be well enough to continue.

25 The following day (8 February) the Claimant sent an email at 9.32 and said that she was waiting for her GP to call her. She said that she believed that she was still in a meltdown. Most of her email was unintelligible. She sent a copy of the form that had been given to her by the Emergency Services. It recorded what the Claimant had told them about her medical conditions which was that she had Autism, PTSD, ADHD and EFD and that she was "*suffering from emotional trauma, in meltdown, non-verbal, not sleeping, not coping*". There was no evidence before us that the Claimant had ever been diagnosed as having PTSD, ADHD or EFD. They recorded their recommendation as,

"Crew called Crisis team who advised can make self-referral on 0300 300 0065.

Crew called GP who advised will call pt's friend Fares later today to make app for telephone consultation. GP to call tomorrow re home visit."

26 We treated the Claimant's email as an application to adjourn the hearing for an indefinite period of time. The Respondent opposed the application. We considered the application. There was very little medical evidence in support of the application. The paramedics who had attended the previous day had not provided the Claimant with any treatment and had not taken her to hospital. There was no evidence that she had made a self-referral. There was no evidence from a medical practitioner that the Claimant was unfit to attend the hearing, no diagnosis and no prognosis. There was nothing in Mr Parkes' report about the Claimant having "meltdowns" as part of her Autism Spectrum Disorder. There was no evidence of when, if ever, the Claimant would be well enough to conclude the hearing. The case was already four years old and we were in the middle of the hearing. The Respondent is a small employer. The case had been time consuming and stressful for the Respondent's witnesses. Any further delay would add to their stress and to the costs that they had already incurred. There was a real risk that a fair hearing would no longer be possible within a reasonable period of time if the case were to be adjourned. The Claimant had left in the middle of previous hearings. If the Claimant was not able to conclude the hearing four years after the case started, one could not be confident that she would be able to do so in six months' time. All the evidence indicated that we would find ourselves in a similar situation in the middle of a part-heard hearing in six months' time. It was also questionable whether there could be a fair hearing if there was a six month gap in the evidence in the case. The balance of justice lay in favour of proceeding with the case and providing a conclusion so that both sides could move on. We had heard the Claimant's evidence and she had had the opportunity in cross-examination of her to respond to the points that the Respondent wanted to make. Having taken into account all those matters, we refused the application to adjourn.

27 We then proceeded to hear from the rest of the Respondent's witnesses and the Respondent's closing submissions. We reserved our decision and the Tribunal deliberated for the rest of that day and the following morning.

28 The Claimant continued to send emails to the Tribunal. We agreed exceptionally to consider one of them (the Respondent did not object to that). The case concluded on the morning of 9 February 2022 when the Tribunal's deliberations concluded.

29 On 15 February 2022 the Claimant sent the Tribunal a letter from her GP dated 14 February 2022. The GP wrote,

"Kuldeep suffered an acute panic attack on Monday 7th February 2022, which was caused by the pressures of the Employment Tribunal Hearing and her being Autistic so she was not well enough to participate in the hearing from 7th to 10th February 2022.

Kuldeep has suffered similar meltdowns previously where she is overthinking and overwriting and cannot switch her brain off. Since this is the worst one, I have issued diazepam on prescription to be used in emergency only.

In my opinion Kuldeep needs the rest of the month to recover but should be well enough to continue once she has recovered from the meltdown, and wants to continue.

It is requested that the Employment Tribunal Hearing to consider the effect her disability has on her mental well-being, during the hearing process and that adjustments are made for that.”

30 I did not consider that there was anything in that evidence to lead to a variation or revocation of our decision to adjourn the hearing. As I have said earlier, there is no reference in Mr Parkes' report to the Claimant having meltdowns or panic attacks as part her ASD. There was nothing in the GP's letter to indicate that the pressures of a resumed Tribunal hearing would not have the same effect again on the Claimant. He had not embarked on any treatment for her to ensure that. It was not clear from the GP's letter whether he/she had seen the Claimant or just spoken to her on the telephone. It appeared that the GP was simply repeating what the Claimant had relayed to the GP about her condition. The reasons for not adjourning on 8 February (see paragraph 26 above) still applied. The GP's letter did not change our concerns set out in that paragraph.

The Issues

31 It was not in dispute that the Claimant was disabled by reason of having Autistic Spectrum Disorder (that incorporates Asperger's Syndrome) from 1 January 2017 to early January 2018. The issues that we had to determine were as follows.

Direct disability discrimination/harassment related to disability

32 Whether the following acts occurred:

- (1) The Respondent engaged in passive aggressive bullying of the Claimant leading to her "blowing up" and being dismissed, in particular, pushing her to the point where she blew, ignoring her emails and concerns and smirking;
- (2) On 4 May 2017, when the Claimant informed the Respondent that she needed to go to hospital due to an injury that she received at work, Geoff Connell and Barbara Quartey (BQ) told her that she had to go into work and would have to toughen up if she wanted to be a manager;
- (3) In May and June 2017 BQ told her that if she did not toughen up she would not get a permanent job and sent her to three different libraries a day;
- (4) In September 2017 the Claimant's workload increased so that she was working very long hours. BQ and Zoe Wilson (ZW) started to ignore and pick on the Claimant. The Claimant raised safeguarding issues with BQ and ZW who were not interested;
- (5) In September 2017 ZW and BQ started to ignore the Claimant when she asked them to explain and clarify how they wanted her to do tasks. During Senior Leadership Team meetings they would roll their eyes, tell the Claimant to leave it for another time or ignore the Claimant when she asked what exactly they wanted her to do. They told the Claimant they were busy or just changed the subject. Her email about her workload and her complaints about M Agyapong and B Anvi were ignored. On 29 September BQ and ZW told the Claimant that if she was unhappy she should leave and that it was unacceptable the way she had spoken about M Agyapong in her email;

(6) The Claimant's email of 30 September about being stressed out because things were not clarified was ignored;

(7) The Claimant's email of 11 October 2017 to BQ and ZW seeking clarification about a task was ignored;

(8) On 17 October 2017 the Claimant's workload was increased. Her email to BQ and ZW saying that it was unfair and that she did not want to do door duty because of her injured leg was ignored;

(9) Between October and December 2017 BQ and ZW criticised the Claimant when she tried to do something well and sneered at her at SLT meetings. The Claimant's concerns about students, her queries and her requests to interview for an English teacher post were ignored;

(10) On 1 December 2017 the Claimant was told that she had to come into work even though she was sick and clearly informed them that she was exhausted and had a temperature. Three people emailed the Claimant about tasks that were not urgent or had already been done;

(11) On 11 December 2017 the Claimant told BQ and ZW that she was being harassed and bullied because of her Asperger's and that she planned to resign in February. BQ and ZW told her that her notice period was one month and they smirked and sniggered and told her to leave earlier if she was unhappy and to put her intentions in writing;

(12) On 13 December 2017 BQ and ZW ignored the Claimant at a Christmas Community Event. They said "what do you want?" and smirked and dismissively walked off. Members of the SLT were sitting together and when the Claimant joined them, BQ, ZW and B Anvi got up and walked off;

(13) On 14 December 2017 after B Anvi was assaulted by pupils told the Claimant that she had to cover door duty despite her protesting about her leg injury. The Claimant was physically injured but no one asked her how she was or offered her First Aid;

(14) On 15 December 2017 the Respondent accepted the Claimant's resignation and did not attempt to retain her in employment or ask about her welfare;

(15) On 18 December 2017 the Claimant's request for other SLT members to provide incident reports about the incident on 14 December 2017 was ignored despite it being routine protocol for every member of staff who witnessed an incident to write a report;

(16) On 22 December the Claimant was not paid her full pay and her email about was ignored;

(17) On 23 December 2017 the Claimant was informed that she was the subject of a disciplinary procedure and was asked to attend a hearing on 2 January 2018 which was not a working day;

(18) On 2 January 2018 the disciplinary hearing was held in the Claimant's absence and was conducted by staff about whom she had complained. She was informed by letter which she received on 8 January that she was dismissed;

(19) From January 2018 the Respondent sent the police to the Claimant's home on three occasions and alleged that she had stolen property. The Respondent referred the Claimant to the National College for Training and Learning and tried to get her struck off teaching.

33 if any of them occurred whether they were unwanted conduct related to the Claimant's disability and had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant;

34 In the alternative, whether in doing any of the acts the Respondent subjected the Claimant to a detriment and on the grounds of her disability treated her less favourably than it treated or would have treated others.

35 Whether the Tribunal had jurisdiction to consider complaints about any acts that occurred before 28 November 2017.

Discrimination arising from disability

36 Whether the Respondent dismissed the Claimant because of the way in which she communicated on 22 and 23 December;

37 Whether the Claimant communicated in that way because she had Asperger's/Autistic Spectrum Disorder;

38 Whether the Respondent knew or could reasonably have been expected to know that the Claimant had the disability;

39 If the answer to all the above is in the affirmative, whether dismissal was a proportionate means of achieving a legitimate aim.

Failure to make reasonable adjustments

40 Whether the following amount to the Respondent applying provisions, criteria or practices (PCPs):

(1) Expecting the Claimant to do her job without the provision of clear instructions, failing to manage her relationships with colleagues, failing to provide support, failing to reduce her workload, hours or days and failing to empathise;

(2) When the Claimant had "blown up" the Respondent failed to de-escalate the situation resulting the in the Claimant's dismissal;

(3) The Respondent followed the normal disciplinary process and failed to understand that her behaviour was Asperger related;

(4) The Respondent ignored the Claimant.

41 If the Respondent applied any of the above PCPs, whether they put the Claimant at a substantial disadvantage compared to persons who are not disabled;

42 Whether the Respondent knew or could reasonably have been expected to know that the Claimant was disabled and that the PCPS put her at a substantial disadvantage;

43 Whether the Tribunal had jurisdiction to consider complaints about any acts that occurred before 28 November 2017.

Victimisation

44 Whether the Claimant told BQ and ZW on 11 December 2017 that she was being bullied and harassed because of her Asperger's;

45 Whether the Respondent was aware between 27 February and 27 March 2018 that the Claimant was intending to bring proceedings in the Tribunal for disability discrimination;

46 Whether the Respondent did any of the following acts:

(1) sent the police to the Claimant's house on 31 May 2018;

(2) Referred the Claimant to the National College of Teaching and Leadership on 12 January 2018 and the contents of that referral;

(3) Delayed in providing a reference to Non-Stop Education on or around 19 April 2018 and the contents of that reference.

46 If it did any of those acts, whether it did so because the Claimant had complained of disability discrimination on 11 December 2017, had contacted ACAS to bring a claim for disability discrimination or had presented the Tribunal claim on 30 March 2018.

Unauthorised deductions from wages

47 Whether the Claimant was entitled to any pay in January 2018 and, if so, how much?

Breach of contract

48 Whether the Respondent was entitled to dismiss the Claimant without notice.

The Law

49 Section 13 of the Equality Act 2010 ("EA 2010") provides,

"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."

Disability is a protected characteristic (section 4 EA 2010). On a comparison of cases for the purpose of section 13 there must be no material differences between the circumstances relating to each case (section 23(1) EA 2010).

50 Section 15 EA 2010 provides,

- “(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 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 reasonably have been expected to know, that B had a disability.”*

In **Homer v Chief Constable of West Yorkshire Police [2012] UKSC 15** Lady Hale stated,

“To be proportionate, a measure has to be both an appropriate means of achieving the legitimate aim and (reasonably) necessary to do so.”

The principle of proportionality required an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. It is for the employment tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer’s measure and to make its own assessment of whether the former outweighs the latter – **Hardy & Hansons plc v Lax [2005] IRLR 726, CA.**

51 Section 20(3) EA 2010 provides that there,

“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.”

The duty to make reasonable adjustments does not arise if A does not know, and could not reasonably be expected to know that the disabled person has a disability and is likely to be placed at the disadvantage set out above (Sch 8, paragraph 20 EA 2010).

52 Section 26(1) EA 2010 provides,

- “A person (A) harasses another (B) if –*
- (a) A engages in unwanted conduct related to 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.”*

Section 26(4) provides,

“In deciding whether conduct has the effect referred to in subsection (1)b), each of the following must be taken into account –

- (a) the perception of B;*
- (b) the other circumstances of the case;*
- (c) whether it is reasonable for the conduct to have that effect.”*

53 Section 27(1) EA 2010 provides,

“A person (A) victimises another person (B) if A subjects B to a detriment because -

- (a) B does a protected act, or*
- (b) A believes that B has done, or may do, a protected act.”*

Bringing proceedings under the Equality Act and making allegations that A or another person has contravened the Act are “protected acts” (section 27(2)).

54 Section 136(2) and (3) EA 2010 provides that if there are facts from which the Tribunal could decide, in the absence of any other explanation, that a person (A) contravened the relevant provision of the Equality Act, it must hold that the contravention occurred unless A shows that A did not contravene the provision.

The Evidence

55 The Claimant gave evidence in support of her claim. The following witnesses gave evidence on behalf of the Respondent (their positions given are the ones that they held at the relevant time) – Barbara Quartey (Principal), Zoe Ramshaw (formerly Wilson) (Vice-Principal), Zoe Poulos (Teacher), Sobia Shah (unqualified Teacher) and Beata Watson (Teacher). We read the witness statement of Shanshair Nagra (Administrator) as he was not available to give evidence. We indicated that we would attach to it such weight as we thought appropriate. The documentary evidence comprise a little over 800 pages. Having considered all the oral and documentary evidence, the Tribunal made the following findings of fact. For the avoidance of doubt if an act that either of the parties say occurred does not appear in our findings of fact, it is not because we have forgotten to decide whether it occurred or not; it is because we have found that it did not occur.

Findings of Fact

56 Barbara Quartey set up Insights School and Skills Academy (“the school”) in 2005. The school is now run by the Respondent company. Ms Quartey is the sole director of the company and the principal of the school. The school is a specialist school for children and young persons with social, emotional, behavioural and mental health needs. It has on average 55 students aged between 5 and 21 placed with it by various local authorities. The school is located on two sites in West London. Younger students attend at the site on Alexandra Road and the upper school is located in Craven Road.

57 The Claimant has a BA (Honours) in English and is a qualified teacher. She obtained her PGCE in 2010. She held various posts as an English teacher between March 2011 and January 2013. She first worked for the Respondent as a supply English teacher via an agency from March to June 2013. Before she started in that role she filled in the Respondent’s Medical Questionnaire form. That form asked

whether she had any illness or medical condition that might affect her ability to perform her duties and whether she considered herself to have a disability, and in both cases the Claimant responded “no”. The two references provided for the Claimant from schools where she had previously taught both said she had excellent interpersonal skills. One of them said that she had *“built strong relationships with both very challenging students and staff colleagues.”*

58 On 10 June 2013 the Claimant sent Ms Quartey an email in which she said,

“Just to let you know, I am currently going through the process of being diagnosed. I believe that I have Asperger’s Syndrome and have been advised that I should tell my employer that I consider myself to have a disability.

I would be most grateful if you could take this into consideration where possible. I may sometimes need things clarified in a bit more detail than employees who do not have Asperger’s. I also am very literal and can come across as rude, however this is not my intention.”

59 Shortly after that the Claimant had a disagreement with someone and left the school at very short notice. On 19 June she sent Ms Quartey an email in which she said,

“Just to say thank you for giving me the opportunity of working at Insights. I have enjoyed every moment. I will miss everyone dearly and would like to wish you, all the staff and all the pupils the best of luck for the future.”

Ms Quartey responded,

“It is a shame that things did not work out as you are a brilliant teacher with ideas and ability to engage student. I hope you achieve what you are looking for.”

54 On 26 September 2013 the Claimant sent Ms Quartey an email in which she apologised for the way she had left and said,

**I have been dealing with my Asperger’s and can now deal with situations much better.”*

55 Between January and July 2017 the Claimant worked for the Respondent as an English teacher. She provided her services on a consultancy basis. On 4 May 2017 the Claimant attended work and said she wanted to go to a hospital because she was having problem with her knee. She sent Ms Quartey an email that she had a department meeting that day and would go to the hospital afterwards. She went to the hospital in the evening. The diagnosis was *“strain of knee”*.

56 In June 2017 the Respondent created two new Assistant Vice-Principal posts and Ms Quartey discussed them with the Claimant. The Claimant was interested in the Assistant Vice-Principal Curriculum, Assessment and Inclusion post and Ms Quartey provided her with the job description and application form in June 2017. The job description described the purpose of the role as being,

“to work in conjunction with the SLT and the Principal in the development,

implementation and monitoring of the curriculum, assessment, behavioural and pastoral policies, procedures and practices to ensure that the School provides high quality teaching/learning and associated activities to enable all pupils/students to achieve their full potential.

... work closely with the designated leads for inclusion to ensure that all SEN needs are recognised and provided for across the school.

The post holder will have a teaching/training commitment of a minimum of 5 hours per week ...”

57 The Claimant applied for the role on 16 June 2017. The application form had a section which stated,

“People with disabilities please note: People with disabilities are guaranteed an interview if they meet all the essential requirements of the person specification. If you consider yourself to have a disability to be taken into account during the recruitment and selection process, please explain what assistance you would like to receive.”

The Claimant did not indicate that she had any disability or that she required any assistance. In her application form she said the role in which she was at the time required her to liaise with staff and parents daily which meant that she must be able to “communicate effectively at all levels.” She also said,

“I am a natural problem solver and display this skill in every aspect of my daily life ... I am a logical thinker who can think on the spot.”

58 The Claimant was successful in her application and was appointed to the role. In that role the Claimant was part of the Senior Leadership Team. It was the first time that she had held a senior leadership role. Her employment with the Respondent as Assistant Vice-Principal commenced on 1 September 2017. The Claimant’s contract provided, among other things,

“Probationary Period

Your employment is subject to your satisfactory completion of a six month probationary period. During the first month of your probationary period, employment may be terminated by giving notice of one week. Thereafter, until the satisfactory completion of your probationary period, including extensions to it, employment may be terminated by giving notice of one month.”

“Hours of Work

The statutory arrangements for working time for fulltime teachers are set out in ... for teachers other than those in the Leadership Group...

There are no specific minimum and/or maximum hours for staff employed on the Leadership Spine. They will be expected to work as many hours/days as is necessary to ensure the running of the school and Skills Academy.”

“Sick Pay

If you are absent from work because of sickness or injury you will be entitled

to Statutory Sick Pay, provided you meet the qualifying conditions.

...

The Company may, in its absolute discretion, pay full pay during periods of sickness absence in certain limited circumstances.”

“The Company may terminate your employment without notice (or payment in lieu of notice) if it has grounds to believe that you have committed any material breach of these terms and conditions or any gross misconduct or act of gross incompetence.”

“Return of Company Property

On the last day of your employment with the Company you must return to your manager all or any Company property which may be in your possession...

Failure to do so could result in the Company withholding payment of your final salary and/or any other sums due to you.”

59 The Claimant was directly line managed and mentored by Ms Quartey and Ms Wilson. On 11 September they met with her and told her what her priorities for the first half term were. There were also sent out in writing to her. They were set out in one typed page. The Claimant shared an office with Ms Wilson and Ms Watson (Assistant Vice-Principal for Operations) on the Alexandra road site.

60 On 21 September the Claimant sent Ms Quartey and Ms Wilson some documents that she had written about theories on autism. She said that she had written them four years earlier at 4 a.m. She said,

“It was shortly after I realised that I was highly likely that I was an aspie!” [sic]

61 On 22 September the Claimant sent an email to the whole of the Senior Leadership Team in which she complained about a number of members of staff, all of whom she named. She said that she wanted two specific named employees to be disciplined because she said that they were not performing their duties. Ms Quartey and Ms Wilson spoke to her about her email and explained to her that that was not the appropriate way to raise or deal with concerns that she had about the staff.

62 On 28 September at 7.48 p.m. the Claimant sent an email to Ms Quartey and Ms Wilson in which she was very critical of the “Doddle” programme which the School had recently introduced. She said that she was not comfortable rolling out to staff something in which she had no faith. If they insisted on rolling out that programme, or something similar to it, it would have to be done by Michael Agyapong, the other Assistant Vice-Principal who had been appointed at the same time as her. She said that maybe she should just teach English and not be in the SLT. Every time she suggested something it was just ignored and they just kept going round and round. She said that she was really struggling and the whole thing made her cry daily.

63 At 5.46 the following morning (which was a Friday) the Claimant sent them another email in which she made serious criticisms about Michael Agyapong and said that she found it impossible to work with him. She said that she was very unhappy in her role because of him and said that she wanted to have a discussion about whether there were any other options in the company for her and, if there were

not, to have a discussion about leaving.

64 On 1 October (Sunday) the Claimant sent them an email headed "Solution". She identified what she saw as the problems with the structure of the senior leadership team and the school and attached her proposal for a new structure. The new structure had three Vice-Principal roles, each being responsible for certain areas. She said that she could fill one of the new VP roles or the Lead English and Outreach Teacher role. She said that Assistant VP was not a suitable role for her and she was not enjoying it because she could only streamline half of the curriculum. She concluded by saying,

"I think Insights is an amazing place and is achieving great things and really enjoy being part of the team. I just feel very underused. I hope you understand."

65 Ms Quartey and Ms Wilson had conversations with the Claimant about the issues that she raised and they explained to her what was expected of her in her role and that some of her actions (such as the criticisms that she made of Mr Agyapong or her proposals to restructure the school) were unacceptable. Ms Wilson worked closely with the Claimant and supported her. She reviewed the Claimant's student profiles and IEPs (individual education plans). At no stage during those conversations did the Claimant say that she had Asperger's or that she was disabled, that she was struggling with her workload or that she needed any adjustments to be made because of Asperger's or any other mental health condition. Ms Wilson had conversations with Ms Watson, who also shared their office, about her son who was in the process of being assessed for Autistic Stress Disorder. She did not make any comparison between his behaviour and that of the Claimant, She did not know the Claimant had Autism.

66 On 17 October Ms Quartey sent the SLT a proposed timetable and pointed out that some staff and SLT had additional teaching commitments as they were still recruiting and that would take some time. The Claimant responded that she did not think it was a fair split of workload as she had 9 lessons, Mr Agyapong had 7 and Ms Watson did not have any. She said that she wanted to discuss it before it was rolled out. It was not clear whether there was any discussion about the time-table. The Claimant did not raise it again. There was nothing in the documents before us to indicate that the Claimant raised any other issues or complaints in the second half of October and in November. We do not accept that the Claimant's emails were ignored. Not every email was responded to in writing. There were verbal discussions in which answers to her queries were provided.

67 Staff birthdays were normally celebrated in the weekly staff meetings. The Claimant's birthday was celebrated on 28 November 2017. The Claimant asked Zoe Poullos (an English teacher who the Claimant line managed) to pick up a cake for her. The Claimant often referred to herself as "Aspie" in conversations with Ms Poullos. Ms Poullos bought two cakes for the Claimant. One of them said "Happy Birthday Kaler" and the other one said "Happy Birthday Aspie". The Claimant was not offended by it as it was a name that she jokingly used for herself. Over forty colleagues signed the Claimant's birthday card. Only two used the name "Aspie" for her.

68 On 1 December (Friday) at 6.03 the Claimant sent a text message to Geoff

Connell saying that she was not coming into work that day as she was unwell – she had been shivering all night, had a temperature and a sore throat. She said that she had asked Ms Poullos to provide cover work. The Respondent's Staff Absence Policy sets out the procedure for reporting sickness absences. It states that the employee should call Ms Watson before 7 a.m. on the number provided and should contact his/her line managers to discuss cover work and any other tasks expected of the employee on that day. Absences of more than 7 days required a certificate stating that the employee was unfit to work.

69 Ms Wilson tried calling the Claimant but her telephone was off. She left her a message asking the Claimant to call her and said that the expectation was for SLT members to come into school. Ms Quartey also left the Claimant a message asking her to call her.

70 At 13.26 on that day the Claimant sent an email to Ms Quartey and Ms Wilson headed "Resignation". She said that she wanted to arrange a meeting to discuss if they had any teaching opportunities for her, or alternatively "*an exit plan*". She said that her role was making her ill and the small increase in salary from when she was a teacher was not worth it. She said that she did not think that it was fair to "*hound her*" when she was ill and she was not willing to come into work if she was sick. She concluded by saying,

"I would like to resign from the position however this email is not my resignation. I would like to do that in person, on Monday, if I am well enough to come in. I understand that this may mean that you might not want me as a teacher either, but my position still stands. This job is not for me because I am not given sufficient time to perform all the duties that you want me to perform, to the best of my ability and it is making me exhausted, stress and ill."

71 On 4 December the Claimant sent a text message that she was still very ill and her symptoms had worsened over the weekend into "*full on flu.*" She also sent in an email to the SLT the same morning about things that needed to be covered in her absence. She sent a message later to say that the doctor had advised her to stay off work for the rest of the week. The Claimant did not attend work the whole of that week (4 – 8 December 2017).

72 The Claimant returned to work on 11 December and Ms Wilson conducted a return to work meeting with her at 8.50 a.m. Jacquie Jess, Senior Manager, was present at the meeting. The Claimant said that she had had a virus and that her absence had not been work related. She said that she had seen her doctor on 6 December but had not got a medical certificate. She said that she would collect it after work that day. She was reminded of the sickness absence reporting policy and that she should make a telephone call and not send texts. She said that she found it difficult to call because she was always asked to come in and she could not deal with the confrontation when she was not well. She was given another copy of the Staff Absence Policy to take away. She requested a follow up meeting with Ms Quartey and Ms Wilson agreed to arrange that. The Claimant did not say anything about having Asperger's or the effect of that on her.

73 Following that meeting the Claimant had a meeting with Ms Quartey and Ms Wilson. Ms Quartey wanted to discuss with her the email that she had sent saying that she wanted to resign. Ms Quartey asked her to clarify whether she was resigning

or not. She said that if she was unhappy and wanted to resign, she needed only to give one month's notice. The Claimant said that she could not resign until February because she was in the middle of a visa application for her husband and needed to be working. She did not say anything about Asperger's or that they had been bullying or harassing her because of it. Ms Quartey asked her to confirm her position in writing. Later that day the Claimant sent her an email in which she said,

"As you requested, this email is to confirm that I am looking for another job and once secured, I will resign (for the reasons stated in my last email). I am planning to resign by February next year and to leave by Easter. I do not want to resign right now."

74 On 12 December the Claimant sent in a medical certificate that she had been unfit to work from 1 to 8 December because of viral illness.

75 On 13 December the Claimant sent Ms Quartey a brief email in which she said,

"Please accept this email as my formal resignation. I would like to give one month's notice as of 1st January, which means I would like my last day to be 31st January.

I would like to thank you for all your kindness and support."

76 On the morning of 14 December 2017 (Thursday) there was an incident when a student attacked a teacher, Mr Anvi, who was on door duty. Other teachers intervened and the student was removed. The teachers involved in the incident completed incident reports on the same day. The Claimant was on door duty later that morning and two students pushed past her. At 10.58 she sent an email to Ms Burden. She said that the students had pushed her and she had "*landed on her bad leg.*" She said that she was still recovering from a ligament that had been torn in the summer at the school. She said that her leg was hurting and that she was going to the hospital to have it checked out. She said that she wanted the incident reported in the accident book and she had not been able to locate it. Ms Wilson tried to call her on her mobile to check on her welfare. The Claimant did not answer but sent Ms Wilson a text message to say that she was with the nurse trying to arrange an x-ray and would update her later by email. She sent her an email later that afternoon. She said that she had been advised to stay off her feet for at least a week. The nurse had told her that she thought that it was a meniscus tear. She said that she would not attend work the next day or the following week. She said that she would self-certify as there were only three days left. That was not correct as the SLT was expected to attend until the end of that week.

77 On the same day Mr Anvi complained in writing about text messages that the Claimant had sent him on 21 November 2017. The messages read "*I love u babe*" and "*I wanna fuck*". He said that he had felt disgusted and embarrassed by the content, and had not reported it earlier because he had been too embarrassed.

78 On 15 December Ms Quartey sent the Claimant a letter accepting her resignation and noting that her last working day would be 31 January 2018. Ms Burden sent her an email that she had located the staff accident book and asked the Claimant to complete it when she was next in. The Claimant asked for a copy of the CCTV footage of the incident and Ms Wilson said that she could come in and view it at a

time agreed with her.

79 On 18 December the Claimant submitted an incident report about the incident with the students on 14 December. She asked Mr Anvi and Ms Jess also to submit incident reports. There was no evidence before us to indicate that they did.

80 The last day of the term was 22 December 2017 and all staff were paid on that day. Due to the amount of sickness absence the Claimant had had in December, her salary was less than normal. At 15.58 she sent an email to Ms Quartey querying why she had not received her full salary and said that she was being discriminated against as other staff who had been absent sick had been paid in full. She continued,

“If I am not paid the remaining amount within 24 hours, I will be contacting my union. I will also be contacting OFSTED with safeguarding concerns! It is illegal to take money from someone’s wages without notice!”

In two subsequent emails sent a few minutes later she added Investors in People and the boroughs of Barnet, Hounslow, Ealing and Harrow as persons whom she would be contacting with safeguarding concerns.

81 At 6.22 p.m. on the same day the Claimant sent an email to all the staff at the school, the subject of which was *“Your rights! Important to read!”* She said that if Ms Quartey ever tried to deduct their pay because they had been absent sick they needed to know that she could not do that without notifying them in writing before hand and that if they were required to phone into work every day before a certain time they were entitled to full pay. That was not correct; the contract made it clear that they would be paid only statutory sick pay for any absences provided they met the qualifying conditions. She continued,

“She has tried to take 7 days off my wages. That’s what you get for working your back side off for her and coming in with a broken leg! Great professional work ethic this is. TRIED to ruin my Christmas. Any way, I am informing my union, investors in people and OFSTED of all the failings of the school.”

At the end of the email, the Claimant put the words *“former Insights slave and now free spirit”* in brackets after her name.

82 The Claimant sent two further emails to Ms Quartey after 7 p.m. about her pay. In the first one she said,

“The money has not cleared my account yet. I have everyone’s individual email addresses and I knew you would swiftly block me. I will keep staff informed of how you treat me so you can’t do it again. It would be prudent to just hurry up and pay me!”

In the second one she said,

“assuming we won’t reach a settlement that I think I will agree to, I think staff should know exactly what kind of company they work for and how you operate. I think all outside agencies should know. You have just pushed me too far!”

83 On 23 December at 10.35 the Claimant sent an email to all the staff at their personal email addresses. She said that they had had time in the holidays to block her work email but not to sort out her pay. She said of her managers,

“Big grown people you know, behaving like this! Shocking. Shameful. Scandalous.”

She described the school as “a scam that robs the most vulnerable students of their only chance in life”. She accused the SLT of bullying staff and using the money that was paid by local authorities for their own personal benefit rather than that of the pupils.

84 At 10.51 the Claimant sent an email to Ms Quartey in which she said,

“You should pay me, it would be less embarrassing.”

At 11.10 she sent Ms Quartey another email which was copied to all the staff at their personal email addresses. In that email, she said,

“You should be ashamed of yourself Barbara! You do all this in the name of GOD! Don’t you dare! Just admit you do it for yourself ... we all know anyway! Everyone in your school thinks of you exactly as I do. That’s what you have done with your life. Built up a huge scam to rob poor vulnerable kids. All alone. The future. Sad.

If my mother was like you, I’d feel so much shame!!!!

You know I worked hard, everyone knows I worked hard. You just couldn’t handle working with someone who actually knew what they were doing as opposed to your PE teacher Vice Principal. So you took the cheap shot and took 7 days sick pay off during Christmas. Classy!”

85 At 11.52 on 23 December Ms Jess sent the Claimant an email in which she set out extracts from her contract and the Staff Manual about pay during sickness absence. The contractual provision is set out at paragraph 58 (above). The relevant extract from the Staff Manual was as follows,

“Employees who are absent because of sickness will normally be entitled to receive Statutory Sick Pay (SSP) from the Organisation providing they meet the relevant criteria.

Once the criteria has been met, SSP is not normally payable for the first three days of sickness absence, unless the employee has been absent and in receipt of SSP within the previous eight weeks...

In order to qualify for SSP the employee must notify the Organisation on the first qualifying day, and submit a certificate of absence as soon as practicable...

In exceptional circumstances, the Organisation may decide to in its absolute discretion to pay full pay during the period of sickness absence. The normal

position is that only SSP is payable.”

The Claimant was asked to stop sending inappropriate emails to avoid further distress to staff.

86 The Claimant responded that she was entitled to full pay. Her response included the following comments,

“Barbara needs to pay me quickly. I have several concerns which I will raise with staff individually unless I am paid full pay for December in December”

“I also want to speak to some of the parents that come to drop their children off. I have some concerns that I want to share with them.”

“If I don’t get a suitable response to this email by tomorrow, I will be forwarding this email to staff so that they can see how the school really operates.

I will continue to send emails and make phone calls until the matter is closed in a way that is satisfactory to both parties.

She has tried to ruin my Christmas and leave me without funds. This is pure nastiness. Her staff will find out exactly what kind of person they work for and the local authorities will be forced to investigate once I tell them my concerns. There is always the newspapers! I could just copy them in on my emails.”

87 A little while later the Claimant sent an email to Ms Quartey in which she said,

“You can choose to pay me or not. If you pay me, you lose a bit of money. If you don’t, then you will just have to accept that you will have a few investigations going on and you will lose face with your staff who are secretly loving it because they have wanted to say these things to you for years.

If I get paid what is owed and fair, I will walk away. If I don’t, then I will make sure that if I’m not getting my money, then I’m definitely going to make you work hard for yours!

You don’t own my mouth. You either pay for it or you don’t have any control over it. That is it. You can’t have your cake and eat it. Money=silence, no money=no obligation to be silent. Your call entirely.”

88 At 16.34 on 23 December Ms Wilson sent the Claimant a letter inviting her to a disciplinary hearing on 2 January 2018. The Claimant responded that she was too ill to attend. She said that she had not sent anything abusive and was within her rights to let staff know what was happening and that she would continue to do so. She said,

“You are a bully Zoe and I will make sure everyone you work with knows it...

Your conduct is illegal! Bullying! Bullying! I’m not backing down at all. The longer you all play games, the more information I will give to staff to help empower them against your regime!”

A little later she sent Ms Quartey an email in which she said,

“Everyone knows what you are really like Barbara, everyone is laughing about it! It is so nasty to do what you did but what do you expect, I don’t know why I ever thought you were decent and fair! I should have known from the last time I worked for your slave plantation!”

89 On Christmas eve the Claimant sent a large number of emails to Ms Quartey and Ms Wilson and to all the staff. In one of the emails to Ms Quartey and Ms Wilson she said,

“That’s where being a nasty Scrooge gets you! I bet your staff are going to love seeing your faces first day back! Enjoy your huge wage packet this month whilst you rob the less fortunate. You will get you comeuppance next year! Stuff your disciplinary, stick it you know where.”

She said to all the staff,

*“I don’t care about the disciplinary because I don’t believe in the fear culture they have created in the school and am taking a public stand for the better of everyone! We are the people! They think they can control people by scaring them about references. Well I don’t give a flying hoot about their reference because I am good at what I do and will have no problem securing work. Independent schools are known for taking the absolute **** with staff! Most mainstreams just ignore their references because they know the people running them could never last a day in a mainstream.”*

The Claimant sent Ms Poullos a text message in which she said that she had supported her and helped her get a big pay rise. She continued,

“You thought you would just shit on me. Loads of people were telling me all along. I could have made all that public and they would be horrible to you. But I’m going to give you a chance to explain why you snaked me. If you don’t explain, I will go public.”

90 On 26 December the Claimant sent Ms Quartey an email in which she said, among other things,

“Zoe [Wilson] just kept picking at me all the time because she was scared for no reason. I didn’t want her job. I wanted Geoff’s! Anyway, what the biggest shame is that had you allowed me to apply for the VP role it wouldn’t have been like this. You and me would have been flying as a team... Zoe felt unnecessarily threatened and started to bully me. She is really very rude and condescending the way she speaks to people. It’s really offensive. She should have embraced my good qualities and I hers. We could have smashed it as a team, but she wanted me to be below her not the same as her... From the moment she realised I was able she went for me, I couldn’t take it... Its really not nice when you work as hard for your boss as I did and you get what I got just because you are ill. I could never work for someone that doesn’t even care if I am dead or alive as long as their work gets done. That’s really unfair and nasty. What horrible employer does that?”

91 The emails sent by the Claimant were on any analysis unprofessional, deeply

offensive, insulting, threatening and some of them clearly blackmailing. If the Claimant had genuine safeguarding concerns she was perfectly within her rights to raise them through the appropriate channels. However, to threaten to do so if she was not paid what she wanted to be paid (although she was not contractually entitled to it) cannot be anything other than blackmail. She was demanding money with threats to make trouble for the Respondent if the money was not paid. They would have been distressing to many of the recipients. In her evidence to the Tribunal the Claimant vacillated between accepting that her emails were inappropriate but that they were attributable to her autism and stating that what she said was the truth.

92 On 1 January 2018 the Claimant sent Ms Wilson and Ms Quartey an email that she would be self-certifying her sickness absence from 3 January for 7 days. She said that she was not starting it on 2 January because that was not a working day for staff at the school. She said that she was unable to attend work because of severe pain and restriction of movement in her leg and back, stress and anxiety and insomnia caused by bullying at work and exhaustion caused by overload at work. Ms Wilson responded by referring her to her contract and reminding her that senior leadership would be working on 2 January 2018. She also told her that they were expecting her attendance at the disciplinary hearing and that it was in her best interest to attend. The Claimant said that she had been informed that she was required to attend work on 2 January. She said that she was too stressed and physically unable to attend. She was on crutches and wanted to fully rest her leg. She said that she would be self-certificating from 3 January and would provide a sick note form the doctor on 10 January if that was required.

93 The disciplinary hearing was chaired by Ms Jess and started at 11 a.m. She waited for the Claimant until 11.20. The Claimant did not attend. Ms Jess decided to proceed with the hearing in her absence. She considered the allegations against the Claimant, most of which related to the emails and text messages that she had sent since 22 December 2017. It was said that the content of the emails and texts had contained abusive, unacceptable, unprofessional and blackmailing language about the school and staff members. She had continued sending these emails after the school's position regarding sickness pay entitlement had been explained to her and she had been requested to stop sending distressing emails to staff. After her work email account had been disabled she had continued to contact staff by using their personal email addresses and telephone numbers. Ms Jess concluded that the Claimant's conduct amounted to gross misconduct. It was not in dispute that the Claimant had sent the emails and the content spoke for itself. Ms Jess concluded that her conduct had brought the school into disrepute, she had shown no respect for the Principal, her line managers and her colleagues; She had used inappropriate language and had been very unpleasant in her emails and text messages; she had harassed her managers and her peers; her conduct had been unacceptable and could put the school in breach of its regulatory requirements. She decided that she should be dismissed immediately without notice.

94 The decision was set out in a letter dated 3 January 2018 and was sent to the Claimant on the same day to her personal email address and by post. She was advised that her employment had been terminated as of 2 January 2018 and that she would be paid until that date on 28 January 2018. She was advised of her right of appeal and informed that if she wished to appeal she had to do so by 10 January. She was instructed to return any property belonging to the Respondent, including her laptop and keys, immediately. There was nothing in the evidence before us to show

that the Claimant had been paid anything at end of January 2018 Her P45 showed her employment has having terminated on 31 December 2017.

95 On 4 January the police attended the school having been contacted by the school. Several employees made statements about the emails and the text messages that the Claimant had sent since 22 December and the effect of those on them. They all said that they had felt harassed and harassment orders were obtained by them. The police visited the Claimant at home and issued her with the harassment orders.

96 On 10 January 2018 the Claimant presented a document comprising 85 pages and entitled "Safeguarding Concerns Insights School" to four local authorities, the Secretary of State for Education and to the Commissioner of the Metropolitan Police. The local authorities investigated the matters and found the complaints about safeguarding to be unfounded on 9 February 2018.

97 On 11 January Ms Wilson wrote to the Claimant and said that as she had not appealed the decision to dismiss her on 2 January stood. She was reminded to return the Respondent's property.

98 On 12 January 2018 Ms Quartey, on behalf of the Respondent, referred the Claimant to The National College for Training and Leadership ("NCTL") for serious misconduct. In the form the Respondent was asked to set out the allegations of the serious misconduct. Ms Quartey stated that from the end of September 2017 the Claimant had sent emails that were inappropriate and defamatory about staff members and on 1 October she had sent a proposed restructure to demote senior staff and to elevate herself to Vice Principal. She also said that she had sent an unwelcomed explicitly sexually suggestive text to a senior male colleague who had been very disturbed by it. She then dealt in more detail with the emails sent in December. She said that in December her level of conduct towards her colleagues had escalated by way of malicious and threatening emails which had included threats and blackmails. She said that the Claimant had not attended the disciplinary hearing and had sent an email to staff telling them that she did not intend to attend and mocking the process and the senior staff. She referred to the police being involved and the harassment orders that had been obtained, She concluded by saying,

"We are concerned about her malicious and damaging conduct which is a direct violation of the teaching standards, ethics and expected professional conduct within the teaching profession. We are also concerned about her physiological state which from what we have experienced does not enable her to remain within professional boundaries and be responsible for the social, moral, emotional and spiritual development of children and young people."

99 On 23 January Ms Quartey wrote to the Claimant and asked her to ensure that the laptop, keys and any other property belonging to the school were returned by 26 January 2018 to avoid any further action. The property was not returned by that date and someone from the school called the Claimant on 6 February to chase it up. The Claimant wrote to Ms Quartey on 7 February. She said that once her queries about her pay had been cleared up to her satisfaction and money owing to her had been paid, they could meet to swap property. She said that she had property at the school which she wanted returned to her. This comprised a scarf and a pencil case and its contents. The police arranged for a local police officer to meet the Claimant at the school the following day to facilitate a swap of the items. The Claimant did not attend.

100 On 28 February the Safeguarding Review and Quality Assurance Manager from the London Borough of Ealing wrote to the Claimant about the concerns that she had raised. The letter said that extensive enquiries had been carried out – all the other boroughs had been consulted, police checks had been undertaken and meetings had been held and site visits carried out. They had determined that while there were standards of care issues at the school, the allegations of harm were unfounded,

101 On 13 March 2018 Ms Quartey asked the police whether they could assist in recovering the school's property from the Claimant.

102 On 16 March 2018 the NCTL wrote to the Claimant informing her of the referral made by the Respondent and that it was launching an investigation into whether she had been guilty of unacceptable professional conduct and/or conduct that might bring the profession into disrepute. She was sent the referral documentation and asked to respond to it by 13 April 2018.

103 On 29 March 2018 a recruitment agency asked Ms Quartey to provide a reference for the Claimant. The agent subsequently spoke to Ms Quartey, who said that she was in Australia and would not be able to provide the reference until 16 April at the earliest. Ms Quartey provided the reference on 19 April 2018. She did not fill in the reference form which, among other things, asked for assessment of the Claimant's "communication skills" and "willingness to accept authority and regulations" and the referee's opinion as to whether the Claimant displayed a high degree of honesty and integrity. Instead she wrote a brief letter confirming the Claimant's dates of employment and stated that her employment had been terminated for gross misconduct.

104 On 19 May 2018 the police wrote to the Claimant about the property that had not been returned to the school. The police officer urged her to return the items and said that if they were not returned the allegation of theft would be pursued or, if the laptop was broken or not in working order, an allegation of criminal damage would be pursued. He asked her to arrange a time when he could collect the items from her or alternatively to bring them to the police station. On 30 May the Claimant said that she would drop the laptop at Hounslow station the following day. When the laptop was returned the operating system had been wiped and it could not be used.

105 On 20 June 2018 the Teaching Regulation Agency ("TRA") wrote to Ms Quartey the outcome of the referral made by her. The TRA had determined that it should close the matter with no further action. It concluded,

"It was considered that Ms Kaler's behaviour was unprofessional, and it was noted that a first warning harassment warning was issued to the police. However, having considered all the evidence presented, it is decided that in this case the alleged conduct is not of sufficient seriousness or occurrence to reach the level required by the Department for Education advice on The Prohibition of Teachers. Therefore, there was not a realistic prospect of a prohibition order being imposed and the case will be closed with no further action."

There is nothing in that document to indicate that the Claimant had said in her defence that she had sent the emails in December 2017 because she suffered from

Asperger's Syndrome.

106 The Claimant was referred for an Autism Assessment in June 2018 and was assessed on 12 August 2019 by Charles Parkes, Clinical Psychologist, who diagnosed her as having Autism Spectrum Disorder ("ASD"). That was the first time that the Claimant was diagnosed as having ASD. There was no previous diagnosis of ASD or Asperger's Syndrome. In order to complete his assessment Mr Parkes gathered information from the Claimant, conducted various assessments and obtained information from others who had had close dealings with the Claimant. He concluded that all those revealed,

"a consistent pattern of significant difficulties which meet the criteria for a diagnosis of Autism Spectrum Disorder (ASD) (DSM-V). Specifically, Kuldeep has difficulties in communicating effectively with others; difficulties in understanding and sustaining relationships; a restrictive and repetitive pattern of behaviour, interests and activities and a number of sensory interests and insensitivities..."

The diagnosis of ASD means that the individual has difficulties in three major areas, outline below. Please note that this is a spectrum condition which means that while all individuals with ASD share certain difficulties, their condition will affect them in different ways.

- *Difficulty communication effectively with others*

This can involve difficulties processing and retaining verbal information; literal interpretation; difficulty understanding jokes and sarcasm; difficulties with the social use of language; difficulties understanding and using body language, facial expression and gesture.

- *Difficulty in social relationships*

This can involve difficulties with friendships; working cooperatively and engaging in social activities; coping with unstructured time; understanding social rules and norms which may sometimes lead to unusual and inappropriate responses.

- *Restricted, repetitive patterns of behaviour, interests and activities*

This can involve a lack of social imagination and creative play; difficulties with flexibility of thought; difficulties coping with changes in routine and environment and a tendency towards unusual, restricted and intense interests."

107 The Claimant had included in the documents before us a number of articles about ASD and Asperger's Syndrome. We quote below what two of them had to say about "meltdowns".

"A meltdown is where a person with autism or Asperger's temporarily loses control because of emotional responses to environmental factors. They aren't usually caused by one specific thing.

Triggers build up until the person becomes so overwhelmed that they can't

take in any more information...

They can look like a common or garden tantrum, [sic] but unlike tantrums, meltdowns can't be stopped by giving the person their own way...

After a meltdown the person often feels ashamed, embarrassed and very tired."

"It is not uncommon for adults with Asperger's Syndrome to experience meltdowns. They occur when the person becomes completely overwhelmed and temporarily loses control over his or her behaviour. This can take the form of shouting, screaming, crying, kicking, lashing out, or head banging. Or it can be the opposite, such as refusing to interact, withdrawing completely or becoming mute.

Meltdowns are not the same as temper tantrums, although they may appear similar. A meltdown is an intense response to situations that overwhelm one's coping abilities. The person is literally unable to stop reacting to a complete assault on his or her psychological and physical systems. This is different from not getting one's way and trying to manipulate people, the essence of temper tantrums.

Because a person's coping ability is overwhelmed during a meltdown, it is largely an involuntary response rather than a willful, intentional act. The person, to a large extent, does not have control over what is happening during the meltdown, although anticipating the meltdown and addressing the aftermath of it are in one's control."

Conclusions

Knowledge/imputed knowledge of disability

108 We considered first whether the Respondent knew or could reasonably have been expected to know that the Claimant had ASD/Asperger's Syndrome in 2017. The Claimant was first diagnosed as having ASD in August 2019, twenty months after her employment terminated. The Claimant first worked for the Respondent from March to June 2013. In her application form at that time she stated that she did not consider herself to have a disability or any other medical condition that might affect her ability to do her job. The comments made in her reference about her interpersonal skills and relationships indicated strongly against her having ASD/Asperger's Syndrome. In June 2013 the Claimant told Ms Quartey that she was in the process of getting a diagnosis as she believed that she had Asperger's Syndrome. She ceased working for the Respondent very soon after that and did not say anything more about what the outcome of the process had been. In an email on 13 September 2013 she said that she had been dealing with her Asperger's and could deal with situations much better.

109 The Claimant did not work again for the Respondent until January 2017, 3.5 years later (other than a couple of days in 2016). She did not at that stage say anything about what the outcome of the diagnosis had been. There is no reason why Ms Quartey would have recalled at that stage the email the Claimant had sent her 3.5 years earlier. The Claimant did not at any stage, while working for the

Respondent on a consultancy basis in the first half of the year, tell the Respondent that she had ASD or Asperger's Syndrome and did not give the Respondent any basis for thinking that she might have it. When the Claimant was given the job description for the Assistant Vice-Principal role in June 2017 she did not inform Ms Quartey or anyone else that she would need adjustments made because she had ASD/Asperger's Syndrome. On the contrary in her application form she claimed that she able to communicate effectively, was a natural problem solver and a logical thinker who could think on the spot. She did not at any stage while she was in that role says that she had Asperger's or that she needed any adjustments made because of that. There were two references to Asperger's during her four months of employment. The first was in the email that she sent to Ms Quartey on 21 September 2017 in which she enclosed documents that she had written four years earlier shortly after she had realised that it was "highly likely" that she was an "aspie". The second was that in conversations with Ms Poullos she referred to herself as "Aspie" and hence that appeared on her birthday cake which would have been seen by other employees. We do not accept that her other colleagues used that name for her. We do not accept that on the basis of those two references and what the Claimant had said about trying to get a diagnosis four years earlier the Respondent could reasonably have been expected to know that the Claimant had ASD or Asperger's Syndrome, especially when there was evidence which clearly indicated the contrary. We concluded that in 2017 the Respondent did not know and could not reasonably have been expected to know that the Claimant was disabled because she had ASD or Asperger's Syndrome.

Direct disability discrimination/harassment related to disability

110 Complaints about any acts or omissions that occurred before 28 November 2017 will have not been presented in time unless they formed part of an act extending over a period with acts that occurred after that date. If we do not find there to be any acts of disability discrimination after that date, the complaints about acts before that date will not have been presented in time and we would only have jurisdiction to consider them if we considered it just and equitable to do so. The Claimant has not put forward any reason why she did not commence EC and issue a claim earlier if she believed that that she was being subjected to discrimination from May 2017. The Claimant did not raise a grievance or take any action to make a claim to the Tribunal until after she had been dismissed. We concluded that it would not be just and equitable to consider complaints about acts or omissions that occurred before that date.

111 In case we are wrong in that conclusion, we set out briefly what our conclusions would have been on those complaints. Although the Equality Act does not specifically provide that there can be no direct disability discrimination or disability-related harassment in the absence of the respondent having actual or imputed knowledge of the claimant's disability, the cases where those claims will succeed in those circumstances will be rare. A complaint of disability-related harassment might succeed, for instance, if someone makes offensive remarks about a particular disability without knowing that the claimant or someone in her family has that disability. It is difficult to think of circumstances in which a complaint of direct disability discrimination will succeed if the respondent has no actual or imputed knowledge of the claimant's disability.

112 We have found that many of the acts of which the Claimant complained did not

occur or, if they did occur, they did not amount to a detriment or unwanted conduct which had the proscribed purpose or effect. We have not found that in May and June Ms Quartey and Mr Connell made the comments which the Claimant says that they made or that Ms Quartey sent her to three libraries a day (paragraph 32(2) and (3) above). We have not found that the Claimant's workload was increased in September 2017 or that Ms Quartey and Ms Wilson behaved as alleged by the Claimant at paragraphs 32(4) – (7) above. The Claimant started her new role on 1 September 2017. Clearly, that meant that she had more work than she did in her previous role. On 11 September Ms Quartey and Ms Wilson clarified to the Claimant what she was expected to do in the first half of the term. The Claimant did not respond by saying that it was excessive and she could not do it. The Claimant's emails were not ignored. Ms Quartey and Ms Wilson spoke to the Claimant about the emails that she had written. They did tell her that some of her emails were inappropriate and unacceptable. It was not appropriate to demand that named employees be disciplined for performance concerns in emails to the whole Senior Leadership Team. It was not acceptable to make serious criticisms about an employee at the same level as her in the way that she had. By pointing that out to the Claimant they did not subject her to a detriment or harass her (as defined in section 26 of the Equality Act 2010). The Claimant complained about the distribution of work in her email of 17 October (paragraph 32 (8)). The fact that the issue was not raised again by the Claimant suggests to us that Ms Quartey did speak to her about it

113 Even if any of those acts did occur or they amounted to detriments or harassment as defined by section 26 of the Equality Act 2010, there was no evidence from which we could have inferred that they had anything to do with the fact that the Claimant had ASD/Asperger's Syndrome. We have already concluded that the Respondent did not know and could not reasonably have been expected to know that the Claimant had that condition at the time it took those actions. The Claimant's case that the Respondent was subjecting her to detriments and unlawful harassment because she had Asperger's Syndrome does not make any sense in circumstances where the Respondent had encouraged her to apply for and had appointed her to the Assistant Vice Principal role. Her case is not that they suddenly found out about the Asperger's Syndrome after September 2017. Her case is that they had known about it. We find that the reality is that the Claimant was out of her depth in that role. She had not held such a senior role before and she did not have the skill set and the experience to perform in it.

114 Had we considered those claims we would have concluded that they failed because the Respondent did not subject her to a detriment or harass her and its actions were not because of, or in any way related to her Asperger's Syndrome/ASD.

115 The same points apply equally to the complaints that were presented in time. We have not found that Ms Quartey and Ms Wilson behaved as alleged by the Claimant at paragraph 32(9) above. On 1 December 2017 Ms Quartey and Ms Wilson tried to contact the Claimant because she did not report her sickness absence in accordance with the Respondent's sickness absence reporting procedure. Ms Wilson said that there was an expectation that SLT members would come into school. She did not say that that the Claimant had to come into work even though she was ill. We have not found that on 11 December the Claimant told Ms Quartey and Ms Wilson that she was being bullied and harassed because of her Asperger's or that they sniggered or smirked. There was a discussion about the Claimant's resignation because she had sent in an email on 1 December saying that she wanted to resign and the notice that

she was required to give. We have not found that Ms Quartey and Ms Wilson behaved as alleged by the Claimant at paragraph 32(12) above. The Claimant was involved in an incident while on door duty on 14 December. The Claimant went to the hospital. Ms Wilson tried calling her to check on her welfare. The Respondent accepted the Claimant's resignation on 15 December. Mr Anvi and Ms Jess did not submit incident reports about the incident on 14 December after the Claimant asked them to do so on 18 December. The Claimant was not paid full pay on 22 December because she was not contractually entitled to full pay during periods of sickness absence. The Claimant's email of 22 December querying that was not ignored. Ms Jess responded to it the following day. On 23 December the Claimant was invited to a disciplinary hearing on 2 January 2018 because of the emails that she had sent to the Respondent's employees on 2 and 23 December. The disciplinary hearing was held in her absence and she was dismissed. The Respondent contacted the police in respect of the emails that the Claimant had sent its employees and in respect of its property that the Claimant had not returned after several requests to do so. The Respondent reported the Claimant to NCTL because of her conduct at the end of December 2017. We did not find that the Respondent engaged in passive aggressive bullying of the Claimant and that this led to her "blowing up."

116 In respect of the acts that we found had occurred, there was no evidence that the Respondent treated, or would have treated someone who did not have Asperger's Syndrome/ASD, any differently in similar circumstances. There was no evidence from which we could infer that the Claimant had been treated the way that she was treated because of her disability or that it was harassment related to her disability. We considered separately below whether the dismissal was disability discrimination under section 15 of the Equality Act 2010.

117 As we have said at paragraph 113 (above) the Claimant, having provided teaching services to the Respondent as a consultant between January and July 2017, was encouraged by the Respondent to apply for the Assistant Vice Principal and was appointed by the Respondent to that role. The Claimant had not held such a senior role before. Within a month of starting in the role the Claimant made it clear that she was very unhappy in that role and wanted to give it up. The Respondent's attitude towards the Claimant had not suddenly changed. The Claimant was struggling in the new role because she did not have the skillset and the aptitude for that role. Whether her disability contributed to her difficulties was not clear from the evidence before us. What is clear that she did not tell the Respondent that it did and the Respondent could not reasonably have been expected to know that any of its practices put her at a substantial disadvantage because of her disability.

Failure to make reasonable adjustments/discrimination arising from disability

118 Our conclusions on the Respondent's knowledge of the Claimant's disability essentially means that these claims cannot succeed. There are additional reasons why these claims would not have succeeded. We have not found that the Respondent failed to provide the Claimant with clear instructions, failed to manage her relationships with her colleagues or that it failed to provide her support or to empathise with her. On the contrary, we found that she was given clear instructions, she was given advice about how to manage her relationships with her colleagues and was supported in her work (see paragraphs 59, 61 and 65 above). At no stage did the Claimant say or indicate that she had a disability which made it difficult for her to do a certain amount of work or to work a certain number of days or hours. At the

end of September she said that she was very unhappy in her role because of her relationship with Mr Agyapong. As a solution, she proposed that she be given a more senior role, that of Vice Principal. She said that the problem was that she felt “*very underused.*” Her criticism about workload on 17 October was not that it put her at a disadvantage because of any disability, but that there was an unfair split of the workload, she was being given more than others. In her resignation of 1 December she said that the job was not for her because she was not given sufficient time to perform all the duties that she was expected to perform to the best of her ability. She did not say that that had anything to do with any disability that she had.

119 The Claimant was dismissed because of the emails and text messages that she sent to the Respondent’s employees between 22 and 26 December 2017. The emails and text messages were offensive, insulting, inappropriate, threatening, blackmailing and distressing to those who received them. The Claimant’s case is that she sent those emails because of a “meltdown” or “blow up” that she had because of her ASD/Asperger’s Syndrome. Her case was that she communicated in that way because of her Asperger’s Syndrome/ASD. Leaving aside the issue of the Respondent’s actual or imputed knowledge of her disability, in order for the section 15 claim to succeed the Claimant would have had to establish (a) that she had a “meltdown” or a “blow up” that caused her to send those communications and (b) that the “meltdown” or “blow up” was connected with her having ASD/Asperger’s Syndrome.

120 There was no medical evidence before us that between 22 and 27 December 2017 the Claimant had a “meltdown” or a “blow up”. There was no medical evidence before us that one of the features of the Claimant’s ASD was that she could in certain circumstances have a “meltdown” which would lead to them sending the kind of communications that the Claimant did. There is no reference to it in the report of Mr Parkes. There was no medical evidence that the Claimant had sent the communication because she had had meltdown because she had ASD. Therefore, we could not have concluded that she had behaved in that way in consequence of her disability. The articles produced by the Claimant did not provide us with much assistance. They are general and not specific to her. Furthermore, the Claimant’s circumstances do not fit in with some of the features of meltdowns discussed in those articles. They say that a meltdown is not usually caused by one specific thing, the Claimant’s conduct was caused by her not receiving her full pay on 22 December. The articles say that meltdowns cannot be stopped by giving the person their own way, the Claimant’s emails seemed to say that if she received full pay the issue would be resolved. The articles say that after a meltdown the person often feels ashamed and embarrassed, there was no evidence of the Claimant feeling that way.

121 Even if we had concluded that the Respondent had had actual or constructive knowledge of the Claimant’s disability at the material time and that she had behaved the way that she had because of something arising in consequence of her disability, the Claimant’s complaint would have failed if the Respondent had shown that dismissing her was a proportionate means of achieving a legitimate aim. The legitimate aims relied upon by the Respondent were ensuring the appropriate levels of professionalism and conduct in the work place, maintaining respect and dignity in the workplace for all its employees and ensuring the health, welfare and safety of its employees. In circumstances where the Claimant had sent the emails set out at paragraphs 80 to 90 above to a large number of the Respondent’s employees outside working hours and that she had continued to do so after she had been told to

stop sending them and she had not thereafter not provided any explanation for her conduct, acknowledged that she should not have sent them or given any indication that she would stop, we would have concluded that starting the disciplinary process against her and dismissing her had been a proportionate means of achieving the Respondent's legitimate aims.

Victimisation

122 We have not found that the Claimant did any protected act On 11 December 2017. It was not in dispute that the Respondent would have known between 27 February and 27 March 2017, while the Claimant engaged in Early Conciliation, that she intended to do a protected act and that she did so on 30 March 2018 when she presented her claim to the Tribunal.

123 The reporting of the Claimant to the NCTL took place before the protected acts and, therefore, could not have been caused by them. The Respondent reported the Claimant because it had genuine concerns about the Claimant's threatening and inappropriate behaviour. There was a delay in providing the reference for the Claimant because Ms Quartey was abroad during the school holidays. The reference provided was brief and true. Neither the delay or the content of the reference was because the Claimant had done the protected acts. The Respondent involved the police again in May 2018 because, in spite of having been asked to do so several times since January 2018, the Claimant had not returned the Respondent's property which was in her possession. It was not because she had done any of the protected acts.

Breach of contract

124 The Claimant's conduct set out at paragraphs 80 – 90 above and summarised in paragraph 91 amounted to gross misconduct and a repudiatory breach of her contract of employment and the Respondent was entitled to dismiss her without notice.

Unauthorised deduction from wages

125 The Claimant was entitled to be paid her wages for 1 to 3 January 2018, when the termination of her employment was communicated to her. It appears from the evidence before us that she was not paid any wages for those three days. She is entitled to be paid for those three days.

–

Employment Judge - Grewal

16th May 2022

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

.16/05/2022.

FOR THE TRIBUNAL OFFICE