EMPLOYMENT TRIBUNALS

Claimant: **Mrs K Wright**

Respondent: **Paramount Care (Easington) Limited**

HELD in person at Newcastle CFCTC **ON: 13, 14, 15 and 16 March 2023**

BEFORE: **Employment Judge Loy**
Members: **Mr D Cattell**
Mrs C Hunter

REPRESENTATION:

Claimant: **In person**
Respondent: **Mr Munro, employed solicitor (Peninsula)**

JUDGMENT having been sent to the parties on 6 April 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

The claimant claims

1. The claimant was initially employed by the respondent in the capacity of Deputy Manager from 19 June 2017. In 2020, the claimant agreed to work from the respondents Ropery site. The precise job role of the claimant at The Ropery site was a matter of contention.

2. By a claim form presented on 10 June 2022, the claimant complains of

    a. unfair dismissal contrary to sections 94/98 Employment Rights Act (ERA);

    b. wrongful dismissal;

c. direct disability discrimination contrary to section 13 Equality Act 2010 (EQA) with respect to the decision to suspend her to the extent that that was materially influenced by the claimant's disability;

d. direct disability discrimination contrary to section 13 Equality Act 2010 (EQA) with respect to the decision to dismiss her to the extent that that was materially influenced by the claimant's disability;

e. failure to make reasonable adjustments contrary to sections 20 & 21EQA;

f. discrimination because of something arising in consequence of disability under section 15 EQA in that the respondent's perceived need for the claimant to have further absences was connected to her disability and that materially influenced the decision to suspend and to dismiss her; and

g. Harassment related to disability under section 26 EQA in that she was repeatedly asked by Elaine Duffy to return to work very shortly after her hip replacement operation which conduct the claimant says was unwanted and was related to her disability and which also she says had the prescribed effect of creating an intimidating, hostile, degrading or offensive environment for her. The claimant says it was reasonable of her to perceive Mrs Duffy's conduct in that way.

3. The respondent is a residential care home which provides personal care for up to 20 people with a learning disability and/autism.

4. The respondent denies all claims.

Representation and evidence

5. The claimant represented herself in these proceedings.

6. The respondent was represented by Mr Munro, an employed solicitor with the Peninsula which is a consulting business with a specialisation in employment law.

7. The parties relied upon an agreed file of documents running to 587 pages.

8. The claimant gave evidence in support of her own case. She called one additional witness, Mrs Elaine Duffy a former Registered Manager. Mrs Duffy had been assigned to the respondent's Elliott House site, and more latterly had also been the Registered Manager at the respondent's Ropery site at which the events that led to these proceedings took place.

9. The claimant produced written statements both for both herself and Mrs Duffy. Those statements were sent to the respondent in accordance with the tribunal's orders. Both the claimant and Mrs Duffy gave evidence at this hearing and were cross-examined by Mr Munro.

10. The witness evidence relied upon by Mr Munro was more piecemeal.

11. Mr Munro called Mr Jackson to give evidence who at the time relevant to these proceedings was employed by the respondent as a Senior Support Worker with additional responsibilities for human resources. Mr Jackson is now a Registered Manager with the respondent. Mr Jackson produced a witness statement which he signed on 7 February 2023 and sent to the claimant in advance of these proceedings. Mr Jackson gave evidence at this hearing and was cross-examined by the claimant.

12. On the morning of these proceedings, Mr Munro handed two additional witness statements to the claimant. First, a statement from the dismissing manager, Ms Paula Oltean. Secondly, a statement from the investigating manager, Mrs Armstrong.

13. The claimant is not professionally represented and has no background in the law or legal proceedings. Plainly, it was not acceptable for the claimant to receive these statements, not only after the date for exchange of statements but only on the morning of the hearing. The Tribunal informed the claimant that she could object to the inclusion of the witness statement of Ms Oltean and Mrs Armstrong. Both Ms Oltean and Mrs Armstrong were employed by Healthcare Management Solutions (HCMS), a business specialising in consulting services to the care sector. HCMS were engaged by the respondent when it became apparent that The Ropery site was in some difficulty.

14. Very fairly, the claimant said she was content for the Tribunal to take the statements as read, but then to apply appropriate weight to them given that the statement of Ms Oltean was signed but undated and since she was not present at the hearing her evidence was not tested in cross-examination.

15. Mrs Armstrong gave evidence by CVP on application by the respondent and she was cross-examined by the claimant.

16. Nevertheless, the upshot is that the evidence that the Tribunal heard on the claimant's case was

    a. a written statement from the claimant which was signed and dated on 20 February 2023, was sent to the respondent in a timely manner and whose evidence was tested in extensive cross-examination;

    b. a written statement from Mrs Duffy, which is signed but undated, was sent to the respondent in a timely manner and whose evidence was tested in cross-examination;

    c. a written statement from Mr Jackson which was signed and dated on 23 February 2023, was sent to the claimant in a timely manner and whose evidence was tested in cross-examination;

    d. a written statement from Mrs Armstrong which was signed and dated on 10 March 2023, not sent to the claimant until the morning of the hearing and whose evidence was tested in cross-examination;

e. a written statement from Ms Oltean which was signed but not dated, was not sent to the claimant until the morning of the hearing and whose evidence was not tested in cross-examination.

17. It follows that the tribunal had only signed but undated written evidence from the dismissing manager (Ms Oltean); written evidence from the investigating manager (Mrs Armstrong) that was only provided to the claimant on the morning of the hearing compromising her ability effectively to cross-examine; and no evidence at all from the appeal manager (Ms Nethercott).

18. The only evidence for the respondent in respect of which a written statement was exchanged in a timely manner and whose evidence was able to be subject to cross-examination at this hearing, was that of Mr Jackson. However, the difficulty with Mr Jackson's evidence is that his actual role in the decision-making which led to the claimant's dismissal was either very slight in the case of the claim for disability discrimination or non-existent in the case of the claim for unfair dismissal including the decision to suspend, investigate, discipline and dismiss the claimant.

19. In the circumstances, I pointed out the obvious to Mr Munro that his case, at least on unfair dismissal, was facing significant evidential challenges. This was a case where the onus of proof is on the respondent who must show, that the reason for the claimant's dismissal was a potentially fair one. The respondent was relying upon conduct or, alternatively, some other substantial reason. However, it was plain that the claimant was alleging that the reason(s) for dismissal relied upon by the respondent for dismissal was not the genuine reason.

20. The claimant says that she was scapegoated for the respondent's organisational failings at The Ropery and that happened because of her disability. The claimant's case was that the respondent was concerned about the management challenges that it would face if it continued to employ the claimant arising out of perceived repercussive absences and restricted mobility both of which arose out of the claimant's disability.

The Law – the statutory provisions

21. Section 98 ERA is in the following terms:

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

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

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

A reason falls within this subsection if it relates to amongst other things the claimant's conduct.

The reason for dismissal

22. In a claim for unfair dismissal within the meaning of section 98 of the Employment Rights Act 1996, it is for the employer to prove that it is show the reason or the principal

reason for the dismissal. That is the result of section 98(1)(A). In order to be fair reason the reason must one which falls within section 98(2) which includes conduct or some other substantial meaning within 98(1)(B). What is the reason for the dismissal is the subject of some helpful caselaw. It often the case that an employer dismisses an employee for what could be regarded as several reasons. In Abernethy v Mott Hay and Anderson [1974] IRLR 213, [1974] ICR 323, at 330B-C, Cairns LJ said this: "a reason for the dismissal of an employee is a set of facts known to the employer or it may be if beliefs held by him which caused him to dismiss."

A fairness of the dismissal

23. Where the employer has satisfied the Tribunal that the reason is a potentially fair one, the question of the fairness of the dismissal falls to be determined under section 98(4) of the Employment Rights Act 1996 which provides this:

> *Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and it should be determined in accordance with equity and the substantial merits of the case.*

The range of reasonable responses of a reasonable employer test

24. Section 98 of the Employment Rights Act 1998 has been subject of much caselaw. The effect of which can be summarised by saying that the key question when a fairness of a dismissal is in issue is whether or not it was within the range of reasonable responses of a reasonable employer to dismiss the employee for the reason for which the employee was in fact dismissed. However, particular considerations arose in relation to the different reasons for dismissal. This was a conduct dismissal. In a case where the employer relies on conduct as the reason for the employee's dismissal the following questions arise:

    - Has the employer satisfied the Tribunal on the balance of probabilities that the reason for which the employee was dismissed was indeed the employee's conduct.
    - Did the employer before concluding that the employee had done that for which he or she was dismissed carry out an investigation which was within the range of reasonable responses of a reasonable employer to conduct.

25. The best authority in that respect is the case of **Sainsbury's v Hitt** which confirms that the bands of reasonable responses also applies to the investigation stage.

The range of reasonable responses of a reasonable employer test applied to conduct dismissals.

26. The severity of the consequences to an employee of dismissal are a relevant factor. So is the employee's length of service. So is his or her past record as an employee of the employer whether good or bad. Those things are stated helpfully in Harvey in which it says as follows:

> *In paragraph of the ACAS code it is stated that where some form of formal action is needed, what action is reasonable or justified will depend on all the circumstances of the particular case. See also the ACAS guide. There are a whole*

range of potential factors which might make a dismissal unfair. In misconduct cases they include especially the employee's length of service and the need for consistency by the employer. The importance of length of service and past conduct were emphasised by the Employment Appeal Tribunal in ***Trusthouse Forte v Adonis*** *has been proper factors for Tribunal to take into account. This is an area however where the EAT has said it must be tread very carefully and it is an error of law for the Tribunal to substitute its own view for the facts before the Tribunal. Of course the mere fact that where an appropriate self-direction is made doesn't make the application of that particular test fair on the facts of any particular case for what must always be borne in mind is that the Tribunal must not step into the shoes of the employer and must ask itself whether what the employer did and concluded was an option open to a reasonable employer acting reasonable.*

Law in relation to unlawful discrimination

27. It is unlawful for an employer to discriminate against an employee in the way it affords him or her access or by not affording him or her access to opportunities for transfer or receiving any other benefit facility or service by dismissing him or her or by subjecting him or her to any other detriment.

Discrimination arising in consequence of disability

28. Section 15(1) of the Equality Act 2010 concerns discrimination arising out of disability and provides:

A person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability, and A cannot show that it did not know and could not reasonably have been expected to know that the employee had the disability or A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

29. Unfavourably must be interpreted and applied in its normal meaning. It is not the same as detriment which is used elsewhere in the Equality Act but a claimant cannot succeed by arguing that treatment that it was in fact favourable might have been even more favourable.

30. Guidance on the correct approach to a claim under section 15 EqA was provided by Simler P in Pnaiser v NHS England [2016] IRLR 170. The EAT gave the following guidance:

> *A Tribunal must first identify whether there was unfavourable treatment and by whom. In other words it must ask whether A treated B unfavourably in the respects relied on by B. The Tribunal must determine what caused the impugned treatment or what was the reason for it. The focus at this stage is on the reason in the mind of A the employer. An examination of the conscious or unconscious thought processes of A is likely to be required just as it is in a direct discrimination case. Again just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too there may be more than one reason in a section 15 case. The something that arises in consequences of disability need not be the main or sole reason but must have at least have a significant and a sense of more than trivial influence on the unfavourable treatment and so amount an effective reason for the cause of it.*

Failure to make reasonable adjustments

31. Under section 39(5) of the Equality Act 2010 a duty to make reasonable adjustments applies to an employer. A failure to comply with that duty constitutes discrimination under the Equality Act section 21. Section 20 of the Equality Act provides that the duty to make reasonable adjustments comprises three requirements set out in sections 23, 24 and 25. This case is concerned with the first and third of those requirements which provides that where a disabled person is put to a substantial disadvantage by either a provision, criterion or practice or the failure to provide an auxiliary aid. In this case it is in the form of a lift which is pleaded in the alternative as amounting to either a failure to make a reasonable adjustment in terms of the provision, criterion or practice or in relation to a failure to provide an auxiliary aid again in the form of a lift. In considering whether the duty to make reasonable adjustments arises the Tribunal must consider the following. Whether there was a provision, criterion or practice applied by or on behalf of the employer; the identify of the non-disabled comparators where appropriate and the nature and extent of the substantive disadvantage in relation to a relevant matter suffered by the employer.

32. Moving on now to the issue in this case in terms of harassment. Section 26 of the Equality Act provides as follows:

> *A person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*
>
> *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.*

Factual determinations and conclusions

33. Turning now to the Tribunal's conclusions

Unfair dismissal.

34. Did the respondent have a fair reason for dismissal?

35. The Tribunal accepts that the reason for the claimant's dismissal are those set out ultimately in the appeal outcome letter of 14 March 2022 at pages 430 to 436 of the bundle. In particular. Ms Nethercott upheld or partially upheld the allegations 1, 3, 8 or 9 which were themselves either upheld or partially upheld by Ms Oltean in her dismissal outcome letter of 18 January 2022 (Pages 384 to 394).

36. In summary, Ms Nethercott concluded that the claimant was responsible for the systematic failures to keep vulnerable residents safe as identified in the CQC report of 26 October 2021:

    - **Original allegation 1** – for failure on the claimant's part to ensure that staff were adhering to the correct PPE procedures in breach of the respondent's health and safety procedure.
    - **Original allegation 3** – falsified manager's daily walkaround checks in August and September 2021.
    - **Original allegation 8** – falsified manager's walkaround checks and recorded the nominated individuals as completing those checks for walkarounds on 20, 25, 26, 31 August 2021 and 1, 3, 8, 9, 10 and 17 September 2021 and submitted those records as forgeries to the CQC with the intention of misleading the regulator.

37. As noted below, some of these allegations mutated into other allegations during the appeal hearing, but we are satisfied that there was a general belief in misconduct on the part of the respondent's dismissing manager Ms Oltean and the respondent's appeal manager Ms Nethercott. For reasons we will come to below, the Tribunal was also satisfied that the claimant's disabilities played no part whatsoever in the respondent's decision to dismiss the claimant, including the key decisions taken by Ms Oltean and Ms Nethercott. The respondent therefore had a potentially fair reason for dismissal, namely conduct within section 98(2)(b) of the Employment Rights Act 1996.

38. Did the respondent have reasonable grounds to believe in the misconduct after carrying out a reasonable investigation. Dealing in turn with each of the four allegations 1, 3, 8 and 9:

Allegation 1 – the CQC identified failures

39. The respondent's case was that the claimant had a part to play in the failings identified by the CQC in The Ropery. The claimant had been in The Ropery for approaching 12 months by the time the CQC inspections took place. The claimant was on any view a manager and she had to take her share of the responsibility.

40. The claimant's position was that it was not reasonable to fix her with blame in this way. The claimant says that she was only seconded to The Ropery to help out. She was only a Deputy Manager and not a Registered Manager with legal and statutory responsibility for The Ropery.

41. The claimant's substantive role was as a mental health specialist assigned to the respondent's mental health unit at Elliott House in Easington. The failures found by the CQC predated her involvement in The Ropery from September 2020. The claimant was asked to help change the culture at The Ropery and was not tasked with turning around a failing service.

42. The claimant in any event had no authority as a Deputy Manager to take the sort of steps and decisions necessary to turnaround what were by common consent systematic, ingrained, longstanding and serious problems. Put simply, the claimant says she was in the wrong place at the wrong time and was unreasonably being expected to account for matters that were the responsibility of more senior managers, particularly the Registered Manager and the Nominated Individual Mr Massar.

43. The claimant believed that she was being asked to go to The Ropery form Elliott House to share responsibility with the existing Deputy Manager, Ms Renshaw. The claimant

believed that Dionne Renshaw had neither been suspended nor dismissed. That had been a key part of the claimant's case since proceedings were issued in May/June 2022. This showed differential and unreasonable treatment of the claimant, Ms Renshaw had been the relevant Registered Manager at The Ropery for some time.

44. Very late in the day, we heard from Mr Munro (and not from any witness) that Ms Renshaw may also have been suspended and dismissed herself, but that formed no part of the respondent's disclosure or witness evidence and we accordingly attach no weight to the information that was brought to our attention in respect of the treatment of Ms Renshaw at the eleventh hour. The claimant had plainly not had an opportunity to consider this account before it was revealed late in final hearing of these proceedings.

45. On the evidence we heard, there had been an operating assumption which we consider to be mistaken that the claimant held a more senior position of Service Manager and was above Ms Renshaw in the management chain at The Ropery. In fact she was not, although we do accept that the claimant from time to time does seem to have also accepted that she was a Service Manager but that would not be the first or last time that an employee was content to be described for certain circumstances in more senior terms than what was in fact the case.

46. We find that it was unreasonable of the respondent to hold the claimant to account for systematic failings in the service provision at The Ropery, failings that could only have been allowed to happen by the Nominated Individual Mr Massar. Mrs Duffy gave evidence that she accepted as the Registered Manager at The Ropery (albeit for a short period) with legal and statutory responsibility for the care provision that she had to leave the respondent's employment in the light of the CQC report.

47. Be that as it may, we find it unreasonable for accountability for systematic and systemic failures to be extended to the claimant as a Deputy Manager on secondment to a unit requiring learning disability specialisms, not the claimant's own specialisms of mental health.

48. We accept that the claimant did have a role to play and we come to that later. However we find that no reasonable basis existed on which the claimant could be held accountable for the broader, systematic problems for which she was dismissed. This is well illustrated by the shifting sands of allegations. Initially, there were five allegations against the claimant. This became expanded to ten by the time of the disciplinary hearing. It became increasingly difficult for the respondent to sustain a number of the allegations which were put to the claimant and we find in no small part this was due to the fact that the claimant was being accused of matters over which she had no meaningful control or influence.

49. The ten allegations at the start of the disciplinary hearing were reduced to four by the end of the disciplinary hearing . Out of those four, only one was upheld in full and the other three were partially upheld.

50. It was at times difficult even for the Tribunal to follow the matters that the respondent was actually accusing the claimant of having done, not least because we had no evidence in person from either the dismissing manager (Ms Oltean) or the appeal manager (Ms Nethercott) which effectively prevented the claimant from being able to challenge the key decision-makers that led to her dismissal. The Tribunal was likewise prevented from getting to the bottom of a number of the allegations including the material ones making it very difficult to assess the reasonableness of the respondent's decision-making.

51. A good example of the shifting sands and lack of clarity in the allegations is the incidents involving HH. At the disciplinary hearing, Ms Oltean found allegations 6 and 7 regarding HH "inconclusive" with the effect that the claimant did not appeal against that particular finding. Yet at the appeal hearing the incidents involving HH appeared to be being included as part of allegation 1, even though it was not a matter directly considered by the CQC. It is not reasonable for the claimant to have been put in a position where what she was actually being blamed for and why was so unclear and constantly mutating.

52. On appeal, Ms Nethercott plainly took into account the claimant's alleged failures in respect of the HH incident. HH had attempted suicide on two occasions during the same day. The claimant was on sick leave on 31 July 2021 when the incident occurred. She returned whilst still unwell, medicated and in pain on 2 August 2021. She filled in an incident report form as best she could highlighting that HH's social worker, family, police and regulatory reports may not have been filled in properly or at all by Ms Renshaw.

53. The respondent then sought to fix the claimant with responsibility for all of these failures when in fact the claimant was highlighting what she identified as shortcomings on the part of Ms Renshaw who was the manager on call on the date of the incident in question. The claimant sought reassurances from Ms Renshaw that safeguarding and CQC had in fact been informed about what had happened involving HH and she then received positive reassurances from Ms Renshaw that Ms Renshaw had informed both safeguarding and CQC when in fact it would appear that she had not. It was not so much unreasonable as irrational for the respondent to apportion the blame to the claimant for how HH's situation had been handled in those circumstances. Plainly those matters were the responsibility of Ms Renshaw and more senior managers, not the claimant.

Allegation 3. PPE breaches

54. Again, we can identify no reasonable basis for the respondent to allocate responsibility to the claimant for this failure.

55. When asked in the investigation by Mrs Armstrong what she had done in relation to infection control, the claimnat explained that she had carried out training. At page 329 she said that 90% of the staff had been trained, leaving only those who were on sick leave outstanding. Visual checks were undertaken to ensure compliance. The CQC inspector observed breaches of PPE requirements when carrying out their inspections. Certain staff members at The Ropery were either not wearing PPE or wearing them inappropriately. However, it is difficult to see what more the claimant could have done. It was common ground that standards had been allowed to become very poor at The Ropery over a significant period of time, one manifestation of which appears to have been poor compliance with instructions. The claimant confirmed that where she saw violations she acted by making recorded discussions. The claimant also explained that The Ropery was drastically understaffed being 660 hours down in staffing levels at the time.

56. The respondent made much of the fact that the CQC had not found staffing shortages during their inspections. That was not to the point as the days of the CQC inspection may very well have coincided with days of adequate staffing levels and the claimant was not challenged or disbelieved about staffing problems at the time of her dismissal. Again we find there to be no reasonable basis for this criticism being made of the claimant.

Allegation 8. Falsifying managers daily walkarounds

57. It was Ms Nethercott's conclusion that these records were not falsified (see page 434). Yet she still partially upheld this allegation by recasting the allegation as a failure to fill in timesheets in accordance with the claimant's job description and attempted to say that the claimant had admitted as much at her hearing.

58. However, the allegation was never put to the claimant as part of the extensive investigation that was undertaken and yet it leads to a partial upholding of an allegation which started off as an allegation of falsifying records and ends up being upheld due to a perceived administrative failure by the claimant. We find that unreasonable.

Allegation 9. Falsifying manager walkarounds and recording the nominated individual as completing these checks, sending forgeries to the CQC with the intention to mislead the regulator

59. The claimant gave an entirely plausible response to Ms Nethercott and Mrs Armstrong before her in relation to this allegation.

60. The claimant says that after her return to work on 2 August 2021, she could not do walkarounds herself. The claimant had just undergone a total hip replacement three weeks earlier. In those circumstances, the claimant reached an agreement with the Nominated Individual, Mr Massar, that he would do the walkarounds and the claimant would write them up and "pp" them on Mr Massar's behalf.

61. We heard no evidence from Mr Massar and saw no evidence that he was interviewed during the course of the investigation into the claimant's conduct. The respondent could therefore have had no reason to disbelieve the claimant when she said she was acting in accordance with the agreement and on the instruction of the most senior manager (Mr Massar as Nominated Individual) at The Ropery. On the contrary, the only evidence was the claimant's own evidence coupled with the fact that she plainly had reduced mobility because of a recent total hip replacement operation.

62. There was no evidence at all of any documents being forged, a very serious allegation that would normally require cogent supporting evidence. There was also no evidence of any intention to mislead the CQC or anyone else on the part of the claimant and no evidence that false information ever actually went to the CQC.

Contributory conduct

63. While we accepted that the claimant could not reasonably be held responsible for the broader systematic failure at The Ropery, we were not satisfied that the claimant bore no responsibility at all.

64. The claimant repeatedly said during cross-examination that she considered herself to have no responsibility at all for the failures at The Ropery. That cannot be right. This was a case where the respondent wanted to fix the claimant with much more responsibility than she had in fact had and where the claimant wanted to absolve herself of responsibility altogether. Neither position was reasonably sustainable. We consider the claimant was responsible for poor record keeping and poor administrative standards on her own evidence and we consider it fair to fix contributory conduct towards her dismissal on the claimant's part at 20%.

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65. The Tribunal was not satisfied that it was a matter of procedure that rendered the dismissal unfair. We considered what difference might have been made if everything that should have been done had been done and concluded that any dismissal would contain precisely the same problems as we have already identified. The unfairness in this dismissal is not procedural but a lack of reasonable grounds upon which to believe in the misconduct for which the claimant was dismissed.

Disability discrimination

66. The respondent accepts that the claimant was disabled.

Direct disability discrimination

67. Our findings are that it was the outcome of the CQC report and that alone which led to the claimant's suspension and dismissal. We find that dismissal not to be reasonable but we also find that it was genuinely and solely the CQC report which motivated the respondent to act as it did.

68. The respondent may or may not have dismissed Ms Renshaw the other Deputy Manager, but we consider any difference in treatment had more to do with Ms Renshaw's knowledge of The Ropery, its service users, their learning disabilities and their families than any consideration of the claimant's disabilities. The evidence was that the respondent wanted the claimant back to work until the CQC report landed at which point it changed its position and there was simply no evidence that the respondent had any concerns about possible future absences. The respondent was very unlikely to be looking that far ahead given the scrutiny it was being subjected to by the regulator at that time. Accordingly, we find that the sole reason why the claimant was suspended, disciplined and dismissed was the CQC report and the respondent's desire to be seen to be taking executive action as a consequence of it.

Reasonable adjustments

69. We accept that the claimant would have liked to have access to the higher floor and that would have improved her sense of job satisfaction, but we must also look at this in context.

70. The claimant was asked back to work early, essentially, to help firefight the problems arising out of the CQC inspection. None of the tasks we heard she was being asked to do involved access to the higher floors and there was no obvious reason why a colleague could not retrieve a file for her if she needed one. The claimant was only at MORE House from 2 August 2021 until 1 October 2021 after which she returned to Elliott House. In those circumstances, the claimant was not placed at a substantial disadvantage by the respondent and in particular by the fact the lift was not functioning and the claimant did not endure discomfort and pain as a result of the difficulty in accessing an office up two flights of stairs as was pleaded. It was the claimant's own evidence that it was impossible for her to climb stairs in her post-operative condition and we could readily see why that would be so. The claimant's own evidence was that she had attempted to do so only on one occasion at which point it became obvious to her that she could not manage to climb the stairs. In those circumstances, we do not consider that the claimant has suffered a disadvantage by any failure to mend the lift to the higher floor. There was simply no requirement for her to work elsewhere than the ground floor.

Harassment related to disability

71. We accept the evidence of Mrs Duffy that she did ask the claimant repeatedly between 21 July and 1 August 2021 to return to work. We accept that that was unwanted conduct and we accept that it related to the claimant's disability.

72. We also noted the good relationship that otherwise existed between Mrs Duffy and the claimant as well as noting Mrs Duffy's apology for having pestered the claimant to return to work in her condition at the time. However, it was not alleged that the purpose of that conduct was to cause the claimant to be humiliated, to violate her dignity or any of the other requirements of harassment and we are not satisfied that the relatively high threshold of that effect were made out. In reality, the respondent needed the claimant's skills to fire fight the consequences of an adverse CQC inspection and that was the purpose of the pestering calls. Even if the claimant had perceived matters in that way we would not have found that to have been reasonable.

Time Limits

73. We noted Mr Munro's concession that the claimant's unfair dismissal claim was in time so we do not need to consider that matter any further.

74. We were satisfied that the balance of prejudice was in the claimant's favour when it came to the issue of amending her claim form to bring a claim for wrongful dismissal. As these proceedings showed, the same considerations that were necessary to decide wrongful dismissal were also the considerations for the Tribunal to decide when it came to the matter of unfair dismissal which was brought in time.

75. On that basis, the claim for reasonable adjustments and disability and harassment were brought out of time and we heard no evidence or submissions as to why it would have been just or equitable to extend time. Having found the dismissal not to be discriminatory the question of conduct extending over a period ending with dismissal cannot arise. However, had the Tribunal decided that it had jurisdiction over the complaints of discrimination the Tribunal would for the reasons we have given have rejected the claimant's disability discrimination claims in any event.

Employment Judge Loy

14 June 2023