



EMPLOYMENT TRIBUNALS

Claimant: Miss S Pooley

Respondent: Wrexham County Borough Council

HELD AT/BY: Mold by CVP **on:** 1st July 2024

BEFORE: Employment Judge T. Vincent Ryan
Ms M Humphries
Mr M Vine

REPRESENTATION:

Claimant: Litigant in Person

Respondent: Mr K Ali, Counsel

JUDGMENT having been sent to the parties on 8 July 2024 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

Introduction:

1. **Witnesses:** We heard evidence from (or where indicated read witness statement in the witness' absence):
 - 1.1. the Claimant
 - 1.2. Alan Thomas - the Claimant's Trade Union Representative – absent.
 - 1.3. Donna Roberts - Head of Service for Corporate Parenting
 - 1.4. Kim Stewart - Social Worker and Team Manager of Leaving Care Team
 - 1.5. Ruth Hale - Social Worker and Assistant Team Manager of Leaving Care Team
 - 1.6. Helen G HR Business Partner
 - 1.7. Alison Griffiths HR Officer – absent.
2. **Documents:** We received an electronic bundle; the page numbering was problematic, but we were able to work around it to every participant's stated

satisfaction. Many of the pages had been renumbered by merely rewriting the new number over the old number, which caused some confusion. The paper bundle comprised 625 numbered pages whereas the electronic bundle showed that there were 635 pages including the index. I made the point to the Respondent's Counsel that the bundle had not been prepared in accordance with directions and the Practice Direction; he apologised. I made the point that, given the Claimant's disability, the preparation of the documents was most unhelpful. In the event, the Claimant used both a paper copy and an on-screen copy, as she preferred, and we all took the time required to ensure that each document referred to was properly identified so that all participants at the hearing were clear as to the document in question at any particular time. I am satisfied that the Claimant did not suffer any disadvantage with regard to the bundle, because of the steps that were taken including the assistance of Mr Ali, for which I thanked him.

3. **Adjustments & the hearing:** The Claimant's preference would have been to proceed with an in-person hearing. I discussed this with the Claimant at the outset because the hearing was listed to be heard by video. The Claimant reassured me that she had no difficulty. I asked the Claimant frequently whether she was satisfied with continuing remotely; she reassured me each time that she was not disadvantaged. I offered to convert the hearing to an in-person hearing from day two onwards (to allow counsel the opportunity to travel and attend) but the Claimant confirmed that as the hearing had started and she was coping adequately, she would prefer to stay in that mode than to convert to an in-person hearing. I honoured her wishes. The Claimant also provided a list of adjustments which was shared with the Respondent and to which we adhered to the apparent satisfaction of the Claimant. As mentioned above I sought reassurance from her at frequent intervals and I am satisfied that the Claimant did not suffer any disadvantage let alone a substantial disadvantage in the conduct of the hearing, not least because she told me so, but also by my and my panel colleagues' observation.
4. **The Issues** (the Claimant having withdrawn her claim of Direct Disability Discrimination and it having been dismissed):

In a situation where the Claimant (C) resigned, following receipt of a Management Advice about her conduct and practice in respect of her placement of a young person who was being looked after, in the light of the way she says she was treated through that process and the circumstances of three unresolved "grievances", and where she also claims that the Respondent (R) failed to make reasonable adjustments in accordance with a statutory duty, it was agreed that the issues to be determined were as listed at paragraph 5 below. The Respondent provided the Claimant with a draft list of issues which the Claimant amended prior to the hearing; we discussed her amended version at the outset of the hearing when she provided further details and confirmed that some of the matters that she had listed were not being pursued; I have indicated this on the list below for completeness and transparency and for the sake of the Claimant.

Constructive unfair dismissal

5.1 Did the Respondent do the following things:

- (1) Unfairly treat the Claimant at a meeting on the 14 June 2023 with Mrs Donna Roberts, Head of Service Corporate Parenting and Ms Ruth Hale, Assistant Team Manager. The unfair treatment involved:
 - Ambushing C with this meeting;
 - Not allowing her to have support/representation at the meeting;
 - When C pointed out some of the statements were incorrect was told "it's irrelevant";
 - Accused C of not completing actions that she had completed.
 - Incorrect information on the Management Advice and not being able to discuss this [CLARIFICATION: Kim Stewart, Social Worker and Team Manager, did not make the telephone call referred to; the supervision meeting on 18 May 2023 involved Ruth Hale, also a Social Worker and Team Manager, and the Claimant says that, contrary to the record, she had put in place a care plan, and she did explore options in respect of other hosts and she did not action the placement of the young person involved without taking appropriate action].
- (2) In June 2023 a reference for the Claimant's secondment was withheld by Donna Roberts, Head of Service. Donna Roberts attempted to block the Claimant's secondment. This caused the Claimant to withdraw from the secondment.
- (3) Locking down the Claimant's access to all of her cases whilst she was on sick leave.
- (4) On or around 29 September 2023 giving false information to Social Care England. This was also a data breach and defamatory.
- (5) Not properly dealing with the Claimant's two data subject requests (made on 21 July 2023 and 1 August 2023).
- (6) The Claimant was not supported with her dyslexia (Ruth Hale refused to hold supervisions in person and IT support was not working correctly).
- (7) The Claimant was not referred to occupational health, following Vicky Crewe stating she had been told to refer the Claimant without consent.
- (8) Ruth Hale stating she was doing a referral to occupational health stating she had the Claimant's consent, which she did not.

- (9) Removing the Claimant from the works WhatsApp group on or around 1 November 2023 whilst she was absent from work on sick leave.
- (10) Ruth Hale stating only certain discussions are on What's App, this is not the case [CLARIFICATION: the Claimant confirmed that this is a matter that concerned her only on disclosure of evidence by the Respondent in these proceedings; it did not inform her decision to resign; it is not pursued].
- (11) There were delays with investigating matters, with an investigation only starting in October 2023. The Claimant was not given a timeframe for dealing with the investigation.
- (12) Not dealing properly with a grievance from the Claimant on 17 June 2023.
- (13) Not dealing properly with a 2nd grievance from the Claimant on 6 November 2023.
- (14) Not dealing properly with a 3rd grievance from the Claimant on 13 November 2023.
- (15) Transfer policy and procedure not been followed [CLARIFICATION: the Claimant says that when the young person's file was transferred to her team there ought to have been a meeting between her and the previous social worker and an arranged joint visit to the young person's accommodation but neither happened].
- (16) Allowing Kim Stewart to contact the Claimant on the guise of wellbeing checks when she was one of the main protagonists.
- (17) Kim Stewart sending the Claimant text message with a kiss at the end of it which the Claimant found highly concerning and inappropriate and significantly concerning.
- (18) Kim Stewart continuing to try and contact the Claimant on 11/3/24 which is a serious concern as she had been advised not to contact the Claimant [CLARIFICATION: the Claimant confirmed that this post-dates her resignation and cannot therefore have informed her decision to resign; it was not pursued].
- (19) Information been shared with another team manger unnecessarily as the Claimant was already liaising with IT about return of the equipment as instructed to by HR. [CLARIFICATION: the Claimant confirmed that this post-dates her resignation and cannot therefore have informed her decision to resign; it was not pursued].
- (20) Asking the Claimant to return her IT equipment to Crown Buildings directly where the issues are, causing significant distress and anxiety. [CLARIFICATION: the Claimant confirmed that this post-dates her

resignation and cannot therefore have informed her decision to resign; it was not pursued].

- (21) Management team not informing the Claimant a young man who had previously threatened to murder the Claimant had been released from prison and was placed two miles from Claimant when the Claimant was off sick.
- (22) The first investigation where there was an initial meeting in October 2023, that the Claimant instigated and asked for, where Jane Rowlands was the investigating officer, did not conclude communication just stopped after an initial meeting.
- (23) The second investigation that the Claimant instigated and asked for (Approximately around January 2024), where Matthew Evans was the investigating officer and Shelley Roberts was present, did not conclude communication just stopped after an initial meeting.
- (24) Email sent on 1/12/23 stating you are combining part of the grievances together and how you will now be dealing with them.
- (25) Breaching the case management order deadline, point 22 in the case management order it states, "By no later than 15th May the parties shall agree an index to the joint bundle, the Respondent providing the first draft" This was not received by the deadline. [CLARIFICATION: the Claimant confirmed that this post-dates her resignation and cannot therefore have informed her decision to resign; it was not pursued]
- (26) Second breach of the case management order deadline, deadline to provide evidence by 17/4/24 email was sent late on the 17/4/24 stating "Paper copies of the Council's documents have been sent to your home address by special delivery". [CLARIFICATION: the Claimant confirmed that this post-dates her resignation and cannot therefore have informed her decision to resign; it was not pursued].
- (27) Human Rights Act 1998 [CLARIFICATION: the Claimant confirmed that this is not a factual allegation].
- (28) Evidence already submitted in the court bundle [CLARIFICATION: the Claimant confirmed that this is not a factual allegation]
- (29) Any other law/policies and procedures/information the Claimant feels relevant to the case [CLARIFICATION: the Claimant confirmed that this is not a factual allegation]

5.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

(1) whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and

(2) whether it had reasonable and proper cause for doing so.

5.3 Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.

5.4 Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that they chose to keep the contract alive even after the breach.

5.5 Was there a fair reason for the dismissal? The Tribunal will need to decide whether the reason given by the Respondent was fair, namely, "any dismissal was fair in any event, in that the Respondent was reasonably managing the Claimant's performance and conduct as a social worker which concerned highly regulated work involving vulnerable individuals and difficult circumstances".

Failure to make reasonable adjustments.

5.6 Did the Respondent know, or could it reasonably have been expected to know that the Claimant had the disability? From what date?

- The Respondent has conceded it had knowledge of the Claimant's dyslexia at all material times to this claim.

5.7A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:

- (1) Providing work documents on white paper
- (2) Requiring the Claimant to work on a laptop and computer.
- (3) Having some meetings virtually rather than in person
- (4) Requiring the Claimant to proof-read and edit her work.

5.8 Did the PCPs, or lack of an auxiliary aids, put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that [the Claimant is to explain]?

CLARIFICATION: the Claimant says that she ought to have been provided with whatever auxiliary aids would have enabled her to work to the same standards as nondisabled colleagues; she did not specify any.

5.9 Did the Respondent know, or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?

5.10 What steps could have been taken to avoid the disadvantage? The Claimant suggests:

- (1) Providing work documents on blue coloured paper.

- (2) Providing special software on her work laptop and computer.
- (3) Having meetings in person.
- (4) Being given support at the management meeting on 14 June 2023 by:
 - pre-warning her about the meeting;
 - by way of someone to support her at the meeting;
 - by not overloading her with information without the opportunity to digest it;
 - by providing her with notes of the meeting to takeaway;
 - by being expected to process complex information very quickly and unexpectedly;
 - by not allowing any opportunities for her to ask questions or to clarify points; and
 - by not allowing her to go away and organise a reply in response to the issues raised).
- (5) Providing assistance with proof-reading and or editing.

5.11 Was it reasonable for the Respondent to have to take those steps, and when?

5.12 Did the Respondent fail to take those steps?

The Facts in relation to the claim of Constructive Unfair Dismissal:

5. The Respondent (R):

5.1. R is a Local Authority with responsibility for, amongst other things, safely accommodating children in care and upon leaving care. It is a large employer with a professional HR and legal team in support of management.

5.2. Its practises are governed by legislation, written policies, and procedures, upon which its staff are trained, and which are available to staff.

5.3. Management provide supervision of staff on a regular basis; during supervision sessions managers will ascertain whether basic staff needs are being met and whether any member of staff has additional needs; the supervisor draws matters to the attention of the member of staff regarding best practise, the aim being to provide a supportive and nurturing culture and environment.

5.4. Prior to the period commencing in late 2022 R became aware that there were some failings, omissions, and weaknesses in the practice of various teams including the Leaving Care Team. The managers from whom we heard evidence, Ms Roberts, Ms Stewart, and Ms Hale, were part of a new management team tasked with improving practice and morale. They took the approach that they should be nurturing and supportive rather than punitive. They appreciated that there had been previous management failings and felt it would be unfair to the social workers if the fact of new management resulted in them being penalised for acts and omissions that would previously have gone unremarked. They were not trying to introduce anything new, but only to ensure compliance with law and established best practise. They used

team briefings, training opportunities, and the supervision sessions to affect the required improvements. Some members of the Team caused concern, and issues were addressed. Only in the case of the Claimant did the new management team consider it necessary to issue written Management Advice following an informal meeting. Such Management Advice, once committed to writing, would appear on the staff members personnel file albeit the procedure is informal at that stage and is not of a formal disciplinary nature; the matters to which a Management Advice relate may be of a disciplinary nature and were in the Claimant's case. A Management Advice indicates conduct or a practice that is not in accordance with policies & procedures and/or instructions from management, gives encouragement to improve, and is intended to be both the highlighting of a problem and the provision of support to rectify the problem.

5.5. When a member of staff is being considered for a Management Advice they are called to a meeting where the conduct or practice in question is discussed. Both sides have an opportunity to explain themselves. If an Advice is issued, it is committed to writing. If it is accepted by the member of staff, then the Advice is placed on their file. If the Advice is not accepted then, as the matter is one of conduct and performance, it proceeds by way of a formal disciplinary investigation. The outcome of a formal disciplinary investigation may be to vindicate and exculpate the social worker (in which case the Management Advice will be removed from their file), it may justify the giving of that Management Advice which will then remain on file, or the outcome may in fact lead to a disciplinary sanction in accordance with the disciplinary policy. Issuing a Management Advice is therefore a relatively quick way of dealing with matters that could potentially have serious long-term consequences for a member of staff under the disciplinary procedure, and doing so in a nurturing and supportive way that is not punitive. The member of staff then has the option of accepting the Advice in the spirit in which it was intended, or risking the full force of the disciplinary procedure. In this case the informal approach was followed and even after it Donna Roberts gave the Claimant the opportunity to return to her to discuss any aspect of the Management Advice given; the Claimant chose not to do so informally. The Claimant was given the opportunity to return to Donna Roberts to speak about the matter again before the issue was considered closed; she did not.

6. The Claimant (C):

6.1. C has a master's degree in psychology and a Social Work degree. She qualified as a social worker approximately 5 years ago. From all accounts, until around the time of the circumstances giving rise to this claim, C appeared to be an effective and conscientious social worker who was popular with her colleagues and considered to be a valuable member of the team. We have seen a work reference to this effect. The only qualification to the glowing reference relates to failings in relation to her practice in the instant case which, we were told, would have led the current management team to modify (but not contradict) the essence of the reference in the hearing bundle. There is no evidence before us suggestive of the Respondent

seeking to penalise the Claimant or bring about the end of the employment relationship. The Tribunal finds that the Respondent acted in a supportive and nurturing way towards the Claimant throughout all the matters in issue; it sought to correct perceived deficiencies in practice and actual failings on the part of C in this case in the placement of a young person, without damaging or destroying the relationship of trust and confidence; it wished to retain the Claimant in post, and aimed to achieve an improvement in conduct and practice.

6.2. C is a disabled person, disabled by dyslexia. Throughout her employment and until the issues arose which are the foundation of this case, reasonable adjustments had been provided to her satisfaction. She was provided with appropriate equipment following DSE assessments. C accepts that her needs were met; any potential disadvantages that she would have faced at work had been removed by virtue of the adjustments in place until the trigger events for this claim. With the agreed adjustments in place none of the Respondents provisions, criteria, or practices placed the Claimant at a disadvantage compared to nondisabled colleagues and there were no additional auxiliary aids required by her to enable her to work to the required standards and those of her nondisabled colleagues. R did not know, and could not reasonably have been expected to know, that C was placed at any substantial disadvantage by any of its practices, criteria or provisions; she was not. The only preference of hers that was not met on one occasion was the conducting of a meeting remotely by video when she had expressed a preference, placing it no higher than that, for meetings to be face-to-face. Whilst the Tribunal accepts that the Claimant had a preference and understands her reasoning, nevertheless it is satisfied from the way that she expressed her preference to management, that she was not placed at a substantial disadvantage by remote participation in meetings.

6.3. C was employed by R as a Social Worker from 19th March 2018 until her resignation on 1 December 2023. At the material time she was deployed in R's Leaving Care Team.

6.4. The issue in this case relates to the Claimant's management of a matter involving the residential placement of a young person, referred to as "A". When the file relating to A was transferred to the leaving care team, A's then social worker ought to have met with C and they ought, together, to have visited A; neither of these things occurred. C does not know why she did not meet the social worker and why she did not go on a joint meeting; she has assumed that the social worker left employment. C did not raise this as an issue with R at the time of the transfer, or subsequently until this claim to the Employment Tribunal. The Tribunal infers from this that C was not concerned at the failure to follow usual transfer procedures, which may in any event have been, at least in part, her fault. The final transfer was affected in March 2023. In all these circumstances the Tribunal finds that C accepted this breach of policy and procedure, and it was not causative of her resignation either on its own or cumulatively with the events that followed.

- 6.5. Young Person A had been resident in a house where the owners had a dog, and A was fearful of that dog. Such was her concern that the Respondent was concerned A may not have been able to enjoy easy and convenient access to the kitchen of the home when she wished to eat, or access to the washing machine, because of the proximity of the dog. C saw to the relocation of A on the 25 May 2023, rehousing A with two schoolteachers who had previously been registered with R as foster parents; at the material time however this couple had been deregistered.
- 6.6. Accommodation could have been set up in a number of ways, but the Tribunal understands that the principal ways would have been either a foster care arrangement or with supported lodgings hosts, and the latter was deemed appropriate in the current circumstances. In this case C was to adopt the approach required under Regulation 26 of the Care Planning, Placement and Case review (Wales) Regulations 2015 (Regulation 26). For effective Regulation 26 placement there ought to be a comprehensive assessment which would, amongst other things, look into alternatives to rehousing a young person, such as by ascertaining whether any difficulties with current arrangements could be resolved without the upheaval of a move; in conducting the assessment the Respondent would expect to look at alternative moves including alternative placements; there ought to be police checks; following all of that there should be a multi-agency meeting and any proposal would have to be signed off by the Head of Service or a senior manager. It would have been essential for a Lodgings Panel to approve the placement. The whole process can take between six and eight weeks.
- 6.7. In this instance R had a considerable amount of information about the teachers with whom C placed A because they had been registered foster parents in the past and there will have been a file on them. Accessing that file may have expedited some of the enquiries, but on the face of it, and all that was known as at the 25 May 2024 relocation of A was, the host couple in question had been registered but had been deregistered. The reason for deregistration was not known to those involved in A's case, including C, when A was placed with them.
- 6.8. At a supervision meeting held on 18 May 2023 many cases were discussed by Ms Hale and C. Amongst them was the case of A. They put in place in agreed action plan which included clarifying the current impact of the presence of the dog at A's then placement via the multiagency meeting, and exploring the process of securing new supported lodgings hosts; this would in turn require police checks and a multiagency assessment with the exploration of the efficacy of the Kickstart scheme. There was to be an exploration of support for A's emotional health and an assessment. Ms Hale was not keen on the idea of moving A at this time; A had been moved several times already and GCSE exams had either started or were imminent; it was Ms Hale's stated preference to resolve the issues concerning the dog in the current placement, not least because it was known to her and to C that reference had been made to the situation improving as regards A and the dog.

- 6.9. C started to carry out the required tasks and made some progress with them but they were not completed, and neither were the formalities in relation to them, before A was rehoused with the host couple, two teachers known to A. C had commenced, and may have concluded, police checks but did not relay that information to her managers before the placement. She had commenced enquiries with some professionals; she was waiting for them to return to her so that she could complete the report to the multidisciplinary team and in order to complete a comprehensive assessment for sign off by the Head of Service or a senior manager. None of that work had been completed in advance of the placement of A in the new accommodation. C misunderstood that it would be an easy process to convert the deregistered foster parents into supported lodging hosts, because she was informed that it could be done relatively easily; that said she was also told that it could take several weeks, that various assessments were required and that it ought to be passed to senior management. C relies on email correspondence with a Ms James which gave her confidence that the transfer would be quick and easy, but it is clear that Miss James did not, and was not authorised to, overrule Ms Hale. C was not entitled, or indeed authorised, to accept Ms James' reassurance about the potential ease of ascertaining information on the host couple, and so to short-circuit the steps put in place by Ms Hale. Significantly at the time that A was placed with the teachers C had not ascertained, and her managers were not aware, why the host couple had been deregistered as foster parents; there may have been innocent, or concerning, reasons for deregistration. It is appropriate to note at this stage that, as it transpired, there was nothing untoward about the deregistration of that host couple.
- 6.10. Contrary to management instructions, C did not fully explore the issues concerning the dog and A, or resolution of them, did not formally pass on the outcome of the police checks, did not complete the comprehensive assessment, and did not engage in a multidisciplinary team meeting. She did not secure this sign off of the Head of Service or a senior manager to her planned relocation of A. The relocation did not have Panel approval. Regardless of all of the required steps, of which C was made aware, C saw to the placement of A with the host couple.
- 6.11. Because of the failure to follow regulation 26 requirements, the directions and instructions of Ms Hale, and best practice generally, C was invited to attend a meeting on 14 June 2023 to discuss the placement. She was aware that she was being asked to attend the meeting about a Regulation 26 placement, and the case of young person A was the only relevant one at that time; it had been the subject of correspondence and conversations over a period of a few weeks; C accepts that she was aware going into that meeting that it was about A. She was not expecting to receive a Management Advice (and still does not think that such was appropriate) but she knew that her managers wished to discuss that case with her, and in that respect therefore she was not ambushed. A manager may speak to one of their reports at any reasonable time during the working day about matters within their remit.

- 6.12. We were referred to a record of Management Advice prepared on 14 June 2023 (pp 342 or 343 of the hearing bundle (352 in the e-Bundle)) and the accompanying letter from Donna Roberts to the Claimant at page 345 of the hearing bundle (354 e-Bundle). The Tribunal finds that the letter is an accurate summary and description of the concerns held by R about C's conduct and practice in this instance. The record of the meeting contains a number of inaccuracies, namely reference to a telephone call of 12 May should have referred to 19 May, the record says that none of the required actions had taken place whereas some had; as recorded above in these findings of fact, C had explored the possibility of other hosts and carried out police checks. All that said, the email of 25 May 2023 from Ms Hale to the Claimant at page 322 (332 e-Bundle) sets out in accurate detail what R considered to be conduct and performance issues on the part of C in relation to her management of A's placement.
- 6.13. The Tribunal finds that R had a valid reason and good cause to consider issuing Management Advice and did so conscientiously in good faith. R wished to sustain the employment relationship and improve C's conduct and practice. The Management Advice was not intended to destroy or seriously damage the relationship of trust and confidence but was a supportive and nurturing act. The Tribunal recorded its understanding of C's frustration at the inaccuracies in the record of the meeting of 14 June. It also understands that C did not expect that she would be issued with such an Advice at the meeting in question although she conceded that she knew the purpose of the meeting was to discuss A's placement when she attended it. It was clear from the invitation that management required an update on a Regulation 26 case, and that the case of child A was that case. The meeting of 14 June was not a grievance or formal disciplinary hearing with the right to accompaniment. C had not previously required accompaniment at informal meetings with managers, and that is what the meeting on 14 June 2023 was; there was no obvious need for accompaniment on this occasion either. The purpose of the meeting was for management to address concerns informally without the need for disciplinary or punitive action; it was intended as a way of supporting C's future conduct and practice. C did not ask to be accompanied. She was not refused accompaniment.
- 6.14. Given the context found by the Tribunal, the Tribunal prefers the Respondent's denial that either Donna Roberts or Ruth Hale said to C that the points she wished to raise were "irrelevant". To have said that would have been inconsistent with the approach adopted by the managers, and we find that it was the manager's intention to obtain comments from C at the meeting on 14 June and give her the opportunity to make further comments after receipt of the written Management Advice if she wanted to discuss matters further. The Tribunal understands that C may have felt that her representations were not being listened to, but we find that she was not told what she wanted to say was "irrelevant"; she was effectively being told or given the impression that the points she made were not persuasive to withdraw the Management Advice.

- 6.15. The Claimant commenced a period of sickness absence on the day following that meeting of the 14 June 2023. She did not return to work before her resignation on 1 December 2023.
- 6.16. C challenged the issuing of the Management Advice and attempted to do so by way of a grievance. She was advised, in accordance with R's policies and procedures, that if Management Advice was not accepted there would be a disciplinary investigation; the grievance procedure was not applicable. Notwithstanding this explanation, C, with Union support, said that she required a formal investigation. C continued to refer to this investigation as being an investigation into her grievance or her challenge to the Management Advice without either appreciating or accepting that the Management Advice was a soft touch approach to conduct and performance issues of a disciplinary nature. The Tribunal finds that at all times R considered there were grounds for disciplinary investigation, and potentially disciplinary proceedings leading to sanction if appropriate, in relation to C's conduct and performance with regard to child A. In keeping with the policy of the new management team, as described above, R had gone for a soft option by way of Management Advice until such time as C triggered a formal investigation of a disciplinary nature. It was C's prerogative to trigger a disciplinary investigation into her conduct and performance following the Management Advice, and that is what she did. R commenced a formal disciplinary investigation at the behest of C.
- 6.17. C applied for a post in the Youth Justice Team and requested a reference from Vicky Crewe. Ms Crewe provided a reference in glowing terms. Donna Roberts did not block that reference being submitted and neither did she alter or amend it. C withdrew her application because of her ongoing grievances with R and the effect the situation was having on her health (and not because the reference was blocked or delayed).
- 6.18. Having been absent from work since mid-June 2023, in accordance with established practice, her access to case files was blocked in September 2023. The reason for this was that she had been absent for three months with no imminent return to work in sight, and she was not working on any files at that time; indeed she ought not to have been working in any files as she was incapacitated from work; she did not therefore require access to case files from September 2023 onwards. The action taken by R in blocking access to case files was a supportive gesture for the good of C's health as her absence was work-stress related. R had a duty under GDPR to control access to sensitive information and limited it to employees who needed such access. C did not need access from September 2023 onwards. R did not lock, limit, or restrict C's access to her work email address and the parties were able to continue in email correspondence.
- 6.19. In September 2023 C applied for registration with Social Care England with a view to alternative employment. Social Care England is a regulator. It requested information from R including whether there were any ongoing investigations affecting C. R considered it had no option but to reply truthfully

to the enquiry but without giving away any detail of a personal nature affecting C. It confirmed that there was an ongoing disciplinary investigation.

- 6.20. C issued a data subject access request. The data held was extensive, and some 85% was redacted because it related to confidential casework. Collation of the data and redaction took a considerable length of time, and this accounted for the delay in disclosing the data to C.
- 6.21. C informed Ms Hale that if there were to be meetings, her preference would be that they are held face-to-face, but she made it clear that this was only a preference and not a necessity. R took this at face value. Some meetings were held remotely by video. C did not complain at the time or say that she was in any way disadvantaged or unable to participate effectively. R was not aware that the holding of meetings remotely by video created any disadvantage whatsoever to C. R had operated a system of “agile working” since the restrictions imposed during the Covid pandemic, with a mix of remote and in-person meetings. This mix had proved effective until the time C ended her employment and is being raised by C in hindsight because of her dissatisfaction with R.
- 6.22. Ruth Hale discussed with C the possibility of a referral to occupational health advisers. The Tribunal accepts that this may have been a very brief conversation, perhaps a question and a comment or acknowledgement, but there was a reference to OH in a dialogue. When C submitted a sick note for the period 20 June to 6 July 2023, Ruth Hale mentioned in a message that she would therefore refer C to OH as had been discussed. Ruth Hale did not say that consent had been obtained. In response C clearly stated that she was not consenting. Ruth Hale did not refer C to OH. The matter was mentioned again to C later in her sickness absence and she again clearly stated that she withheld her consent; R never referred C to OH because of her consistent withholding of consent.
- 6.23. R’s management periodically carried out housekeeping with regards to the various teams’ various WhatsApp groups. It is clear from the evidence before the Tribunal that in November 2023 a number of staff members who were no longer active in the group for one reason or another, including long-term sickness absence, were excluded from the group. The purpose of the group was to facilitate discussions about ongoing matters of concern and interest in day-to-day practice at work. Staff members, or former staff members, who were not engaged in day-to-day work within the team would be excluded after a short time. In keeping with this practice, compliant again with GDPR, C and others were deleted from the group. C had been absent from work by this stage for some four months. The Tribunal is satisfied from the evidence that the only reason for exclusion was that she was on long-term sickness absence with no imminent return to work in sight, that she would not have been deleted from the group if she was due to return to work imminently, and furthermore that she would have been rejoined as a group member if and when she returned. In the event she resigned.

- 6.24. C presented a grievance to R on 6 November and then another on 13 November 2023. These were further to what she refers to as her grievance of June 2023, which was in fact her challenge to the Management Advice which had triggered disciplinary investigation. That investigation was ongoing when the November grievances were presented.
- 6.25. The disciplinary investigation had been delayed because various meetings were postponed at the request of the Claimant either because of her unavailability or that of her Trade Union representative, until 23 October 2023. There was an investigation in meeting on this date. The investigator obtained information from C and her representative, and planned to conduct further investigations thereafter.
- 6.26. The two November grievances overlapped with each other and with matters relevant to the disciplinary investigation. Sadly, the disciplinary investigating officer suffered a bereavement that led to a further short delay. In consequence of these circumstances R wrote to C on 1 December 2023 (email from Sue Robins to C at page 452 in the bundle or 461 in the e-Bundle) with an update explaining how the various matters were being better managed, in its view. R asked for some of the issues raised in the 13 November grievance to be shared with the disciplinary investigator so that those matters could be taken into account in the disciplinary procedures; R confirmed that the 6 November 2023 grievance was a separate matter and that R was seeking to appoint an investigating officer from outside “of the service”; R recommended that the matters raised in the 13 November 2023 grievance would be split both as to those issues relevant to the disciplinary investigation and other matters to be allocated to the investigating officer dealing with the 6 November grievance.. This was a conscientious effort to tackle what had become a complicated situation by virtue of the Claimant’s initial insistence on a formal disciplinary investigation, delays in bringing that to the meeting of 23 October 2023, and then two formal grievances in quick succession following that meeting. C says that this letter of proposal was the “last straw” that caused her to resign.
- 6.27. There was no deliberate or negligent delay on the part of R in its dealing with any of the matters set out above or its proposal as to the management of various grievances. R did not seek to antagonise C or frustrate her. R did not seek C’s resignation. R sought at all times to address properly the matters raised consecutively by C. The Tribunal finds that the email of 1 December 2023 was a practical proposal being put forward in a helpful manner and was an innocuous act.
- 6.28. During her sickness absence, in line with her managerial duties, Kim Stewart kept in contact initially with C. C complained about Kim Stewart’s involvement and from that complaint onwards she refrained from making contact; R appointed a substitute.
- 6.29. In one communication from Kim Stewart, she ended the message to C with a “x”, understood by all to signify a kiss. This was typical of the WhatsApp messages exchanged within the team and messages sent by Kim

Stuart to others. There was nothing about the prior relationship between Kim Stewart and C or the correspondence which would have led the former to think that her sign-off was anything other than usual and friendly; she did not suspect it would cause offence. There was nothing in the context that would mean a kiss would be offensive. C considers it to have been unprofessional, that is her opinion. The Tribunal finds that there was nothing intentional or that could reasonably be interpreted in context as an attempt to seriously damage or destroy the relationship of trust and confidence by that sign off.

6.30. During C's employment a service user, whose case she had been on, was released from prison. At this time, he was no longer a service user of the Respondent's children's services. The Claimant's managers were not aware of his release from prison; they were not forewarned of it either and there were no measures requested of it for the protection of C. The probation service contacted C to notify her of his release and to reassure her that there was no apparent risk to her. The notification was for information purposes only and no precautionary measures were required or taken by C.

6.31. C complains that her various complaints and grievances have still not been resolved. Delays after 1 December 2023 cannot have been informative of her decision to resign and therefore the Tribunal is confining its consideration to matters that were in C's mind at the time of her resignation.

6.32. C's resignation is at pages 457 – 458 of the hearing bundle (466 – 467 of the e-Bundle). C resigned with immediate effect citing "ongoing false allegations....hostile work environment....toxicity around the situation" (read as being toxicity and hostility around the Management Advice which C refers to as "false allegations"). C said that this had significantly impacted her well-being such that she felt it was unsafe to return to work, which would be untenable. C went on to refer to work-related stresses and damage to her physical and psychological health and well-being, such as the severe impact of these matters on her mental health. She says that she was trying to resolve the situation and address the issues but there had been no improvement; she felt that she had no option but to give notice and proceed with a claim of constructive dismissal.

6.33. The Tribunal finds that the Claimant resigned because she could not face the criticism of her conduct and practice in relation to child A, which she thought was unjustified and, having required a disciplinary investigation into her conduct and performance, she became ill through stress over that investigation and the failure of R to resolve her two grievances immediately upon their receipt. C was upset at management's criticism in respect of her handling of A, was not accepting of any fault, did not accept that the disciplinary investigation was into her conduct and performance where she felt it ought to have been in to management's perceived unreasonableness, and ultimately she could not cope because of the effect of her health.

7. Facts in relation to the claim of a failure to make Reasonable Adjustments:

- 7.1. R utilises a system of communication heavily dependent upon emails and WhatsApp's, with correspondence and minutes being sent as email attachments; there is very little actual paperwork but there is some. R does not require the use of white paper and will provide colour paper on request.
- 7.2. As mentioned above, R has adopted "agile working" with a mixture of in-person and video meetings and discussions between colleagues, some of whom will be working from home and some of whom will be office based. Meetings will adopt the most convenient format at the time, provided in each instance that any participant is able and willing to either attend in person or to participate remotely at their election.
- 7.3. Formal documentation such as comprehensive assessments, submissions to various panels and the like, are passed by certain social workers to their managers for approval and therefore for proofreading. Many of the reports have to be signed off by the Head of Service or a senior manager, such that they too are proofread. It follows therefore that a person other than C can deal with editing as required.
- 7.4. Until 14 June 2023 when the Management Advice was issued by R to C neither the colour of paper, the format of meetings, proofreading or editing had caused C any difficulty, and she never complained of any. R had no reason to believe that C was put to substantial disadvantage compared to nondisabled colleagues by reason of any relevant practice, provision or criterion. It is evident from C's work, and the esteem in which it was held prior to the issue of the Management Advice, that C was not at a substantial disadvantage compared to nondisabled colleagues. There is no evidence to suggest that her standards needed to be improved by the provision of auxiliary aids or that she was hampered by the lack of any. Until the case of A there was no perceived issue or inefficiency in C's work and her performance or her conduct. There is no evidence to suggest that C's deficiencies, as perceived by R in accordance with our findings above, were in any way caused, contributed to, or exacerbated by any of these PCPs relied upon by C is triggering the statutory duty to make reasonable adjustments.
- 7.5. C would have preferred face-to-face meetings to video meetings and would have been assisted by the provision of blue paper when she was short of it. She has not however proved that she was at a substantial disadvantage compared to her nondisabled colleagues in relation to them.
- 7.6. Reasonable adjustments have been made in accordance with DSE assessments and C's reasonable requests. C confirmed in evidence that she was entirely satisfied with her working conditions and adjustments made for her benefit until such time as the new management team raised the Management Advice.
- 7.7. As with a number of the allegations of fundamental breach of contract relied upon by C in justifying her resignation and claim constructive unfair dismissal, the Tribunal concludes that the reasonable adjustments claim is an

afterthought in retribution against R, and that these matters were not concerns prior to the Management Advice of 14 June 2023. C was absent from work from 15 June 2023 until the date of her resignation and therefore from the date these matters came to her mind as potential issues they were not something that affected her practically she was not in work; they did not put her at a substantial disadvantage before the Management Advice and she was not at work, and therefore not disadvantaged at all, after it.

The Law:

8. Constructive Unfair Dismissal:

- 8.1. S.94 Employment Rights Act 1996 (ERA) establishes an employee's right not to be unfairly dismissed. S.95 ERA sets out the circumstances in which an employee is dismissed which includes where an employee terminates the contract of employment (with or without notice) in circumstances in which he or she is entitled to terminate it without notice by reason of the employer's conduct (a constructive dismissal).
- 8.2. It is well established that for there to be a constructive dismissal the employer must breach the contract in a fundamental particular, the employee must resign because of that breach (or where that breach is influential in effecting the resignation), and the employee must not delay too long after the breach, where "too long" is not just a matter of strict chronology but where the circumstances of the delay are such that the employee can be said to have waived any right to rely on the Respondent's behaviour as the basis of their resignation and a claimed dismissal.
- 8.3. The breach relied upon by an employee may be of a fundamental express term or the implied term of trust and confidence and any such breach must be repudiatory; a breach of the implied term will be repudiatory, meaning that the behaviour complained of seriously damaged or destroyed the essential relationship of trust and confidence. Objective consideration of the employer's intention in behaving as it did cannot be avoided but motive is not the determinative consideration. Whether there has been a repudiatory breach of contract by the employer is a question of fact for the Tribunal. The test is contractual and not one importing principles of reasonableness; a breach cannot be cured and it is a matter for the employee whether to accept the breach as one leading to termination of the contract or to waive it and to work on freely (that is not under genuine protest or in a position that merely and genuinely reserves the employee's position pro tempus).
- 8.4. As to whether a Claimant has resigned as a result of a breach of contract, where there is more than one reason why an employee leaves a job, the correct approach is to examine whether any of them is a response to the breach, rather than attempting to determine which one of the potential reasons is the effective cause of the resignation.

8.5. Even if an employee establishes that there has been a dismissal the fairness or otherwise of that dismissal still falls to be determined, subject to the principles of s.98 ERA. That said it will only be in exceptional circumstances that a constructive dismissal based on a repudiatory breach of the implied term will ever be considered fair.

8.6. “In the normal case where an employee claims to have been constructively dismissed it is sufficient for a Tribunal to ask itself the following questions”
Kaur v Leeds Teaching Hosp [2018] EWCA Civ 978 (Per LJ Underhill):

What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?

Has he or she affirmed the contract since that act?

If not, was that act (or omission) by itself a repudiatory breach of contract?

If not, was it nevertheless a part (applying the approach explained in *Omilaju* [that “the function of the Employment Tribunal when faced with a series of actions by the employer is to look at all the matters and assess whether cumulatively there has been a fundamental breach of contract by the employer”]) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory)-breach of the *Malik* [trust and confidence] term? If it was, there is no need for any separate consideration of a possible previous affirmation, [because: “If the Tribunal considers the employer's conduct as a whole to have been repudiatory and the final act to have been part of that conduct (applying the *Omilaju* test), it should not normally matter whether it had crossed the *Malik* threshold at some earlier stage: even if it had, and the employee affirmed the contract by not resigning at that point, the effect of the final act is to revive his or her right to do so”).

8.7. Did the employee resign in response (or partly in response) to that breach?

9. DisAbility Discrimination - Reasonable Adjustments:

9.1. S.20 & s.21 EqA: where a PCP, or a physical feature, puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, there is a duty on an employer to make reasonable adjustments to avoid the disadvantage. It is necessary to identify: (a) the PCP applied by or on behalf of the employer; (b) the identity of non-disabled comparators (where appropriate); (c) the nature and extent of the substantial disadvantage suffered by the Claimant (see *Environment Agency v Rowan* [2008] IRLR 20).

9.2. ‘Practice’ connotes something which occurs on more than on a one-off occasion and has an element of repetition about it (*Nottingham City Transport Ltd v Harvey* [2013] EqLR 4).

- 9.3. Substantial means more than minor or trivial. The disadvantage must arise from the disability (*Newcastle upon Tyne Hospitals NHS Foundation Trust v Bagley* UKEAT/0417/11). Identification of a substantial disadvantage involves the accumulative assessment of the PCPs. Physical features or lack of auxiliary aids (*Environment Agency v Rowan* [2008] IRLR 218). Not being able to work as efficiently or productively as colleagues who do not live with disabilities may amount to a substantial disadvantage in this context.
- 9.4. The duty does not arise if R did not know, and could not reasonably have been expected to know, both that C was disabled and that C was likely to be at a substantial disadvantage in comparison with persons who are not disabled (*Secretary of State for Work and Pensions v Alam* [2010] IRLR 283).
- 9.5. Paragraph 6.28 of the EHRC Code of Practice recommends that when deciding what is a reasonable step for an employer to have to take some of the factors that should be considered are: whether taking any particular steps would be effective in preventing the substantial disadvantage; the practicability of the step; the financial and other costs of making the adjustment and the extent of disruption caused; the extent of the employer's financial or other resources; the availability to the employer of financial or other assistance to help make an adjustment (e.g. through Access to Work); the type and size of employer.
- 9.6. Where the duty arises, an employer who was unaware of the duty to make reasonable adjustments may still show that it was not in breach of the relevant duty because a particular step would not have been a reasonable one to take. The question is whether, objectively, the employer complied with its obligations or not (*Tarback v Sainsbury's Supermarket Ltd* [2006] IRLR 664, paragraph 71).
- 9.7. An employee does not have to suggest any, or any particular, adjustments at the material time and may even first make the suggestion during a final hearing (*Project Management Institute v Latif* [2007] IRLR 579).

Submissions:

10. **The Respondent – oral submission of 3 July 2024 (14:45 – 16:00 approx) summarised as:** C was upset at being challenged about her conduct and practice by managers and she then embarked on bringing as many complaints she could think of rather than genuine claims, evidenced by the fact that the initial list of issues includes claims of alleged breach of contract leading to resignation which only arose after the resignation. Many of the other claims are unarguable. R made all reasonable adjustments requested by C when she was in employment and everything was in order, by C's own admission, until June 2023; her complaints about the provision of equipment and materials only arose after the Management Advice that upset her. The Management Advice was issued with good cause and in accordance with R's policies and procedures. The challenge to that Management Advice was dealt with through a formal investigation at the behest of C and in accordance with policies and procedures. C's disciplinary investigation and grievances were managed in accordance with

the policy procedures laid down and any perceived slippage in the timeframe was initially due to C's of request to defer matters until the end of October 2023. There then followed two further grievances in short order and the intervening unfortunate personal circumstances of the investigating officer, a short delay. R did not breach the implied term of trust and confidence and C resigned before allowing a reasonable opportunity for R to complete its investigation and the appropriate grievance procedures. The claims must fail.

11. **The Claimant – written submission:** at the conclusion of Mr Ali's oral submission C confirmed that she understood what had been said and also confirmed that she wished to make written submissions. We agreed that C would provide her written submissions by 11 AM the following morning, the parties attending in the afternoon for an oral judgement if the Tribunal was in a position to proceed. The Tribunal received C's written submission on time, at a few minutes before 11 AM. I attach that submission as an appendix to this judgment in the interests of transparency and comprehensive dealing, and I confirm that the written submission was read by the Tribunal at 11 AM. Following its deliberations, the Tribunal was ready for me to deliver our unanimous judgment orally at 2:15 PM.

Application of law to facts:

12. C has failed to prove that R breached her contract of employment let alone that there was a fundamental breach; we have considered each alleged breach and taken them cumulatively. It appears that C has used hindsight to make a number of allegations about matters that did not concern her unduly at the time they arose; she has used various such issues to bolster her case. That said, the Tribunal understands that a conscientious professional may feel put out at having their practice criticised, and it is human nature to try and justify oneself. Having done that, it was obviously a matter of frustration to C that what she had done was to call down upon herself a formal disciplinary investigation. She appears to have no regret that she did not accept management's criticism of her handling of the case of A but, to use the modern cliché, she has "doubled down". She is adamant that she did nothing wrong and everything right, such that any criticism of her is wholly unwarranted. That self belief is misconceived. So convinced is C that she was right and that she did not fall below required professional standards, that she has failed to appreciate efforts made by R to support and nurture the relationship of trust and confidence.
13. The Tribunal has used the words "nurturing" and "support" throughout its judgment just as R's witnesses used it throughout their evidence. It is clear that C did not follow management instructions nor complete what was required under Regulation 26 before placing A. She had made a good start on the required work; she made some appropriate enquiries; she had put action in motion, but she did not follow due process and complete the work that was required of her. It appears, in arguing that the Management Advice should not have been given, that C will not even accept that it was a requirement for sign off on a plan by the Head of Service or a senior manager; there was none. There was no multidisciplinary team meeting. At the time of the placement of child A not even C knew why the host couple had been deregistered as foster parents (the risk of

which is patented, albeit thankfully it did not arise). In all the circumstances C's handling of child A's placement clearly fell within the realms of conduct and performance management; C was at very real risk of reasonable consideration under the disciplinary procedures with the potential for any sanction up to and including summary dismissal. R held back. C does not appear to either understand or appreciate that.

14. Against that background, R's conduct and management of the situation can only be seen as an attempt to support and nurture the relationship of employment. Its managers acted in an exemplary fashion given that this was their intent. They could have been more explicit in the invitation to the meeting to discuss the Regulation 26 update, in that they could have forewarned C that she may be given Management Advice. They had never previously had to do this when giving advice of any nature to C or dealing with her on a day-to-day basis. The managers were entitled to speak to C about work-related affairs; they had made a firm decision at that stage not to invoke the formal disciplinary procedures and they were entitled to tell C. C knew the purpose of the meeting was to discuss child A. In the event she may well have been thankful that her managers were taking a soft approach by recording Management Advice that was appropriate in the circumstances, where it demurred from disciplinary action.
15. There were errors in the record of the meeting of 14 June but other than the mistakenly reported date of the telephone call, the error was only in the extent to which C had carried out some work towards following instructions that had been given to her. Any error was inadvertent. It was innocuous in fact although troubling to C. The essence of the record is correct, in that there were a number of outstanding items of work at the date that child A was placed. C had placed child A in accommodation without following due process and explicit instructions given to her. It follows therefore that despite any spin put on the record by C, or elaboration by her of the work that she had carried out, it was entirely appropriate for R to either discipline C or to follow the alternative path it chose. This was not a breach of contract.
16. The findings of fact above indicate that C, either to bolster her case or because of understandable sensitivity, has misconstrued and inaccurately cited reasons for her access to cases being closed while she was on sick leave, the disclosure of information to Social Care England, the dealing with two data subject access requests, the non-referral to OH, removal from the WhatsApp group, the timing of the disciplinary investigation and dealings with the grievances, and Donna Robert's involvement, such as it was, in the reference prepared by Vicky Crowe. On that latter point it is significant that in the list of issues C claimed that it was Donna Roberts' attempt to block the secondment that led her to withdraw from it; it is evident that Donna Roberts did not block the secondment and furthermore that C gave a wholly different reason at the time than her mistaken belief of Ms Roberts involvement; it appears C was being disingenuous at very least in respect of the secondment claim.
17. R's management acted promptly and appropriately in accordance with the duty of trust and confidence throughout these matters. We are not asked to judge the reasonableness of R's conduct but whether it breached the implied term of trust

and confidence. It did not. On the contrary the managers did their utmost to preserve the relationship, to further and nurture it, but C could not take criticism even when it was constructive and given in such a way as to be a softer option than the disciplinary route.

18. If C had not resigned, we could only presume that the disciplinary investigation would have reached its conclusion. That conclusion could have been vindication and exculpation for C and the removal of the Management Advice from a file. It could have been justification for the Management Advice which would have remained on a file with employment could have continued in any event. Even if the result of the investigation was a formal disciplinary hearing and sanction then that sanction may have been anything from an oral warning right the way through to final written warning whilst still maintaining the employment relationship. C was made aware that the management advice was an alternative to formal disciplinary proceedings. She insisted on a formal disciplinary investigation. She would not accept that the investigation was into her conduct and performance which had fallen short of the professional standard expected of her. Neither the giving of Management Advice nor instigation of the disciplinary investigation was in breach of an express term of the contract or the implied term. Like it or not a manager is entitled to give advice with due cause to one of their reports; C's managers had due cause in this case. The written procedure allowed for disciplinary investigation where Management Advice was challenged; R expressly advised C that this would be the consequence of her pursuing the matter, as a grievance was not appropriate; C persisted and therefore she instigated the disciplinary investigation. The fact of the investigation was not a breach of contract. C risked it ending with a disciplinary dismissal but R did not seek that outcome.
19. The pace of the investigation was dictated largely by C and her Trade Union representative. There were repeated requests for postponements until the end of October 2023. There is no evidence to suggest that R delayed matters unduly, and in fact there is evidence to suggest that they took practical steps to address all relevant matters. Matters were then partly delayed by the investigating officer suffering a bereavement and by C presenting two grievances in quick succession in November 2023. It was then incumbent upon R to manage not only the disciplinary investigation but the investigation into two grievances. It put forward a proposal that looks to the Tribunal to have been a conscientious and reasonable one as to how it could better manage matters that were in part interrelated or overlapping. It put forward a proposal without any undue delay. This was an innocuous act, and yet is relied upon by C is the last straw, the final act that she says justified her resignation and claim of constructive unfair dismissal.
20. C says in effect that the last breach of contract relied upon was not dealing with her grievances and delays in relation to them and the investigation. It appears that she resigned in response to the letter to her dated 1 December 2023 with proposals. That that was not a breach of contract. It was certainly not a repudiatory breach of contract and the Tribunal finds that none of the alleged breaches of contract are repudiatory breaches. We have looked at each matter individually and cumulatively and still cannot find conduct designed to or likely to seriously damage or destroy the relationship, a fundamental breach of contract.

21. Taking R's conduct as a whole it was not repudiatory of the relationship of trust and confidence. The Tribunal finds that C resigned in response to appropriate constructive criticism of her professional practice in one instance.
22. C has not proved that she was at a substantial disadvantage as a result of any provision, criterion, or practice of R's. Insofar as there was potential for a disadvantage to C as a disabled person compared with a nondisabled colleague, any such disadvantage was removed by the agreed reasonable adjustments which were in place for quite some time before June 2023. By C's own admission there was no problem until then. That was when the Management Advice was issued. C was absent from work from the day after the Management Advice was given to her and did not return. She did not suffer any substantial disadvantage at work, and the statutory duty to make reasonable adjustments did not arise.
23. For these reasons the Claimant's claims fail and are dismissed.

Employment Judge Ryan

Date: 17 July 2024

REASONS SENT TO THE PARTIES ON 19 July 2024

FOR THE TRIBUNAL OFFICE Mr N Roche

APPENDIX

The Claimant's Written submission

Submission

The way the Claimant has been treated throughout this entire process from start to finish has been extremely detrimental to her wellbeing, I, the Claimant have tried to find reasonable resolution, however I have had no choice but to resign as there has been a complete breach of trust and confidence resulting in a breakdown of working relationship and leaving the Claimant with no option but resignation. I will now list the evidence to support this.

It has been proven that the management advice was held without any notice of the content of the meeting, simply an online meeting was set up titled "reg 26 update". There was no opportunity to have support or union representation which, in light of the evidence that has been presented throughout this case that the consequence of not agreeing with management advice would be formal disciplinary investigation, then it is deemed reasonable to give an employee the option to have support, union representation and minute taking. Being ambushed in this way is extremely distressing, particularly when it has been proven that this advice was inaccurate. This contributed to my eventual resignation.

On the management advice it states Kim Stewart contacted me on the 12/6/23 this has been evidenced to be incorrect evidence page 314, 280, 281, 282 the fact I was receiving factually incorrect evidence contributing to my resignation.

On the management advice it states that SP had supervision with Ruth Hale. RH states that during the supervision SP did not mention the plan of moving the young person, however this was incorrect see evidence page 307, this contributed to my resignation.

On the management advice it states that I did not explore other hosts as asked to in supervision, this is untrue, see evidence 324, this contributed to my resignation.

On the management advice it stated that I moved the young person without any of the actions asked of me, this is incorrect, see evidence 276, 277 and 278, 292, this contributed to my resignation as even when I provided evidence to the contrary it was still not accepted by the Respondent.

The management advice states KS stated that the first time ATM became aware of the YP being moved was when SP had asked about a quick supported host assessment, please see evidence 291 this was not the case. This contributed to my resignation as even though I had evidence the Respondent did not accept this.

There was confusion around the status of the carers, and I moved the young person after receiving information from Sarah James supported lodgings co-ordinator see evidence 320, this contributed to my resignation as they would not consider this, they were adamant the blame was solely with me.

The management advice stated no police checks were completed, see evidence 292 this contributed to my resignation as this was incorrect and it was only when challenged this information eventually changed.

After seeing all the inconsistencies in the management advice and complete disregard for the Claimant disputing the many proven inaccuracies, the Claimant did not feel she was able to discuss this with the same managers again, as the tone/behaviour and actions taken by management up to this point led to a breach in her confidence and trust in the management team. This contributed to my resignation.

Following this meeting I, the Claimant, felt very distressed so I reached out to my union representative for guidance and support.

I asked the union for advice see point 5, and as pointed out in witness statement by Alyn Thomas, I should have had prior knowledge of the purpose of the meeting. The union concur the procedure certainly had not been followed and the union advised the Claimant to raise a grievance.

Point 9 of Alyn Thomas' witness statement states the grievance I had raised was relevant as I the Claimant did not agree with the management advice and felt it was inaccurate, refusing to sign. AT quotes "whilst effectively there is no right of appeal to management advice the Claimant was being denied the opportunity to challenge the comments which were based on a one sided perspective of the manager giving the advice without looking at the past practice of the team and failing to consider that there appeared not to be a formal set of criteria set out for the team to follow." This was the basis for raising a grievance and is a contributing factor to my resignation. I refer to point 11 in Alyn Thomas' witness statement – email correspondence with Ms Alison Griffiths on 3 November 2023 at 16.05 "I write with regards to SP who works in children's services you may recall that this is the person whom the department wished to give management advice to on the basis that she allegedly did not follow process. It was suggested that she had no right of appeal to this and was required to accept it and a grievance was then lodged. You highlighted that this was not usual, and this would need to follow a disciplinary process however having reviewed the information I note that Jane Rowland was appointed to investigate this in line with the fact that a grievance was lodged." The fact that I did not have any formal avenue available to me where I could challenge the inaccuracies that have been proven within the management advice was very distressing, alongside having to submit a grievance against my place of work of 6 years, was detrimental to my mental health. This contributed to my resignation.

I refer to point 12 in Alyn Thomas's witness statement. It states that "I am mindful that there have been similar cases within the local authority which we as a union have had to deal with, all matters are advised on a case-by-case basis. However, I am of the opinion the manager in this instance had issued the management advice without first undertaking at least a cursory review of the situation. Therefore, the information being shared with Ms Griffiths did not provide her with sufficient information to advise correctly." This shows how it is not unusual for management advice to be issued without a comprehensive review of the information which can lead to inaccurate management advice. The lack of avenue to challenge this has contributed to my resignation.

I refer to point 13 in Alyn Thomas' statement "there were a number of problems with addressing the grievance and at no time did the Respondent commence a disciplinary investigation or hearing, the Claimant and I were both of the opinion initially that Mrs Jane Rowland manager was undertaking the disciplinary investigation where in fact it transpired that she was investigating the grievance and it is noted the grievance was not completed". This contributed to my resignation as they still shared incorrect information with Social Care England, causing me significant distress as a professional.

I refer to point 14 of Alyn Thomas' statement "the Respondent further compounded the matter by responding to a request from Social Care England in terms of the fact that the Claimant was being under a disciplinary investigation. I am personally not aware of the commencement of any investigation and have not supported the Claimant to attend any investigation". This was a significant contributing factor to my resignation, as rather than the Respondent addressing the grievance and seeking a resolution to the matter of inaccurate management advice being issued, it

transformed into a disciplinary investigation which questioned my suitability as a social worker. This was very detrimental to my wellbeing and breached my trust and confidence in the organisation, leaving me no further avenue but to resign.

In November 2023 two further grievances were submitted and neither have had an outcome. ACAS and the local authority's own policies and procedures states that "when a grievance is raised, the employer should hold a meeting usually within five days, this was not done on any of the three occasions I raised a grievance.

Guidance also states employers should deal with grievances within a "reasonable" time frame this was not complied with on any of the three occasions when grievances were raised. I felt at this point that was no avenue for resolution to this matter and it caused me great upset and distress which contributed to my resignation.

In the disciplinary policy and procedure, it states on page 7 any investigation should be dealt with without unreasonable delay, this was not complied with. This contributed to my resignation.

In the disciplinary policy and procedure, it states that if the investigation is going to take over twenty days due to exceptional circumstances the investigating officer will agree any extensions of time scales with the employee and or their trade union representatives, this was not complied with, therefore contributed to my resignation as there were no other avenues available to me.

I asked the local authority to send any response to me about social care England prior to sending it to them, this was ignored. I would state what they have done in relation to this is defamatory, this contributed to my resignation.

Social Care England wrote to the local authority who informed them I was under disciplinary investigation, this contributed to my resignation as they are now providing factually false incorrect information to external agencies potentially effecting my future career. This was very distressing for me and contributed to my resignation.

How can I raise three grievances, have them all ignored, no outcome reached, plus two investigations, one investigation prior to resigning, ignored that I instigated and have no outcome to all five of these processes. This contributed to my resignation as I had exhausted all options at this point.

I tried ACAS reconsolidation; the Local Authority would not engage in any form of reconciliation and this contributed in my decision to resign.

I tried to progress with reconciliation arrangements as stated on my ET1, this was not reciprocated on the Respondents ET3 and this contributed in my decision to resign.

I updated ACAS that throughout this process I would be open to resolving this and having further discussions, this was not reciprocated by the Respondent.

I tried a solicitor to contact them to reach an agreement, this was also declined by the local authority and this further contributed to my resignation.

I was sent a text message from Kim Stewart with an inappropriate kiss on it. I do not feel this is acceptable and it was a contributing factor to my resignation and the Respondent do not see this as an issue at all.

While the disciplinary policy and procedure is not contractual it does lay down the basics of a fair procedure that is consistent with the ACAS code.

There were significant breaches of the procedure, no investigation to speak off, on two separate potential investigations, one prior to my resignation, and three grievances with no outcome, and this contributed to my decision to resign.

When the issue of inconsistencies was raised in the meetings held there was no investigation of that and this contributed to my decision to resign.

There was no written notice of the allegations made prior to the meeting where management advice was issued and this contributed to my decision to resign.

There was no notice of what other avenues could / would be available to the Claimant if they did not sign the management advice and this contributed to my resignation.

There was no chance to bring a companion or a trade union representative to the initial meeting where management advice was given, no chance to prepare for the meeting as the content of the meeting was not made clear, this contributed to my decision to resign.

The Claimant was not given any minutes from what was discussed in the meeting and no impartial witness.

I do not believe the Claimant was treated with reasonable responses, the action taken sits outside the remit of reasonable responses for the following reasons.

The issues were not dealt with promptly contributing to my resignation.

There were significant delays in relation to meetings, decisions and confirmation of any decisions, contributing to my resignation.

Nobody informed me of what the problem was, nor did they give me an opportunity to respond to the case before any decisions were made, contributing to my resignation.

The Dignity and work policy and procedure states that if the investigation takes over 20 working days all parties should be kept informed of progress and the reasons for any delay, this was not complied with and contributed to my resignation.

ACAS code states you must follow a full and fair procedure, this was not done and contributed to my resignation.

The new management team brought in did not comply with meeting reasonable adjustments in relation to my disability and this contributed to my resignation.

I asked for supervision to be face to face as a reasonable adjustment, this was ignored and contributed to my resignation.

In relation to the Polky, would the Claimant have been dismissed in any event, I see no evidence to that effect. There is a reference which is very positive and other comments from previous team managers are also positive. The initial actions from management were supposed to be informal, as they claim, and only when the Claimant refused to sign this due to inaccuracies did the local authority wrongfully state they were instigating formal disciplinary procedures. There is zero evidence of malpractice prior to this incident, there is no evidence throughout supervision of poor practice, nor is there any previous incidents evidenced. Furthermore, the Respondent has never raised concerns regarding her practice as a registered professional. It was only when the Claimant refused to sign an inaccurate internal process document did they claim to begin an alleged disciplinary investigation. I did not want to take this case to the Tribunal, but I felt I had exhausted all my options and did not know what else to do. I have remained open to resolution right up to the Tribunal date.

The significant amount of stress and pressure taking this case to Tribunal has been extensive, especially without representation and I would not choose this lightly unless I believed there was no other option open to me due to the actions of the local authority.

If I had been given the opportunity to resolve this through any of my several attempts, I would have agreed to this subject to the details to be agreed.

There comes a time when it is just too much, the email I received on 1 December 2023 stating again different time-frames and a different plan, in relation to the grievances and investigations, was the final straw. Although I initially agreed to this, after further consideration I made the decision to resign as the trust and confidence was totally broken and I did not believe that any progress, actions would come from this email based on previous actions from the local authority. I do not know what else could have been reasonably expected of me to resolve this situation and therefore had no choice but to resign.

There has been no update from my resignation until 4/7/24, therefore evidencing my concern that they would not follow through with actions on the email (evidence 454) The last 12 months have had a significant detrimental impact on my wellbeing. I am being punished simply for refusing to agree to a clearly inaccurate document which was issued to me without any prior warning. I followed guidance from my union and ACAS and tried to find resolution, however this was not reciprocated. I felt every time I tried to follow processes in terms of lodging grievances and then having to request investigations to be completed, I was blocked and challenged every step.

Furthermore, the Respondent has then attempted to slander my practice, not only through Social Care England by inaccurately stating I was under disciplinary investigation, but also quite evidently throughout this case. The complete disregard for my attempts to raise grievances and resolve these issues has led to a significant breach of trust and confidence on the local authority's part and I had no option but to sadly leave my place of work of 6 years.

Additional note – I have had substantial support from a friend in writing my statements for this case.