



EMPLOYMENT TRIBUNALS

Claimant

Mrs L Wanji

Respondent

Central Bedfordshire Council

v

Heard at: Bury St Edmunds

On: 15, 16 and 17 July 2024
9 August 2024 (in chambers)

Before: Employment Judge Laidler

Members: Ms L Gaywood and Ms B Handley-Howorth

Appearances

For the Claimant: In person

For the Respondent: Mr D Earl, Counsel

RESERVED JUDGMENT

1. The claimant resigned and was not constructively unfairly dismissed.
2. The respondent accepted that the claimant was disabled by virtue of diabetes within the meaning of s6 Equality Act 2010
3. The claimant was not disabled by virtue of mental health issues within the meaning of s6 Equality Act 2010.
4. The respondent did not treat the claimant less favourably because of her disability within the meaning of s13 Equality Act 2010
5. The claimant was not treated unfavourably within the meaning of s15 Equality Act 2010
6. The respondent did not fail in its duty to make reasonable adjustments within the meaning of s20 Equality Act 2010.
7. It follows that all claims brought by the claimant fail and are dismissed.

REASONS

Background

1. The proceedings in this matter were received on 15 August 2023 following a period of ACAS Early Conciliation between 13 June and 25 July 2023. The Claimant brings claims of constructive unfair dismissal and disability discrimination. These were defended by the Respondent.
2. There had been two Case Management Hearings, one that had not been able to proceed due to the Claimant being unwell and one on 26 April 2024 when there was a clarification of the issues.
3. The Respondent then produced for this Hearing a composite List of Issues and the following represents that document which is what the Tribunal and the parties worked from.

List of Issues

1. **Time limits**
 - 1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 14 March 2023 may not have been brought in time.
 - 1.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - 1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 1.2.2 If not, was there conduct extending over a period?
 - 1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 1.2.4.1 Why were the complaints not made to the Tribunal in time?
 - 1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?
2. **Unfair dismissal**
 - 2.1 Was the claimant dismissed?

Did the respondent do the following things:

 - 2.1.1 failing to implement Occupational Health recommendations;
 - 2.1.1.1 listening to the Claimant about triggers and working out a plan with her Manager;

- 2.1.1.2 refusing the Claimant's request to work from home;
- 2.1.1.3 you may wish to consider completing a Wellness Action Plan (WAP) this can help both Managers and employees understand their needs and help to support them at work. This allows people to plan in advance and develop tailored support for a time when they are not coping so well. A template for this can be found on the Council Intranet;
- 2.1.1.4 an Individual Stress Assessment and a Workplace Stress Management Plan are advised, in line with the Health and Safety Executive advice under the Management of Health and Safety at Work Regulations 1999. If you do not have an in house tool, one is available at www.hse.gov.uk (put "Stress" in the search engine and click on "Management Standards");
- 2.1.1.5 at times her concentration may be impaired but a robust action plan of support will assist in ensuring her performance remains at expected levels; and
- 2.1.1.6 in my opinion Lucy is likely to be covered by the Equality Act because the condition is long term and in the absence of treatment, the condition is likely to have a significant impact on day to day functioning;
- 2.1.1.7 Risk Assessment:

The above list was discussed at this Hearing, it appeared the Claimant has taken most of these from the Occupational Health Report of 2022.

- 2.1.2 If the Claimant was unable to perform certain tasks comparing her to other employees who were able to do those tasks;
 - 2.1.3 putting the Claimant on a PIP Plan and pressuring her to sign the form in order not to be put onto Stage 2;
 - 2.1.4 bullying at the April 2023 meeting involving the Claimant, the Claimant's boss Michelle Wilson and Ms Wilson's boss Claire Collins;
 - 2.1.5 interrupting the Claimant;
 - 2.1.6 telling the Claimant that others in the Team did not like her and had made complaints about her;
 - 2.1.7 bringing up things that had happened in the past;
 - 2.1.8 after the Claimant came back from sick leave failing to support her in that the Respondent did not arrange "Clean the Air" meetings with those who had made complaints about her; and
 - 2.1.9 failing to deal in good time with the Claimant's complaint about Peter Fraser (whose comments about being "ex Police" had led her to fear going into Luton and participating in work social events).
- 2.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

- 2.2.1 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
 - 2.2.2 whether it had reasonable and proper cause for doing so.
 - 2.3 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.
 - 2.4 If the claimant was dismissed, what was the reason or principal reason for dismissal i.e. what was the reason for the breach of contract?
 - 2.5 Was it a potentially fair reason?
 - 2.6 Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the claimant?
 - 2.7 The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.
3. **Disability**
- 3.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The respondent accepts that Type 2 diabetes amounts to a disability. So far as the claimant's depression and other mental health difficulties are concerned, the Tribunal will decide:
 - 3.1.1 Did the claimant have a mental impairment?
 - 3.1.2 Did it have a substantial adverse effect on her ability to carry out day-to-day activities?
 - 3.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
 - 3.1.4 Would the impairment have had a substantial adverse effect on their ability to carry out day-to-day activities without the treatment or other measures?
 - 3.1.5 Were the effects of the impairment long-term? The Tribunal will decide:
 - 3.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?
 - 3.1.5.2 if not, were they likely to recur?
4. **Direct disability discrimination (Equality Act 2010 section 13)**
- 4.1 Did the respondent do the following things:
 - 4.1.1 failing to implement Occupational Health recommendations;

- 4.1.2 listening to the Claimant about triggers and working out a plan with her Manager;
- 4.1.3 refusing the Claimant's request to work from home;
- 4.1.4 you may wish to consider completing a Wellness Action Plan (WAP) this can help both Managers and employees understand their needs and help to support them at work. This allows people to plan in advance and develop tailored support for a time when they are not coping so well. A template for this can be found on the Council Intranet;
- 4.1.5 an Individual Stress Assessment and a Workplace Stress Management Plan are advised, in line with the Health and Safety Executive advice under the Management of Health and Safety at Work Regulations 1999. If you do not have an in house tool, one is available at www.hse.gov.uk (put "Stress" in the search engine and click on "Management Standards");
- 4.1.6 at times her concentration may be impaired but a robust action plan of support will assist in ensuring her performance remains at expected levels; and
- 4.1.7 Constructively dismiss the claimant.

4.2 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The claimant has not named anyone in particular who they say was treated better than they were.

4.3 If so, was it because of disability?

4.4 Did the respondent's treatment amount to a detriment?

5. Discrimination arising from disability (Equality Act 2010 section 15)

5.1 Did the respondent treat the claimant unfavourably by:

- 5.1.1 Doing any of the things listed in paragraph 2.1 above.
- 5.1.2 Constructively dismissing the claimant.

5.2 Was the unfavourable treatment because of something arising in consequence of the claimant's disability?

5.3 Was the treatment a proportionate means of achieving a legitimate aim?

5.4 The Tribunal will decide in particular:

5.4.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

5.4.2 could something less discriminatory have been done instead;

5.4.3 how should the needs of the claimant and the respondent be balanced?

5.5 Did the respondent know or could it reasonably have been expected to know that the claimant had the disabilities? From what date?

6. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

6.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

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

6.2.1 Angela Perry (Head of Service) agreed to liaise with Michelle Wilson (my Manager) about how I will be supported with all recommendations from OH but only a Risk Assessment document was done during my phased return period;

6.2.2 I need further support after my phased return to work as I was not getting support from Michelle Wilson;

6.2.3 Angela Perry agreed with Michelle and I that I needed further support as recommended by Occupational Health and offered to split my supervision sessions into two parts where she agreed to explore the support that I needed with my disabilities and for Michelle to focus work related tasks. Just one meeting took place with Angela who failed to follow up with me as agreed during the meeting;

6.2.4 I was put on a PIP without explaining reasons for this and asked to comment, sign and return the PIP document immediately; and

6.2.5 I was informed that I was to be put on Stage 2 if I failed to comment, sign and return the PIP document to my Manager.

6.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disabilities, and if so how?

6.4 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

6.5 What steps could have been taken to avoid the disadvantage? The claimant suggests:

6.5.1 Angela Perry, Head of Service, agreed to liaise with Michelle Wilson my Manager about how I will be supported with all recommendations from OH, but only a Risk Assessment document was done during my phased return period;

- 6.5.1.1 Michelle should have had a proper hand over including email copy of my Occupational Health document;
- 6.5.1.2 a three way meeting with Angela, Michelle and I should have taken place when I requested further support from Angela after my phased return to clarify my needs;
- 6.5.2 I need further support after my phased return to work as I was not getting support from Michelle Wilson;
 - 6.5.2.1 Michelle should have listened to me more when I needed further support;
 - 6.5.2.2 Michelle should have read my OH document on time;
- 6.5.3 Angela Perry agreed with Michelle and I that I needed further support as recommended by OH and offered to split my supervision sessions into two parts where she agreed to explore the support that I needed with my disabilities and for Michelle to focus on work related tasks. Just one meeting took place with Angela who failed to follow up with me as agreed during the meeting;
 - 6.5.3.1 Michelle and Angela should have worked together to support me further as they were both supervising me;
 - 6.5.3.2 an Action Plan should have been agreed and put in place to support my needs during the time that I requested further support;
- 6.5.4 I was put on a PIP without explaining reasons for this and asked to comment, sign and return the PIP document immediately;
 - 6.5.4.1 Angela was aware of the issue with the PIP document but never intervened on time;
 - 6.5.4.2 there was therefore no early intervention from Angela;
- 6.5.5 I was informed that I was to be put on Stage 2 if I failed to comment, sign and return the PIP document to my Manager;
 - 6.5.5.1 Angela was aware of the issue with the PIP document but never intervened on time;
 - 6.5.5.2 there was therefore no early intervention from Angela;
 - 6.5.5.3 a three way meeting was promised by Angela as requested by me regarding the support that I needed. This meeting however did not take place with Angela and a new Head of Service (Claire Collins) agreed to organise this meeting;
 - 6.5.5.4 it's in the meeting with Claire and Michelle that it became known to me that both Michelle and Claire had no idea that I had an Occupational Health Report;
 - 6.5.5.5 one of the outcomes from this meeting was Michelle to contact Angela about my OH Report and Risk Assessment document that Angela had put in place during my phased return to work;

6.5.5.6 it's after this three way meeting that Michelle emailed me to apologise to me that she has now found the document and has read it but wanted me to do a new OH document; and

6.5.5.7 I became unfit to work the following week due to stress related to work which eventually led to constructive dismissal.

6.6 Was it reasonable for the respondent to have to take those steps and when?

6.7 Did the respondent fail to take those steps?

The Hearing

4. This Hearing had only been listed for three days. The Tribunal had a bundle of 1,513 pages, the Claimant gave evidence and five witnesses on behalf of the Respondent. There was clearly insufficient time for the Tribunal to conduct its deliberations which were conducted on a separate date and this decision and reasons sent to the parties as soon as it was possible thereafter, taking into account other sitting commitments.
5. The claimant, as a litigant in person, had not understood that she would have the opportunity to put questions to the respondent's witnesses and had therefore not prepared any. It was therefore suggested that the tribunal would consider appropriate questions which the judge would put giving the claimant the opportunity after that to ask any questions she considered still needed to be put and that was what she did with most of the respondent's witnesses.
6. In addition to the Claimant, the Tribunal heard from the following witnesses on behalf of the Respondent:-
 - 6.1. Angela Perry, now Senior Commissioning Manager, previously Youth Support Manager;
 - 6.2. Michelle Wilson, currently Education Advisor, previously Information, Advice and Guidance Manager ('IAG Manager');
 - 6.3. Claire Collins, Head of Service – Family Solutions;
 - 6.4. Nicola Murphy, HR Business Partner; and
 - 6.5. Kristina Meadows, an advisor for Human Resources.

Findings of Fact

7. From the evidence heard the Tribunal finds the following facts. The Respondent provided hard copies of the bundle and a digital bundle. For some reason it had divided the paper bundle into sections A and B and numbered each section. This did not then translate into the digital bundle.

The page numbers shown in [] relate to the paper bundle. If there is an additional number given that is to the digital page.

8. The Claimant's continuous employment commenced on 18 June 2008 and she was subject to a TUPE transfer to the Respondent on 1 June 2017. Her employment ended when she resigned on 15 August 2023.
9. Her original role was as a Personal Guidance Advisor within Childrens Services and that was subsequently re-titled to a Youth Careers Advisor. This role is for the Council's Youth Support Service which comes within the Council's Childrens Services Directorate. This provides support to young people to access education and employment by delivering impartial careers advice and counselling to improve the life outcomes and social mobility for children within the Council's Region. The primary focus is to reduce the number of young people who are not in Education, Employment or Training ('NEET'), some of whom may have multiple barriers to learning and are often regarded as the most vulnerable people in the community and to support them into meaningful employment, education and training opportunities.
10. Michelle Wilson was an Information Advice and Guidance Manager (IAG Manager) and had previously worked alongside the Claimant as a Youth Careers Advisor herself for seven years. On becoming a Manager she took over the direct line support of seven Youth Careers Advisors including the Claimant. She reported to Angela Perry, Team Leader (who left in March 2023) and then reported to Claire Collins.
11. A Role Profile for the Claimant's role dated February 2022 was seen in the Tribunal Bundle (B434). This set out how the role was to:
 - 11.1. Deliver information advice and guidance and transition support to a case load of young people with complex needs, identifying needs and barriers to participate and achievement in education, employment or training and developing an agreed Action Plan;
 - 11.2. Work with Partners to help vulnerable young people remove barriers to reaching their potential and personal, social and economic success;
 - 11.3. Attend relevant multi Agency meetings;
 - 11.4. Develop / maintain partnerships with local providers in order to secure opportunities for young people;
 - 11.5. Support the statutory Annual Activity Survey and ensure accurate / timely record keeping; and
 - 11.6. Post holder will hold a current careers or IAG qualification.

12. The Role Profile also noted that the work pattern was standard Monday to Friday with flexibility subject to business needs and that work related travel would be regular.
13. The Tribunal heard from and accepts the evidence given by the Respondent's witnesses of the importance of face to face contact with the young people they were working with. They could be at home but they could be in a care home or other place where to actually see them face to face was crucially important and this continued even during the pandemic.
14. When Angela Perry first started line managing the Claimant there was an arrangement in place whereby the Claimant worked two days from home and the other three days in the office. That would have been at Bedford to reduce her driving. It was her understanding this was an adjustment due to the Claimant's Diabetes and the arrangement was kept in place for many years.
15. As a result of the Covid pandemic the Respondent adapted ways of working and formally brought in hybrid working as a contractual arrangement. Initially the advisors met with the service users virtually or by telephone, but it then became necessary to get them back to meeting the young people face to face.

Managing Attendance Policy

16. The Policy appeared in the Tribunal Bundle at page B501/589. This provided that an absence of more than four weeks would be classed as long term. Section 2 of the Policy dealt with Managing Attendance and provided as follows:-

Trigger points

We have identified a number of patterns of sickness absence that can be seen in the tables below. By calculating the amount of days sickness / occasions of sickness, you will be able to determine what trigger has been reached.

Whenever your Manager records sickness absence for you, they will check whether you have reached either one of the trigger points outlined within the tables below. Our figure points are pro-rata if you work less than five days per week and as demonstrated in the two examples, you may reach any one of the trigger points at any stage of the process.

Whenever you reach a trigger point, your Manager must review your sickness absence record, in line with this Policy."

17. The Policy then explains how the Manager will hold a meeting with the employee in such circumstances and at each Review the Manager will set a target for the employee's attendance and a Review period. It goes on,

“If you have met your agreed attendance target within the review period your Manager will confirm this in writing stating that they will not be progressing the review of your attendance any further unless you reach another trigger point.

If you don’t meet the attendance target or you reach another trigger point, it will be escalated.”

Trigger Points Table

Trigger Points:	Periods of Absence:	Or:	Number of actual working days absence – for an employee contracted to work (these do not have to be consecutive working days):				
In any 3 consecutive months (Trigger 1)	3 absence Periods	Or	8 days absence, employees contracted to work 5 days a week	6.5 days absence, employees contracted to work 4 days a week	5 days absence, employees contracted to work 3 days a week	3.5 days absence, employees contracted to work 2 days a week	2 days absence, employees contracted to work 1 day a week
In any 6 consecutive months (Trigger 2)	4 absence periods	Or	15 days absence, employees contracted to work 5 days a week	12 days absence, employees contracted to work 4 days a week	9 days absence, employees contracted to work 3 days a week	6 days absence, employees contracted to work 2 days a week	3 days absence, employees contracted to work 1 day a week
In any 12 consecutive months (Trigger 3)	5 absence periods	Or	20 days absence, employees contracted to work 5 days a week	16 days absence, employees contracted to work 4 days a week	12 days absence, employees contracted to work 3 days a week	8 days absence, employees contracted to work 2 days a week	4 days absence, employees contracted to work 1 day a week

Trigger Four – Any noticeable pattern of absence, for example frequent absences on particular days of the week, or repeated absences linked to annual leave or Bank holidays.

- The Policy goes on to explain that there will be a First Review, Second Review and a Final Review. At the Final Review the Manager will summarise the Sickness Absence Record and the previous Reviews, will let the employee know that because attendance has improved they will not be progressing the Review any further. Otherwise, if the attendance target has not been met the Review will be Chaired by a Senior Manager who has authority to dismiss. The Policy goes on to set out at the B513/601 that it is up to the Chair of that Review what action to take and this includes the following:-

“Adjourn your final review and wait for further information to become available.

Set a time bound plan of action to improve your attendance. ...

May agree a change to your contract of employment so that your job reflects your current capabilities.

This may include changing the content of your job, your working pattern and / or the hours you work. It may also involve changes to your terms and conditions of employment, including your pay.

A further review period.

Redeployment may be considered where appropriate.

Dismissal on the grounds of incapability due to ill health if there is an underlying medical condition, or, if there is not, then some other substantial reason could apply. In either case you will be entitled to between one and three months' notice, depending on your salary scale and length of service."

19. The Policy also sets out the right to be accompanied and the right of appeal.
20. Over the Christmas period 2021 / 22, the Claimant visited Cameroon. The Tribunal saw a letter from a Doctor there dated 26 January 2022 stating that she had been brought in to the Practice on 14 January 2022 with a sudden onset of,

"fever, headache, abdominal discomfort and fatigue which had started two days earlier".
21. She tested positive for Malaria and Salmonella infection and was hospitalised. Emails in the bundle indicated the Claimant had been absent from work from 8 December 2021 and was on leave until 17 January 2022. She only returned to the UK on 20 February 2022 when she remained on sickness absence. On 21 February 2022 she was signed off not fit for work until 6 March 2022 [B813/902].
22. The Claimant was again signed off sick on 7 March 2022 to 3 April 2022 and the Fit Note stated depression as the reason [B815/903].
23. By letter of 28 March 2022 the Claimant was advised that her absence had triggered the necessity for a Final Attendance Review to be held. She was offered the opportunity to have a referral to Occupational Health and to advise if she was prepared to do that by 6 April 2022. In subsequent correspondence it was confirmed that the Claimant had agreed to the OH Assessment. The Claimant was signed off sick again from 4 April 2022 to 1 May 2022 again with depression.

Occupational Health Report April 2022 [B478/567]

24. This Report stated it was carried out on 6 May 2022 by telephone. It recorded that the first day of absence had been 17 January 2022. The target

return to work date was given as 9 May 2022 with a four week phased return to work. In the initial part of the Report there is little reference to the nature of the ill health that the Claimant had been experiencing, but later in the report the Occupational Health Advisor suggested that the Claimant could be covered by the Equality Act 2010 and refers to “anxiety and depression and Diabetes”. There is little other detail though given in respect to those conditions and their effect on the Claimant. What is described in the Report is the Claimant having had a difficult few months due to ill health and “family stressors which have had an impact on her psychological wellbeing”. It noted she was seeking support through her General Practitioner and Counselling and using the Headspace App. It then set out how whilst in the Cameroon visiting family, the Claimant had contracted Malaria and Typhoid resulting in hospitalisation. Due to her underlying Diabetes her illness and recovery had been prolonged and several months on she continued to report severe fatigue. In addition the Report noted that the trip was stressful, dealing with some personal family stressors which had had an impact resulting in anxiety and depression. It stated the Claimant was,

“under GP care and has been prescribed medication”.

The Claimant was also experiencing Menopause which had had a further impact on her wellbeing. With regard to the tropical illnesses, tests had been taken and the Claimant was now clear. Her Diabetes was described as stable on medication and the Claimant was managing her diet well.

25. At the time of the Assessment, the Claimant reported,

“Extreme fatigue, stress, disturbed sleep patterns, lack of motivation and energy, memory issues and poor concentration.”
26. The Claimant had explained she was worried about her return to work as she was unsure how she would be able to manage due to her energy levels and poor concentration. This had led to the recommendation of a gradual build-up of caseload in order to support the Claimant, an Individual Stress Assessment and a Workplace Stress Management Plan were advised. A link was given to such a tool on the Health and Safety at Work Government website if the Respondent did not have its own plan.
27. In conclusion, the advisor considered the Claimant to be fit to return to work in the next week, although she believed the Claimant planned to take some annual leave before returning. She recommended a phased return as follows:-

“Week 1 and 2 – 50% of contracted hours with the first week a chance to catch up with changes and cases.

Week 3 and 4 – 75% of contracted hours”.
28. This plan should be monitored by management with supervision meetings with a view to extending the Plan if needed.

29. When this Report was received Angela Perry organised and carried out a Mental Health Risk Assessment on the Claimant's return to work, on or around 31 May 2022. The Tribunal saw an email from Angela Perry sending the updated Mental Health Risk Assessment to the Claimant on 1 June 2022 [B529/617]. The email recorded that the Claimant the following week was doing 18.5 hours and planned to do 8 to 12 and take her out of office off. She would use the time to do online training, clear emails, upload Reports, touch base with team members and may start to contact the clients if she felt ready. The Claimant acknowledged receipt of the Report which she had been able to sign and a copy of the Assessment was seen in the Bundle at B2/90. It is one of the issues in this case that the Respondent did not implement the Occupational Health recommendations, one of which was to carry out a Wellness Action Plan. The Claimant was taken to this document in cross examination and accepted having had time to work through it that this did happen. Her issue was that when she subsequently had difficulties her manager did not go back to this document. The Claimant also accepted in cross examination that the main recommendation made by Occupational Health was a phased return to work which was indeed implemented.
30. The Occupational Health Report had stated that "agile working" had allowed the Claimant to manage and diarise her time autonomously, particularly when working from home was recommended during the pandemic. It recorded that the Claimant
- "...has the flexibility presently to diarise her own appointments and meetings and take adequate breaks when necessary. Lucy has self-risk assessed her home working set up and she has any equipment she has requested. Lucy is entitled to attend all necessary medical appointments which are related to her Diabetes. Lucy has used the system of flex time to manage her hours accordingly. Lucy has been allowed to reclaim her annual leave when she has been absent from work due to sickness at this time. Lucy has been given the opportunity to be able to attend all meetings virtually to help alleviate her anxiety and stress regarding the transmission of Covid and while she was classified as CEV. The expectation for the whole team since February 2022 is that team meetings will be held physically where possible, in order to facilitate a team approach. Lucy has always confirmed in Supervisions that she would visit clients where they wished to be met face to face."
31. One of the issues before this Tribunal is the allegation that the Respondent refused the Claimant's request to work from home. As can be seen from the Occupational Health Report there was no recommendation that every request to work from home should be granted. The Tribunal, however, saw from email requests that the Claimant would not actually request to work from home, but rather state that she was not attending the office. These did not always reference her Diabetes or mental health. For example, the Tribunal was taken to an email from the Claimant to Michelle Wilson of

29 November 2022 [B1028/1116] when the Claimant at 12:49 stated she had not left home as promised. She had something to eat,

“... after our meeting this morning and now feel like throwing up. I have cold symptoms and headache. I hope it’s not Covid. I will therefore not be present for today’s meeting at Priory House but will be working from home.”

32. Michelle Wilson replied that she was disappointed the Claimant had not been able to attend as this had been a management instruction. She confirmed that the expectation is that if you are fit to work from home then you are fit enough to attend a team meeting. She stated that,

“Others in the group were also not feeling their best but attended.”

33. She confirmed she had made this clear at supervision. This had been a team building meeting and therefore virtual attendance was not an option as the important part was to work together collaboratively. She reminded the Claimant to follow procedures and advise before 9am if she is unfit to work. There is no evidence in that email exchange that the reason the Claimant could not attend was in any way connected to her Diabetes or mental health.

34. It is also part of the Claimant’s case as set out in the List of Issues that the Respondent failed to implement the Occupational Health recommendations in the Report referred to above. She did, however, acknowledge in evidence that its primary recommendation was for a phased return to work which did happen.

35. The Claimant suggests in these proceedings that the Respondent did not listen to the Claimant about “triggers”, but that is also not mentioned in the Occupational Health Report.

Final Review Meeting – 14 June 2022

36. This meeting was convened as the Claimant had hit another attendance trigger by the period of absence between January and May 2022, a total of 148 working days. This Review Meeting was chaired by Sacha Rymell and attended by Nicola Murphy HR Business Partner, Laura Hadfield, Angela Perry and the Claimant.

37. By letter of 21 June 2022, Sacha Rymell wrote to the Claimant with the outcome of that meeting. This letter stated that having heard from the Claimant and also the Occupational Health Advisor, the employer remained concerned about the Claimant’s Attendance Record and her ability to perform her duties within her role. The Claimant had advised that she would be up to 100% full case load by 1 July 2022 which would include face to face meetings with her young people and attendance at non-virtual meetings when required and that would entail working full time hours. The Respondent needed to be satisfied that the Claimant’s attendance would improve and that the service would not continue to suffer and as a result

was setting the Claimant a 100% Attendance Target for a period of six months from 13 June 2022. It was stressed how important it was for the Claimant to achieve that target and if during that period she did hit a trigger, a further Final Attendance Review Meeting would be held which could result in dismissal. The Claimant's attendance and performance during this six month period would be further monitored if necessary.

38. It was noted in that letter that the Claimant had referred to a Grievance that she had raised back in 2019 and it is believed that is the matter which was raised in these proceedings concerning Peter Fraser which will be referred to further below.
39. The Claimant did not meet this Attendance Target.
40. On 18 and 19 July 2022 the Claimant had two days' sick leave, stating she was unable to work due to the very hot weather at the time [page B953/1041].
41. On 21 July 2022, the Claimant emailed Michelle Wilson that she was not fit to work and would like to take the day off as annual leave. Michelle Wilson replied stating this was disappointing and asking if the Claimant needed to go back to her GP to seek advice. The Claimant replied on 22 July 2022 [B953/1041],

"I did all I could to prepare for the terrible heatwave we just had. I think I handled it well, but lack of sleep for those two nights is what knocked me down in the end. I feel I have rested well, and I now hope to carry on with work effectively."
42. The Claimant returned to work on 25 July 2022 and the following day Michelle Wilson held a return to work meeting with her to explore the reasons for her absence. The Claimant agreed that no further support was necessary or any adjustments. The Claimant had in effect missed a target that had been set for her at the previous Final Attendance Review so the matter was reported to HR. HR subsequently advised Michelle Wilson that as it was only two days the Respondent would not be taking any further action.
43. In December 2022, the Claimant took unplanned leave when she visited Cameroon and was due to return to work on 27 December 2022. She requested to extend her leave twice whilst in Cameroon and then could not come back to work when she was expected on 8 January 2023 and did not return until 12 January 2023 [B1069/1157].
44. On 3 January 2023, the Claimant emailed Angela Perry and Michelle Wilson stating she was still in Cameroon and requested annual leave. She had tested positive for Covid and had to stay away from her mother as her situation is critical. She would visit her on Thursday and had an eye appointment on that day also. She then planned to travel back and return to work on 9 January 2023. Michelle Wilson replied on 3 January 2023 emphasising that the request for annual leave had to be approved in

advance. She emphasised there were clients on the Claimant's case load that required support and follow up as there had been a significant lapse in some contacts. For these reasons she did not approve the leave. If the Claimant could not return to work the absence would be treated as unauthorised.

45. On 9 January 2023, the Claimant emailed to state she did not travel on the Saturday as planned and that her flight had been scheduled for that evening and she would arrive in the UK the following morning and return to work on the Wednesday. She ended by stating,

"I am sorry about all these mess".

46. The Claimant then emailed again on 10 January 2023 stating she did not travel as planned, having been stopped at the airport by the Police,

"...for some investigation / questioning which resulted to me missing my flight. I have another meeting with the Police this afternoon. My flight has been rescheduled for tonight, on a condition that the Cameroonian Police are happy for me to leave. Fingers crossed all goes well. I will update you again tomorrow."

47. The claimant did not state to the respondent that the reasons for this delay were related to her diabetes or mental health.

The Claimant's Performance Improvement Plan [PIP]

48. After the Claimant's delayed return from her visit to Cameroon over the Christmas period 2022, she eventually emailed Michelle Wilson on 11 January 2023 to confirm she had landed at Heathrow Airport. Michelle requested that they catch up first thing on the Friday and would send her a Teams invite. Notes of a meeting held on 13 January 2023 were seen at page B1115/1203. This primarily discussed the reasons for the Claimant's absence and the delay travelling back from Cameroon. The claimant is noted as stating:

'you were still in shock and gave a little history of the conflicts in Cameroon which led to citizens being questioned and stopped at the airport because of money laundering/holding arms'

49. Michelle is noted in the Minutes as stating,

"I then suggested how I could support you to work through your caseload as I have concerns about the quality and quantity of direct work taking place to support young people."

50. At about this time, Angela Perry was due to leave the service and emailed the Claimant on 27 January 2023 to offer her a,

"Couple of meets to discuss your wellbeing separate from your supervision."

51. She wanted to arrange this before she moved on.
52. Due sadly to the death of the Claimant's brother a scheduled Caseload Meeting for 30 January 2023 did not take place. It was agreed the Caseload Management Meeting would be rescheduled. This was confirmed in an email to the Claimant of 30 January 2023. The Claimant took issue with some of the points Michelle was making in an email of 31 January 2023 stating she did not mind [B1171/1259],

"...your micro-management style. I just want more clarity on what you want me to do please, especially when you make me feel like I can't even make my own professional judgement on some of these cases".
53. The meeting that had started on 31 January 2023 was terminated by Michelle Wilson as she, "felt under attack" from the Claimant and did not feel comfortable continuing. This was confirmed in an email of 31 January 2023 [B1176/1264]. Michelle explained in evidence, which the tribunal accepts, that she had been trying to empathise with the claimant as she too was suffering a bereavement but felt that she was under attack with the claimant telling her she was not a good manager and that she would rather be managed by someone else. They both felt that the meeting should be ended.
54. It was at this time that Michelle Wilson reported to Claire Collins and HR that she was beginning to feel "psychologically harassed" by the Claimant and did not feel that things were improving despite offering support, listening to the Claimant's needs and putting in extra measures and time to understand why many of her young people were not receiving direct support.
55. In response to Angela Perry reaching out to the Claimant on 27 January 2023, the Claimant replied on 31 January 2023 stating that she felt that the October meeting they had was just "lip service", she had not received any action notes from it and no follow up as promised. She did not see the need for them to catch up in February [B1185/1273].
56. In an email of 2 February 2023, [B1188/1276] the Claimant wrote to Michelle Wilson her Line Manager stating,

"I now feel like I am under attack from you. What's going on please?"
57. She felt sad and let down by Michelle. This appears to have been in response to an email from Michelle of 2 February 2023 scheduling another Caseload Management Meeting for 7 February 2023.
58. By email of 9 February 2023, Michelle Wilson confirmed there needed to be a final and third Caseload Management catchup meeting the next day 10 February 2023 [B1193/1281]. The Tribunal saw at page B1194/1282 the Capability Policy and Procedure – Stage 1 First Review – Performance Improvement Plan completed on 10 February 2023. Michelle had concerns about several of the Claimant's young people who had not been contacted for some time, some for a month but some for nearly three months and when

looking into the Case Management system there was no indication of any follow up or Guidance Meetings being done. She shared the Performance Improvement Plan document with the Claimant at that meeting. The Plan set out competency areas of Caseload Management and responding to telephone calls and emails in response to their partners and young people. It set required standards and objectives and review dates. In the employee comments the Claimant had stated,

“Would have preferred to have known about this document at the beginning of the Caseload Management meetings but it is a good document. If holiday / sickness in future would like to have two weeks to catch up before Caseload Management meetings take place.”

59. The Plan was sent to the Claimant with an email from Michelle Wilson on 12 February 2023 [B1199/1287]. She stressed how the Plan was intended to be supportive and how they could review the document during their supervisions at the beginning of March or earlier if the Claimant preferred. She stated,

“In the meantime please kindly follow the targets set and this will prevent having to progress to Stage 2 of the capability process”.

60. The Claimant replied on 13 February 2023 stating she thought she had expressed her concerns regarding the document at their meeting. Whilst it had been explained to her it was a new document which had only just been introduced she thought she should have been updated about the new document before the meeting. She therefore stood by her final decision which was not to sign it. One of the allegations in this claim is that the Claimant was put on the PIP and was pressurised to sign the form. In her oral evidence she was not in fact critical of the content of the PIP acknowledging that the tasks set out within it were part of her role. Her complaint was that on her case she was told to sign it or she would be moved to Stage 2 of the process. The Tribunal is satisfied that is not what Michelle Wilson’s email of 12 February 2023 said. What Michelle was trying to do was encourage the Claimant to follow the targets so that then she did not have to be moved further within the capability process. She explained further in her oral evidence that the claimant had indicated at the meeting that she might not even read it or sign it and Michelle was trying to encourage her to take it away and to read it. To Michelle the importance was not the signing of the PIP but the fact that they had the discussion and had documented areas for improvement.

61. As part of her role Claire Collins would run Management Performance Reports to see how often visits were being conducted by all staff members within the service and ran one on or around 10 March 2023. From this she could see that the Claimant had carried out twelve face to face visits to see young people in the academic year, even though she had approximately 60 children in her caseload at that time. The Report therefore revealed that most of the children were not visited as part of the Claimant’s caseload.

This was a face to face aspect of the job which had been part of the Claimant's role ever since she started.

A three way meeting – 3 April 2023

62. The Claimant had requested a three way meeting at first between herself, Angela Perry and Michelle Wilson but as Angela was due to leave the Service Claire Collins agreed to facilitate the meeting. The first meeting was arranged with the Claimant to take place on 9 March 2023, but the Claimant did not attend. The Claimant subsequently contacted Claire Collins asking to rearrange the meeting as she was on new medication that was making her feel sleepy and she was worried about the snow [B1243/1331].
63. Following that aborted meeting Michelle Wilson contacted the Claimant by a Teams call to see how she was. She summarised her conversation in an email [B1251/1339]. This email dated 9 March 2023 confirmed that she had suggested a referral to Occupational Health but the Claimant said she wanted the three way meeting first and then she would look at how adjustments could be made to support her. The Claimant explained that her Diabetes was a disability and
- “how it can be frustrating for her to have to cancel pre-arranged meetings because of the side effects of her medication.”
64. She confirmed she had contacted her young people who she was due to see that day to rearrange visits. Michelle Wilson recorded that she had asked the Claimant if she felt she needed any work to be covered and she would look into that for her, but the Claimant felt it would not be necessary.
65. The rearranged meeting was scheduled for 3 April 2023 to which the Claimant arrived approximately 40 minutes late, having been stuck in traffic. It is this meeting which the Claimant alleges in these proceedings she was bullied at. Notes of the meeting were seen in the Bundle at B1276/1364. The version in the bundle contained highlighting to illustrate the additions that the Claimant had made to the minutes.
66. In evidence, the Claimant stated she had ended the meeting, “with a smile”. When pressed on how then she could allege she had been bullied at the meeting, the Claimant stated that she reflected on everything afterwards and then considered that she had been bullied. She stated she was,
- “putting on the smile. Trying to cover up.”
67. The Claimant also states that she was interrupted at the meeting. The Minutes seem to show however that all parties had the opportunity to speak and of course the Claimant has added her additions to those Minutes.
68. One of the Claimant's allegations is that she was told that some of the team did not like her. That does not appear in the Minutes and the Tribunal is satisfied that did not occur, but that what was said to the Claimant was that some colleagues had raised concerns about how the Claimant had behaved

towards Michelle in meetings which they found difficult to deal with and which made them feel uncomfortable..

69. The Claimant also states that matters from the past were brought up at the meeting. The Claimant has, however, acknowledged that it was she that brought up the 2017 complaint about Peter Fraser and her July 2022 absence from work.
70. What the Minutes show is that clearly there was a difficult working relationship between Michelle Wilson and the Claimant. Also, it seems that the Occupational Health Report which had been obtained in May 2022 had not been passed to Michelle when she started line managing the Claimant. However, that was specifically dealing with a short period of a return to work and does not deal with adjustments that were considered to be necessary for the Claimant's diabetes or indeed mental health issues.
71. What the Minutes also show is the desire to try and encourage the Claimant to book appointments outside of her usual hours or use annual leave and to communicate with Michelle if any flexi changes were required.
72. There was discussion about the PIP document and it was again explained to the Claimant that this was to support the Claimant to prioritise and ensure that her young people were promised follow up meetings and that they received these. Michelle even recorded that she was pleased to see that since the meeting more young people had Action Plans and had been followed up. The PIP document was to help ensure working standards are maintained. The meeting concluded with an agreement there would be improved communication to enhance the working relationship, that if the Claimant felt unable to take on a task or do her work, she inform Michelle and that if a member of staff felt uncomfortable that be mentioned to the Claimant at the time of the incident and discussed immediately.
73. Following the meeting, Michelle met with the Claimant on 15 April 2023 to discuss the three way meeting. She confirmed she had become aware of the Occupational Health recommendations following the meeting and the Mental Health Wellbeing Assessment document which had the recommendations on how to support the Claimant back to work from that sickness absence. Michelle had suggested they may need to review the Claimant's Mental Health Needs Assessment during a future supervision and also pay attention to the recommendations set out as the Claimant had mentioned she was struggling again with managing her medication for her Diabetes and sees this as a disability. Michelle had agreed that this impacted on the Claimant's day to day working practice but also for the Claimant to consider how she can best manage the situation when expected to travel and undertake her duties [B1310/1398].
74. As already stated, the Claimant had sent her comments on the Minutes with additions and also a separate document with her comments on the meeting on 14 April 2023 [B1280/1368]. In that document she raised how she felt bullied and threatened. The Tribunal accepts the evidence of the

Respondent's witnesses who were present that that was not something she said in the meeting.

75. Claire Collins emailed the Claimant on 19 April 2023 [B1313/1401]. She expressed her concern that the Claimant had not felt able to share information in relating to bullying, she felt she was experiencing and asked her to respond to the email with examples of this and,

"I will ensure that I follow up and explore what has occurred and whether any additional action is needed."

76. She noted that she had been made aware that the Claimant was currently off sick. She again raised the obtaining of an up to date Occupational Health Assessment and noted that the Claimant, "previously did not wish for this to be completed", that she was offering again. She gave the details of Health Assured and the Employee Assistance Programme.

77. The Claimant had submitted a Fit Note dated 20 April 2023 stating that she was unfit to work from 19 April to 3 May 2023, with work related stress. The Claimant did not return to work thereafter.

78. The Claimant's next Fit Note was dated 4 May 2023 and it signed her off again with work related stress to 1 June 2023 [B1331/1419].

79. Michelle Wilson recorded a conversation she had had with the Claimant on 9 May 2023 in an email to Claire Collins and Kristina Meadows of HR [B1336/1424]. The Claimant had stated she had a cold over the weekend but was getting better, but in relation to anxiety and depression,

"this is getting worse because of her worries about how she will be returning to work".

80. The Claimant had mentioned that she would welcome a letter sent to her home explaining where she was in terms of her Review and would like to have a Review Meeting. She had queried why she did not have her Third and Final Review and this was "panicking her". The Claimant said how she did not like to talk about these issues over the telephone. She explained she was unlikely to look at emails whilst off sick and asked that Michelle print and send a copy of Claire Collins' last email to her. Michelle is noted as stating she had explained to the Claimant how important it was to involve Occupational Health to support the Claimant's return to work and noted that the Claimant had said, "this is for later down the line". With regard to the PIP, Michelle reassured the Claimant it was a document that could be reviewed on her return to work. The Claimant mentioned a referral to a dermatologist and that managing her sugar levels remained a concern. The Claimant had said that she,

"is looking at her triggers and knows its bullying and how this keeps coming back to her."

Peter Fraser

81. The allegation about Peter Fraser related to an incident in or around 2017. This had arisen out of an alleged data breach when Angela Perry had forgotten to lock a calendar meeting in Outlook which had the Claimant's address on it. It is her evidence which the Tribunal accepts that she apologised to the Claimant at the time for this mistake and also received an informal reprimand and had to undertake additional training.
82. Peter Fraser was Head of Partnerships Community Engagement and Youth Support at that time. The Claimant's allegation was that Peter had tried to say to her that Angela Perry had not done anything wrong and said something along the lines of he used to be a Police Officer and "I don't miss a thing". The Claimant had perceived that as some sort of threat towards her.
83. It appeared that the Claimant had raised concerns with Peter Fraser himself in or about 2019 and when the Claimant raised the matter again at a Final Review Meeting on 14 June 2022, HR were to speak to Peter and ask him what had happened and arrange a 'Restorative Meeting'. It appeared that did not happen.
84. In a letter dated 15 May 2023 to the Claimant, Ian Smith Interim Assistant Director of Social Care and Early Help wrote in connection with this and the sickness absence process [B1341/1429]. He apologised for not responding to the Claimant earlier in connection with the matter and advised that enquiries had been made concerning Peter Fraser. They had looked into the matter and,
- "...felt that there was no evidence to support your claim that he acted in an unprofessional manner."
85. However,
- "He [Peter] is concerned any contact that you have had with him during your employment has led to making you feel the way you do, on this basis he is prepared to make a personal apology to you as he sincerely did not mean to do or say anything that would impact how you feel about working with us.
- He is also prepared to meet with you should you feel that it would help the situation going forward. If you would like us to arrange this please let me know and we can organise."
86. With regard to sickness absence and the target that had been set in June 2022, it was confirmed to the Claimant that two days that she had during the Assessment period were not to be taken into account and that she had therefore met the target that had been set.
87. By email of 26 June 2023, the Claimant did agree to a meeting with Peter Fraser, however, she stated she would like to have another witness present.

The meeting did not progress at the time as the Claimant was signed off sick and she asked in her email that the meeting take place on her first week of returning to work [B1390]. As the Claimant did not return to work this did not happen.

88. The Claimant submitted a further Fit Note dated 4 July 2023 signing her off as unfit to work with work related stress until 31 July 2023.
89. By letter of 20 July 2023 Michelle Wilson wrote to the Claimant in connection with the sickness absence process. She confirmed that due to the recent absence of a period of three months within the 12 months of her previous Final Review, they needed to progress to a further Final Review and that a letter would follow shortly.
90. A Management Report was prepared by Kristina Meadows of HR dated 15 August 2023 [B1402/1490].

Claimant's Resignation

91. On 15 August 2023, [B1414/1502] the Claimant submitted her resignation to Michelle Wilson, copied to Claire Collins, Ian Smith and Kristina Meadows. She headed the letter 'Constructive Dismissal' and said she was resigning with immediate effect. She stated that she was a Diabetic and on medication and,

“My Occupational Health Reports have been well received by my employer and personal plans put in place for me. These plans have however not been used as expected. This has made my job very stressful.”

92. She cited how her current Manager and previous Managers had told her that they were not aware she had an Occupational Health document and had promised to look for that. She cited the PIP that she had been put on and again made the allegation that she had to sign the form in order not to be put on Stage 2. She alleged that at the joint meeting in April 2023 she felt bullied and threatened and discriminated against. She felt bullied during that meeting. She also felt attacked during that by the Head of Service who was chairing the meeting but failed to listen to the Claimant. She said she was interrupted by her.

93. The Claimant also referred to the complaint she had made against Peter Fraser (although she did not name him) in 2017 that had been so stressful she had been in fear of him and,

“I physically hide from him whenever I see him at work which is painful.”

94. She stated she was currently on medication for depression and had made several attempts to have a clear plan on how to return to work but,

“...my manager has so far not been helpful”.

95. She alleged that the Manager continued to send her confusing messages and the Claimant had gone back to taking tablets to help her sleep as her mental health was getting worse and she felt suicidal. She was not able to return to work and had contacted ACAS. She stated that her next plan was to make a claim with the Tribunal straight after her resignation. The Claimant in fact invoked Early Conciliation on 13 June 2023 and the Certificate was issued on 25 July 2023.

Relevant Law

96. The Claimant who resigned must show that she was dismissed within the meaning of s.95 Employment Rights Act 1996 (“ERA”). The relevant provision is sub-section 1(c) which provides:-

“95(1)(c) The employee terminates the contract under which he is employed with or without notice in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.”

97. It is now well decided that the behaviour of the Respondent must be a fundamental breach going to the root of the contract and is not a test of reasonableness. The relevant Law was set out in Western Excavating (ECC) Limited v Sharp [1978] IRLR 27, in which it was stated:-

“If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or it shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer’s conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains, for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract.”

98. The Claimant also brings claims under the Equality Act 2010. She alleges that under s.13 she was treated less favourably than the Respondent would treat others because of her disability.
99. The Claimant also relies on s.15 discrimination arising from disability which provision states that :-

- “s.15(1) A person (A) discriminates against a disabled person (B) if-
- (a) A treats B unfavourably because of something arising in consequence of B’s disability, and
 - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.”

100. The Claimant also states that there was a failure on the part of the Respondent in its duty to make reasonable adjustments contrary to s.20 of the Equality Act 2010. For the duty to arise there must firstly be shown that there was within the meaning of sub-paragraph (3):-

- “(3) A provision, criterion or practice of A’s puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.”

101. Section 123 of the Equality Act 2010 sets out the time limits within which a discrimination claim must be brought. Sub-section 1 provides that it must be brought within:-

- “(1) (a) The period of three months starting with the date of the act to which the complaint relates, or
(b) Such other period as the employment tribunal thinks just and equitable.”
- (2) ...
- (3) For the purposes of this section-
- (a) Conduct extending over a period is to be treated as done at the end of the period,
 - (b) Failure to do something is to be treated as occurring when the person in question decided on it.”

Conclusions

Constructive Unfair Dismissal

102. The Respondent was not guilty of a breach of any of the express or implied terms of the contract of employment. The Claimant chose to resign and this was not in response to a fundamental breach by the employer. Rather than seeking to destroy the relationship the Tribunal is satisfied that the contemporaneous evidence shows that the Respondent was trying to keep the relationship going by encouraging the Claimant to perform her role in a satisfactory manner and was performance managing her to achieve that result. The Respondent was entirely justified in examining the Claimant’s performance of her role and particularly the number of face to face meetings with the young people in her caseload which were crucially important.

103. The Respondent also had justification for considering the Claimant's attendance and applying the Absence Management Procedure. The Claimant chose to resign for her own reasons because she did not want to continue in the role influenced no doubt by being subject to performance and absence management.
104. The Claimant relies upon an alleged failure to implement Occupational Health recommendations. The last Occupational Health Report followed a telephone appointment on 4 May 2022 when the main recommendation was a phased return to work, which did occur and which the Claimant acknowledged in evidence was followed.
105. The Claimant states that the Respondent did not listen to her about "triggers". That was not a recommendation contained within the Occupational Health Report.
106. The Claimant further alleges that the Respondent refused her requests to work from home. The Claimant did work from home. There was no recommendation in the Report that every request to work from home should be granted. The Claimant was required to attend Team Meetings and conduct in person visits, otherwise she did work from home. The Claimant's practice as can be seen from the email exchanges was to inform management she would not be attending the office, rather than requesting leave. She never made a flexible working request and could have done so if she felt that would have been of assistance to her.
107. The reasons given for not attending the office did not reference the Claimant's diabetes or mental health and sometimes were non-illness related, for example the snow or a heatwave, or referred to an entirely different illness, for example sickness or being worried about having Covid.
108. The Claimant takes issue that there was no Wellness Action Plan completed in accordance with the recommendation of the Occupational Health Practitioner. It is correct that there was no plan with that name, but the Claimant acknowledged in evidence that a Mental Health Wellbeing Risk Assessment was completed, which covered the relevant matters. Further, it was followed in that there was a phased return to work, supervisions meetings and the overseeing of the return to work by the Claimant's Manager, at that point Ms Perry.
109. The Claimant was, contrary to her suggestion, supported with regular supervision.
110. The Claimant is critical that Ms Wilson compared her to other employees. As indicated the Tribunal accepts the evidence of Ms Wilson that she did indeed look at the output of other staff and may well have, on occasions, mentioned to the Claimant what other advisors did. She was not comparing the Claimant to others. The Claimant also took issue with the comment Ms Wilson made that other colleagues were not feeling their best but had attended the office. That was a legitimate point to make.

111. The Claimant states that she was pressured by Ms Wilson to sign the PIP form. The Tribunal has not found that occurred, but that Ms Wilson emphasised the need to keep to the targets to avoid going to the next stage of the process. Her evidence also was, which the Tribunal accepts, that the signature of the form was not the most crucial aspect. The importance was that the Claimant's performance had been discussed with her and documented in the Plan.
112. The Tribunal has not found that the Claimant was bullied at the meeting on 3 April 2023. Her oral evidence was clear that it was a good meeting and she ended the meeting with a smile. On reflection she says, she considered that she had been bullied. This was a meeting where the Respondent was having to explain that the Claimant needed to book appointments outside of her usual hours, but also the importance of following the PIP document, which they were perfectly entitled to do.
113. Finally, the Claimant asserts that the Respondent failed to deal with her complaint about Peter Fraser in good time. This matter occurred in 2017. It is completely separate and distinct from the other matters that the Claimant relies upon. It cannot have any bearing on her resignation. After she had raised her complaint directly to Mr Fraser, she did not raise the matter again until June 2022.
114. It follows from the Tribunal's conclusions that the Claimant chose to resign and this did not amount to a dismissal by the employer. The claim for constructive unfair dismissal therefore fails.

Disability Discrimination

Disability

115. The Respondent has accepted that the Claimant meets the statutory definition of disabled by virtue of Diabetes. It did not concede that the Claimant was disabled by virtue of mental health issues, although in final submissions Counsel stated that he was not instructed to oppose a finding of disability in that respect.
116. Whilst acknowledging that the Claimant was signed off as unfit to work with work related stress and on occasions depression and the Occupational Health Report stating that the Claimant might come within the meaning of disabled by virtue of diabetes and mental health issues, the Tribunal did not have enough evidence before it to determine that the Claimant was disabled by virtue of mental health issues. There was no evidence given by the Claimant as to how her mental health alone had a substantial and adverse effect on her ability to carry out normal day to day activities. The Occupational Health Report does not make a distinction between the diabetes and the mental health issues when referring to the Claimant's struggles and her need for a phased return to work.

Time Limits

117. The Tribunal accepts the submission made by the Respondent that on the face of it events that pre-dated 14 March 2023 are out of time. That date is calculated taking into account the ACAS Early Conciliation period and that the Claimant submitted her Claim Form to the Tribunal on 15 August 2023. The Tribunal, however, is of the view that the events which the Claimant alleges occurred on her return to work in May 2022 and as they primarily involved allegations against Ms Wilson, could form part of a continuing course of conduct. There is no way, however, that the matter concerning Mr Fraser could be said to be part of a continuing act, but in any event, it has never been made clear to the Tribunal how that was in any way related to any disability on which the Claimant seeks to rely.

Direct Disability Discrimination

118. The Claimant was not treated less favourably by the Respondent because of her disability. The Tribunal has already given its findings in relation to each of the matters relied upon by the Claimant. She relies on the same factual matters in support of her disability claims. Either these matters did not occur or if they did, there is an entirely different interpretation to them. As has already been made clear, the Tribunal is satisfied that on the Claimant's return to work following the May 2022 Occupational Health Report, the recommendations were implemented in the Claimant's favour.

Discrimination Arising from Disability

119. The Claimant relies upon the same matters and as in relation to direct discrimination, either they did not occur or they did occur but with a different emphasis or meaning to that put on them by the Claimant. The Respondent made certain concessions that technically a Wellness Action Plan was not completed, although one had the same effect but called a Mental Health Wellbeing Risk Assessment was completed. The Claimant was compared by Ms Wilson to other employees and there was some delay in dealing with the matter of Mr Fraser. That though is well out of time and not part of a continuing act and insofar as Ms Wilson may have referred to the behaviour of other members of staff, this was not because of something arising in consequence of the Claimant's disability. Indeed, the Claimant has never identified what the "something arising" was.

Failure to Make Reasonable Adjustments

120. The Respondent has not disputed the Claimant's diabetes and was aware of it from around 2008. Although the Tribunal has not found the Claimant to be disabled by virtue of her mental health, if it had done so then knowledge could be attributed from May 2022 and the content of the Occupational Health Report.
121. The provision, criterion or practice in the List of Issues were not ones that come within the statutory definition in s.20. They are not provision, criterion or practices which the Respondent applied to its staff that put those with a disability at a substantial disadvantage, but are matters relating solely to the Claimant. The Judge did suggest during the course of the Hearing that

possibly the Performance Management Policy could be a provision, criterion or practice and the Respondent accepted that proposition. However, it was never part of the Policy to progress staff to Stage 2 if they did not sign the form, which is the complaint made by the Claimant. In any event, the Tribunal has found that that is not what was said to her.

122. In any event, the Claimant's concern does not seem to be about the use of the PIP which she confirmed accurately set out what was required of her role, but her suggestion that she had to sign it. The Tribunal does not find that occurred and it was not part of the Policy.
123. In the Claimant's closing submissions she stated that she wished the Respondent had sat down with her and explained where she was lacking. The tribunal is satisfied that they did try to do that. Indeed, on a number of occasions they asked to refer her back to Occupational Health, but the Claimant did not agree to that.
124. It follows from all of the Tribunal's findings and conclusions that the Claimant was not constructively dismissed, the dismissal was not an act of disability discrimination in any form. All claims brought by the Claimant fail and are dismissed.

Employment Judge Laidler

Date: 15 August 2024

Sent to the parties on:
4 September 2024.....

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For the Tribunal Office.

Public access to Employment Tribunal decisions

Judgments and Reasons for the Judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal Hearing has been recorded you may request a transcript of the recording, for which a charge is likely to be payable in most but not all circumstances. If a transcript is produced it will not include any oral Judgment or reasons given at the Hearing. The transcript will not be checked, approved or verified by a Judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>