



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000214/2023

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Held in Glasgow on 8, 9, 12, 13 February and 15. 16, 24 May, 5 & 6 June 2024

**Employment Judge Campbell
Members L Farrell and D McFarlane**

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Ms E Stewart

**Claimant
In Person**

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North Lanarkshire Council

**Respondent
Represented by:
Ms K Carrick -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous decision of the tribunal is that:

1. The complaint of failure to make reasonable adjustments is unsuccessful;
2. The complaint of discrimination arising from disability is unsuccessful;
- 25 3. The complaint of unfair constructive dismissal is unsuccessful; and
4. The claim is therefore dismissed.

REASONS

Background

1. This claim arises out of the claimant's employment with the respondent which
30 began on 13 December 1993 and ended on 12 February 2023. The claimant
resigned, giving notice. She has a medical condition. She alleges that the
condition amounts to a disability, that she was constructively dismissed, was
discriminated against for reasons arising from her condition, and that the

respondent failed to make reasonable adjustments for her as a person with a disability.

2. The hearing took place over nine days which included legal submissions. The tribunal reserved judgment to be issued in writing.

5 3. The claimant represented herself. The respondent was represented by Ms Carrick, a solicitor. Where necessary the tribunal took time to explain the rules and conventions of employment tribunal hearings, and some of the legal concepts to ensure as far as possible the parties were on an equal footing. The tribunal found the claimant to be most capable in presenting her case and
10 was especially appreciative of the documents she had spent some time preparing, including a chronology and a note of her closing submissions.

4. Evidence was heard from:

a. the claimant on her own behalf, and

15 b. the following witnesses on behalf of the respondent (their roles at the relevant time in brackets): Maria Williamson (Senior Officer, Recruitment), Monica O'Hanlon (Locality Social Work Manager), Fiona Swift (Senior Education & Families Manager (Social Work)), Helen Wilson (HR Advisor).

20 5. The parties were able to agree a joint bundle of documents for the hearing. Where necessary to refer to pages of the bundle below, numbers in square brackets are used.

6. The hearing was to determine remedy if appropriate as well as liability. The claimant provided a schedule of loss.

25 7. Two case management preliminary hearings (PH) took place in the lead up to the full hearing. Those were before Judge Robison on 11 July 2023 and Judge MacLean on 11 September 2023. At the first PH the claimant was given a set of questions by the judge to answer about her case, designed to clarify some of the key aspects. She provided an extensive note which Judge MacLean

attempted to summarise at the second PH. This is discussed in further detail later in this judgment, under the heading 'Discussion and decision'.

8. A list of issues had been drafted by the respondent's solicitor. The claimant had been unable to agree them fully. They are set out below under the heading 'Legal issues'. The list is based on the respondent's proposed list which the tribunal adjusted where considered appropriate in light of the matters discussed and agreed at two earlier preliminary hearings in the case, and the evidence presented at this hearing.
9. On conclusion of the evidence, the parties delivered legal submissions in support of their cases and the tribunal then deliberated before reaching a decision as set out in this judgment.

Legal issues

10. The legal issues for the tribunal to decide were as follows:

Preliminary Issues

1. *At the material time, did the claimant have a disability in accordance with section 6 Equality Act 2010 (EqA)? The claimant relies on the condition 'genetic haemochromatosis'.*
2. *Did the respondent know, or should the respondent reasonably to have known, that the claimant was disabled at the material time?*
3. *Have any or all of the claimant's discrimination claims been presented outwith the relevant statutory limitation period? The claimant commenced ACAS Early Conciliation on 10 February 2023 and therefore any complaint earlier than 11 November 2022 is out of time unless part of a continuing act.*
4. *If yes, would it be just and equitable for the employment tribunal to extend those time limits in the circumstances?*

Constructive unfair dismissal – section 95(1)(c) Employment Rights Act 1996 (ERA)

5. Did the respondent materially breach the claimant's contract of employment, whether by breaching one or more of its express terms, or by breaching the implied term of mutual trust and confidence?
6. If so, did the breach occur by way of a single event or a sequence of events?
7. When did the breach occur, and if it was as a sequence:
- a. when was the last event in the sequence?; and
 - b. was it a breach in itself or a 'last straw' with lesser effect?
8. Did the claimant resign in response to the breach?
9. Did she do so promptly so as not to waive the breach?
10. If the claimant was constructively dismissed, was her dismissal fair, i.e.:
- a. Was it for a potentially fair reason under section 98(2) of ERA; and
 - b. Did the respondent act reasonably according to section 98(4) of ERA in treating its reason as sufficient to justify dismissing the claimant?

Discrimination arising from disability – section 15 EqA

11. Did the respondent subject the claimant to unfavourable treatment?
12. If yes, what was the unfavourable treatment?
13. Was the unfavourable treatment because of something arising in consequence of the claimant's disability?
14. If yes, what was the "something" which arose in consequence of the claimant's disability?
15. Was any such unfavourable treatment a proportionate means of achieving a legitimate aim?

Failure to make reasonable adjustments – sections 20/21 EqA

16. *Was the claimant put at a substantial disadvantage by reason of her disability, compared with persons who are not disabled, by:*
- a. *a provision, criterion or practice (PCP) of the respondent;*
 - 5 b. *a physical feature of the respondent's premises; or*
 - c. *the lack of an auxiliary aid?*
17. *If so what is the PCP, physical feature or auxiliary aid in question?*
18. *Who is the non-disabled comparator?*
19. *What was the substantial disadvantage?*
- 10 20. *Did the respondent know, or should it reasonably have known about:*
- a. *the claimant's disability; and*
 - b. *the substantial disadvantage caused?*
21. *Did the respondent take sufficient steps as would be reasonable to avoid the disadvantage?*
- 15 22. *If no, what additional steps ought the respondent to have taken to avoid the disadvantage?*

Relevant Law

1. By virtue of Part X of the Employment Rights Act 1996, an employee is entitled not to be unfairly dismissed from their employment. The right is subject to certain qualifications based on matters such as length of continuous service and the reason alleged for the dismissal.
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2. An employee may terminate the contract but claim that they did so because their employer's conduct justified the decision. This may be treated in law as a dismissal under section 95(1)(c) ERA, commonly referred to as constructive dismissal. The onus is on the employee to show that their resignation amounted to dismissal in that way. The employer's conduct prompting the
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5 resignation must be sufficiently serious so that it constitutes a material, or 'repudiatory', breach of the contract. The breach may take place or be anticipatory, i.e. threatened. It may be way of a single act or event, or a chain of events ending with a 'last straw'. A last straw may not be a breach in its own right but should not be completely innocuous. The employee must resign in response to the breach, and not delay unduly in doing so or they may be deemed to have accepted or 'affirmed' the breach.

10 3. Unless the reason for dismissal is one which will render termination automatically unfair, the employer has an onus to show that it fell within at least one permitted category contained in section 98(1) and (2) ERA.

15 4. Whether a dismissal is direct or constructive, a tribunal must consider whether the employer acted reasonably in relying on that reason to dismiss the individual. That must be judged by the requirements set out in section 98(4) ERA, taking in the particular circumstances which existed, such as the employer's size and administrative resources, as well as equity and the substantial merits of the case. The onus of proof is neutral in that exercise.

5. Individuals in different scenarios, including employees and workers, are protected against different types of unfair or unequal treatment related to protected characteristics. Disability is a protected characteristic.

20 6. Disability, for the purposes of a legal claim, is defined in section 6 of the Equality Act 2010 as follows:

6 Disability

(1) *A person (P) has a disability if—*

(a) *P has a physical or mental impairment, and*

25 (b) *the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.*

(2) *A reference to a disabled person is a reference to a person who has a disability.*

7. Workers are protected against unlawful direct discrimination by their employer. Acts done by fellow employees in the course of their duties can be ascribed to the employer so that it becomes vicariously responsible for them.
8. A distinct type of claim can be made by a disabled person where their employer treats them unfavourably not directly because of the disability, but something related to or arising because of it:

15 *Discrimination arising from disability*

(1) *A person (A) discriminates against a disabled person (B) if—*

(a) *A treats B unfavourably because of something arising in consequence of B's disability, and*

(b) *A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*

(2) *Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.*

9. A disabled person is entitled to have their employer make reasonable adjustments when they are put at a disadvantage compared to non-disabled employees in certain ways:

20 *Duty to make adjustments*

(1) *Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.*

(2) *The duty comprises the following three requirements.*

(3) *The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not*

disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

5 (4) *The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*

10 (5) *The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.*

...

21 Failure to comply with duty

15 (1) *A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.*

(2) *A discriminates against a disabled person if A fails to comply with that duty in relation to that person.*

Findings of fact

20 The tribunal made the following findings of fact, based on the evidence provided and as relevant to the legal issues to be decided.

25 1. The claimant is qualified and experienced in the field of social work. She was employed by the respondent, latterly as a senior social worker (SSW), between 28 January 1994 and 12 February 2023. She worked in the Children and Families team based in Motherwell. Her employment with the respondent ended by her giving a month's notice on 12 January 2023. She began a new job with another employer on 13 February 2023 and her termination date with the respondent was consciously chosen so that it would fall immediately below her start date with the new employer.

2. The respondent has a supervision policy [648-662].
3. The respondent has a 'supporting attendance' policy, an extract of which was included in the hearing bundle [642-647]. At section 4.3 it discusses the circumstances where redeployment of an employee for health reasons will be considered. It states that this will *happen 'where all adjustment options have been exhausted and the employee remains unable to carry out the duties of their role'*. It goes on to say that the normal practice in that case is that the employee will be placed on a redeployment register for 12 weeks, after which they will be dismissed on grounds of capability if a role has not been found for them.
4. The respondent has a 'Dignity at Work' policy [302-316].
5. The respondent has a grievance policy [297-301].

Medical background

6. The claimant has the medical condition Genetic haemochromatosis (abbreviated in the hearing to 'GH'), which was diagnosed in October 2019. She claimed this condition amounted to a legal disability. It causes an excessive build-up of iron in the body. If unchecked, organ damage can occur. There is no apparent cure or prospect of the condition going away, but it can be treated by monitoring iron levels and the donation of blood at appropriate intervals. Upon diagnosis she had blood taken every week, which continued for some six to eight weeks until the condition was brought under control. Iron still builds up in her system, and this is controlled by giving blood quarterly on an ongoing basis. She will have to do this for the foreseeable future.
7. The claimant's main symptoms have been abdominal and joint pain, and lethargy. These build up over time as iron levels increase, and then are alleviated when blood is removed. The claimant has experienced pain in her fingers, ankles, hips, shoulders, neck and abdomen. These effects can be exacerbated by stress.
8. In terms of any effects of the condition, the claimant explained in her oral evidence that she experienced reduced movement, particularly in her limbs,

5 which caused her to experience difficulty or take longer with activities such as personal care, dressing, getting up from a seated position, lifting her young granddaughter, using cooking utensils including heavier pots and cutting implements, opening jars and climbing stairs. It was difficult and painful for her to sit at a desk for a prolonged period. The claimant has been physically affected by GH since at least 2019.

9. The claimant also suffered from irritable bowel syndrome (IBS). This predated her GH condition and it was in relation to what she thought were IBS symptoms that she was examined and diagnosed as having GH. She did not assert that IBS was a separate disability. It was therefore necessary in some instances, with the medical evidence available, to consider whether symptoms and effects described by the claimant were caused by GH, IBS or a combination of both. The claimant accepted in evidence that it could be difficult to separate one from the other. This was particularly the case in relation to the abdominal pain she experienced, and is discussed further below.

10. The claimant provided a letter from her Consultant Haematologist dated 8 November 2023 [83]. From that the details of how the claimant came to be diagnosed with GH in 2019 could be taken. The Consultant said that the claimant was complaining of abdominal bloating and fluid retention which she did not think were symptoms of GH. She had drawn the same conclusion in a letter dated 7 May and 26 November 2020 to the claimant's GP [79-80]. Around the same time stones were identified in the claimant's gall bladder. Those were removed in October 2021 as discussed further below.

11. The claimant prepared a disability impact statement in table form for the purposes of the hearing [219-220]. Its contents were not substantially challenged by the respondent and are accepted as a sufficiently accurate note of the effects of the claimant's GH condition on her over time. The tribunal noted that the statement incorporated effects and impacts of the separate IBS condition. Those were disregarded as the claimant was not asserting IBS to be a disability.

12. In terms of the respondent's knowledge of the claimant's medical circumstances, Ms O'Hanlon had been the claimant's manager in 2019 when the GH diagnosis had first been made, and from then on. The claimant told her all of the key details about the condition at that time. By 2020 it appeared that the condition was under control and the claimant rarely mentioned it. When she did so this was usually in connection with requesting time off to have blood taken, around four times per year.
13. The claimant frequently raised with Ms O'Hanlon when she was experiencing abdominal pain but did not link it to her GH condition. Ms O'Hanlon believed it to be a consequence of the claimant's IBS condition and/or related to the removal of her gall bladder, or caused by stress. She was not aware of any contact the claimant was having with medical practitioners.

Chronology of events relied upon by the claimant

14. The claimant's case was based on a number of events dating between March 2018 and September 2023. Those were described by her in a 'Chronology' document [90-215] she drafted in response to a set of questions given to her by the judge conducting the first of two PHs, which was intended to clarify and give structure to her case. It contained 140 different entries.
15. In the course of her evidence in chief the tribunal took the claimant through this document and asked her to explain her entries, so that it could be sure of understanding what the claimant said had happened, and why each entry was considered relevant to one or more of her legal complaints.
16. The tribunal ultimately reached the view that the majority of events as described up to the beginning of 2022:
- a. did not raise a relevant complaint which could form part of her legal claims;
 - b. were confined by their characteristics and not sufficiently connected to later complaints; and/or

- c. were too historic to properly and fairly be considered as free-standing complaints in their own right.

Those events are therefore not recorded in detail in this judgment although they were noted by the tribunal in the hearing for the purpose of considering them. They mainly comprise entries 1 to 52 of the claimant's chronology.

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17. The tribunal noted that the claimant discussed with Ms O'Hanlon any difficulties she felt with the various events at the time, but did not take any matter further by raising a grievance or otherwise escalating it.

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18. Of particular relevance was that between late October 2021 and early February 2022 the claimant was absent from work while recovering from surgery, as recounted in further detail below. The tribunal reached the view that this three-month absence from the workplace represented a dividing line between what had gone before and what came after. This was because of the fact of the claimant's removal from the workplace and her colleagues itself, but also because her return to work led to a different level of understanding of her medical position by both her and the respondent.

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19. In March 2018 the claimant was the only substantive senior social worker (abbreviated to 'SSW') in her department. The department structure provided that normally there would be at least two and ideally three. Each SSW would have a number of social workers report to them. Her manager was Monica O'Hanlon, Locality Social Work Manager. Ms O'Hanlon in turn reported to Ms Fiona Swift, Senior Education & Families Manager (Social Work). Ms O'Hanlon worked in the same office as the claimant and the two would generally see each other through the working day. Ms Swift was based at another office nearby, within the Civic Centre.

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20. The role of a SSW is by its nature demanding, intellectually and emotionally. Work can be unpredictable and difficult to plan to any great degree. It involves balancing constantly changing priorities.

21. It was part of Ms O'Hanlon's responsibility to hold regular supervision meetings with the claimant. Those were to happen approximately monthly.

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This is consistent with the respondent's policy and also external guidance. Meetings were held regularly, albeit not always monthly. The claimant believed that Ms O'Hanlon did not take the correct approach to these meetings, in that she covered the work the claimant was doing and the clients and service users she was assisting, but did not focus enough on the claimant's own needs or wellbeing, or on what she had done well, or could do better. As such, she believed supervision was not 'reflective' as she considered it should have been.

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22. The claimant also maintained that when she did raise issues such as stress and how challenged she felt by her work, Ms O'Hanlon would tend not to record that in the meeting notes. The claimant believed this occurred from at least as far back as March 2018, when she returned to work following a period with high blood pressure, and continued until November 2022, and was a continuing act or failure to act extending over that period. She said that latterly, when it became known (or at least ought to have been clear) that she was disabled in the statutory sense, there should have been more discussion about her symptoms, the risks posed by the role and any adjustments which could be made.

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23. At all material times the claimant worked to a pattern of compressed working hours. This involved her not working on Wednesdays, and adding the time to the remaining weekdays. She was contracted to work 35 hours per week. She volunteered as a cleaner at her local church on alternate Wednesdays, and would often use free time on Wednesdays for her studies as discussed further below. She was allowed to work part of her working time from home and vary her start and finish times from day to day. Ms O'Hanlon understood her to prefer to start working early in the day and end around 5pm. She had no sense that the claimant was working excessive hours as a rule.

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24. Around April 2021 Ms O'Hanlon removed two of the claimant's additional responsibilities in an attempt to make her workload more manageable. Those were in relation to independent care experience reviews and kinship panels.

25. The claimant began to raise concerns about the level of support she was receiving from Ms O'Hanlon around June 2021. She voiced them directly in supervision meetings. Ms O'Hanlon reported the claimant's comments to Ms Swift, who emailed the claimant on 14 June 2021 asking for more details [621]. The claimant replied to say that she had been applying for roles outside of the respondent and had sought support to prepare her applications, but felt awkward asking for that. Ms Swift followed up to ensure there were no unresolved matters. The claimant sent a longer email back [217-219] which was also addressed to Ms O'Hanlon, in which she referred again to the question of support with external applications, and also 'wider team issues'. Those were to do with social workers the claimant had responsibility to manage and another SSW. She did not mention people's names as she wished to preserve confidentiality. Ms Swift noted the response and proposed a meeting between the three of them at some point in the near future when people had taken their summer holidays. A meeting took place although there were no documents relating to it in the bundle.

Absence from work 2021-2022

26. The claimant was absent from work between 25 October 2021 and 7 February 2022 following an operation to remove her gall bladder and a follow-up operation on 9 October 2021.

27. Earlier in October 2021 she attended a supervision meeting and reported to Ms O'Hanlon that she was exhausted and in pain relating to her gall bladder. The team was one SSW short and the claimant was supervising additional social workers. Ms O'Hanlon has removed some of her tasks and allocated them to others in order to help the claimant carry on studies for an MSc degree. The claimant felt that she still had too much to do.

28. Shortly after that she emailed Ms Swift to explain her current circumstances, and said that the pressure of her work was 'now beyond manageable'. Ms Swift replied to acknowledge the claimant's position, but said that staff across the locality were dealing with pressures of different types, and that each person in the team should realistically prioritise their most important duties

from day to day. She offered to catch up in person and a meeting took place. The claimant was upset in the meeting and Ms Swift offered the claimant the opportunity to take some days of annual leave, which she did.

29. Following the operation, on 19 November 2021, the claimant took part in an Occupational Health ('OH') assessment by telephone. This resulted in a report being prepared by the external OH advisor for the respondent's consideration [84-86]. The claimant received a copy.
30. The OH report stated that in the clinical opinion of the advisor the claimant was temporarily unfit for work due to her need to recover from her surgery and also 'symptoms of unknown cause' which she needed to discuss with her GP. Those were 'fatigue and slowed thinking'. It was said not to be clear whether those symptoms were related to the surgery or '*underlying health conditions*'. The advisor was aware, and noted, that the claimant suffered from IBS and GH. She was of the opinion that the GH condition met the requirements of a disability under EqA.
31. The claimant complained about the respondent's normal practice of maintaining weekly contact with a colleague who is absent through illness. However, in its nature this was a complaint of indirect discrimination. In any event, there was a lack of evidence as to how that practice would place individuals with the claimant's protected characteristic of disability at a substantial disadvantage compared to other employees absent from work for a similar duration but who did not have a disability.
32. The claimant attended a meeting with Ms O'Hanlon and Mrs Wilson from HR on 21 or 22 January 2022. The claimant had reservations about her ability to cope with her workload upon returning. Ms O'Hanlon told her that the other SSW in the team had returned to work from an absence, which would involve taking back responsibility for supervising some social workers who the claimant had been overseeing. The claimant was not completely reassured, but saw returning to work as something she had to aim for, even as a step towards looking for a different role.

33. The claimant met again with Ms O'Hanlon on 27 January 2022. She had been given a stress assessment tool, which was a form with questions to be filled in. The claimant had not managed to complete her sections but had made notes and was able to discuss how she felt. She argued that she should have been given more assistance to complete it, and also that it should have been mostly completed by Ms O'Hanlon in the meeting with her own input as required.
34. The claimant spoke to an external and confidential workplace counselling service on 3 February 2022. The conversation reinforced her view that she was experiencing burnout which could only be alleviated by having fewer work responsibilities, or a change in job. As such she saw that the key to improvement was exclusively within the respondent's control.
35. Ms O'Hanlon met with the claimant again on 3 February 2022. She prepared a note summarising what was discussed [164]. She offered the claimant the option of taking a career break, which the claimant did not wish to take. They discussed the details of a phased return and the claimant's need for follow-up appointments. The claimant would begin by working from home during mornings, and be given administrative tasks initially. The note recorded that the claimant did not want to change her working pattern. Her phased return would last for six weeks.

Return to work – 8 February 2022

36. On her return the claimant was given the exercise of responding to a data subject access request (SAR) as a means of becoming reacquainted with work and building up her hours. This involved dealing with a high volume of documents and the claimant spent a large amount of time dealing with it. However, she was largely able to decide how much time she spent from day to day. There was no hard deadline.
37. The claimant again spoke with the confidential counselling service on 8 February 2022, her day of return to work. Her recollection was that she was told her symptoms were situational and suggested workplace stress, and that she should discuss with her line manager ways of improving her working

environment. Ms O'Hanlon had actively encouraged the claimant to engage with the service.

38. A supervision meeting took place on 1 March 2022. The claimant reported that she felt lethargic and was struggling to complete her working day. She was continuing to increase her hours and taking occasional days of annual leave to regain energy.
39. By 8 April 2022 the claimant had resumed some of her normal responsibilities as well as continuing with the SAR. She recorded in her reflective diary that it was difficult to balance the two. Ms O'Hanlon suggested working on the SAR as overtime. The claimant felt this was inconsistent with her still being on a phased return, and experiencing tiredness. The claimant also raised with Ms O'Hanlon that she had prepared a report in her own time before her absence the previous October. Ms O'Hanlon pointed out that she was too late to claim for any overtime. The respondent had a rule that any overtime, if authorised, had to be claimed within three months of the work being carried out.
40. By early May 2022 the claimant had resumed her full duties and was feeling generally well. She attended an interview for another role with the respondent, which had been rescheduled from the previous year due to her absence. Ms O'Hanlon enquired about it in a general way.
41. At a supervision meeting on 10 June 2022 the claimant raised with Ms O'Hanlon that she felt unsupported by her. Ms O'Hanlon did not accept this was the case and said she would raise the matter with Ms Swift, who contacted the claimant on 14 June to take the matter up. The claimant told her she felt inadequately supported and that she disagreed with some of Ms O'Hanlon's management decisions relating to the team. Ms Swift sought further information from the claimant at the end of that month. The claimant and Ms O'Hanlon remained in disagreement over some of the latter's management decisions within the department.
42. A supervision meeting took place on 20 June 2022. There were some vacant roles within the team around this time which added to the workload of those who were present. The claimant was tearful for part of the discussion. She

was holding a hot water bottle against her stomach, something she did to alleviate abdominal pain. The claimant felt that Ms O'Hanlon had a responsibility to discuss and protect her wellbeing which she was not meeting.

43. In January 2022 when the claimant was absent from work, the file of a social worker in her team was picked up in a file audit due to inadequate record-keeping. Ms O'Hanlon asked the claimant to speak to the individual on 23 June 2022. The claimant felt that the criticisms raised were harsh. She was aggrieved at being asked to deal with the issue at that time rather than another manager having to address it when it arose five months before. The claimant raised the matter in the social worker's supervision meeting and they were given an action plan.

44. Around June 2022 the claimant was awarded an MSc degree in Leadership and Management, which she had been studying for since late 2018. She carried out her coursework largely in her own time, occasionally requiring blocks of days for group study.

45. The claimant sent a text message to Ms O'Hanlon on 7 August 2022 in which she said she was feeling exhausted from applying for alternative roles without any success. The next day the two spoke by telephone. Ms O'Hanlon knew that the claimant had an outstanding application with the Care Inspectorate, despite the claimant not telling her directly. This was the application which had been made before her absence began the previous October. Ms O'Hanlon said she would support the claimant in finding a role outside of the respondent.

46. At a supervision meeting on 26 August 2022 the claimant said she felt 'trapped' and needed to move. There had been some discussion about a transfer to another service within the respondent's council area, but Ms O'Hanlon reported that there had to be further meeting before a decision could be taken. The respondent did not as a rule simply agree to direct requests for redeployment. Ms O'Hanlon also encouraged the claimant to apply for a vacant Senior Officer role internally. The job specification for the role was included in the hearing bundle [381].

47. On 28 August 2022 the claimant completed the DASS-21 questionnaire which is designed to record levels of perceived depression, anxiety and stress. She scored 59 which equated to 'extremely severe'. She also completed the Beck's Depression Inventory questions which gave her a score of 43, which also equated to severe. These scores were shared to Ms O'Hanlon and HR on 2 September 2022.
48. On 30 August 2022 the claimant noted in her diary that she was working long hours and that members of her team also appeared to have difficulty coping with their workload. The claimant made a list of her working hours for that month, using her daily log-on and log-off times. They showed her regularly being at work for between 10 and 12 hours. Her average would normally have been 8.75 hours per day given that she had compressed five days of working into four. The claimant continued to note difficulties her team members were experiencing through September.

15 **Management support meeting on 2 September 2022**

49. The claimant attended a management support meeting on 2 September 2022 with Ms O'Hanlon and Ms Wilson from HR. This had been arranged by Ms O'Hanlon in response to the claimant's account of how she was feeling about her role at previous supervision meetings. Ms O'Hanlon wished to discuss whether there were any ways of supporting the claimant, whether in her current role or in seeking a new one. By this point the claimant had been given an interview date for the Senior Officer post. A summary of the discussion can be found in a letter Ms O'Hanlon sent to the claimant on 22 September 2022 [425-426].
50. The claimant reiterated that she did not wish to complete the Work-Related Stress Assessment tool, as she felt she had already provided the information it was seeking, and did not believe it would help in finding a solution. She did agree to attending a further OH consultation and one was to be arranged. She said that her GH condition did not impact on her performance at work and was under control. She did mention being affected by lethargy which would build up until being alleviated by donating blood. She referred to having joint pain,

feeling stiff and having abdominal pain in connection with IBS. She said that her work was making her feel stressed and burnt out. She did not blame Ms O'Hanlon for this, explaining that she felt the nature of her role had changed. She mentioned three aspects – that there was an expectation of presenteeism or always being available, social workers were less experienced than before, particularly following the Covid pandemic, and there was a cycle of recruiting staff who left within a short time, impacting on experience levels and requiring more training and supervision time. As a result, she felt her only options were to find another role or simply resign. She believed that, as her employer, the respondent would have an obligation to explore whether another role could be found for her if it could not change the role she was in. When she expressed a fear of dying Ms O'Hanlon suggested that she should take a period of illness absence and consult her GP. The claimant did not see this as a solution as her job would be just as difficult whenever she returned. She asked for the burden of her workload to be reduced as a measure to help remedy her sense of burnout.

51. Ms O'Hanlon acknowledged that the claimant's role had become busier and more demanding over time. She referred to some aspects of the claimant's role which had been taken away in order to help her. She said that the essential nature and demands of the role could not be changed, which the claimant accepted. She explained that the respondent only redeployed its employees in limited circumstances (which was normally when a person's role became redundant or when they were incapable of performing their role altogether) and the claimant could not simply be moved into another role. She asked about the progress of the claimant's Senior Officer role application and offered support in relation to it.

Application for Quality Assurance role – September 2022

52. The claimant attended her assessment for the Senior Officer post on 15 September 2022. This involved a standard interview and a short presentation the claimant had prepared in advance. Three and a half vacant roles were on offer. She received positive feedback on the day but was not told whether she was appointed. Eight other candidates were assessed at that time, one of

which was assessed two days before as they were going on annual leave [418].

53. The next day she sent a text message to Ms O'Hanlon saying that she still had not heard about the position, using a 'sad face' emoji. Ms O'Hanlon replied to reassure her and added a laughing emoji. Ms O'Hanlon had spent some time with the claimant to help her prepare for her interview by discussing different styles of questioning and possible answers. She had spoken to Ms Williamson before the interview to ensure that she had all of the relevant information available to candidates. At this point Ms O'Hanlon was of the view that the best means of the claimant improving her situation was to find another role which did not place the same demands on her as being an SSW.
54. On 21 September 2022 the claimant received a telephone call from one of the interview panel members. They told her that she had scored highly and was appointable to the role, but was unsuccessful. The claimant said she had anticipated that outcome and asked for a copy the interview notes. She said she felt that some of the comments now being made contradicted how the interview had gone, for example when she had been told by members of the panel that they had heard enough from her in answer to a particular question. She said she was considering making a complaint about the fairness of the process. She believed around this time that a male colleague had been appointed before her interview.
55. The claimant believed that she should not have been encouraged to apply for the post as it was a foregone conclusion that she would not be successful. However, there was no evidence of this and on the evidence which was available, primarily from Ms Williamson who was one of the co-ordinators of the exercise, it appeared that the process was suitably fair and objective, that the claimant was appointable to one of the positions, but that other candidates had a better overall skillset or experience, or performed better on the day. There was no evidence of the panel speaking to, or being negatively influenced by, Ms O'Hanlon, which was a concern the claimant held.

56. The claimant was correct that a male colleague had been appointed to one of the roles. This had been done in line with the respondent's policy on redeployment. The candidate had come from a more senior role in Culture and Leisure when his role was removed and he was placed at risk of redundancy. He still had to go through an assessment to show that he was appointable, which he did. This was in keeping with the respondent's policies. It left two and a half roles open to the other candidates.
57. Ms O'Hanlon recognised that the claimant was disappointed to lose out on the Senior Officer role. She was supportive of the claimant moving out of the locality, whether temporarily or permanently. She spoke to Ms Swift about that, who was also in favour. This discussion led to the secondment which took place beginning in November 2022, as discussed further below.

Further events in September and October 2022

58. The claimant made a data subject access request by email on 21 September 2022 [420], seeking *'full access to all information held by North Lanarkshire Council in accordance with data subject access request (Data Protection Act 2018). I am requesting that the research period is from December 1993 which is when I commenced my employment and including all information to date.'* At least part of her reason for doing so was that she believed there may have been documents which showed why she was unsuccessful in previous applications for internal posts, and which had been kept from her. There was no such evidence.
59. The respondent attempted to have the claimant narrow down her request by clarifying what data she was looking for. This was because of the potentially large scope of the search, going back to the beginning of the claimant's service in 1993 and across multiple physical locations where she had worked. The claimant believed that Ms O'Hanlon was disengaged from the process and the claimant's position itself. Ms O'Hanlon was not the principal person coordinating a response to the SAR. The claimant agreed in June 2023 – some months after leaving the respondent's service - to the request being restricted to her last four years of her employment.

60. The claimant emailed Ms O'Hanlon again on 22 September 2022 [422-423]. She appeared to be at something of a low ebb having lost out to one of the Senior Officer roles. She asked about what help would be available to pursue other job opportunities away from her current role. She said the following:

5 *'On reflection of our many conversations and as I set out during the management support meeting (3/9/22) I feel that you are powerless to change the areas I have identified that are contributing to my symptoms of burnout and subsequently moral distress.'*

10 This read as acceptance by the claimant that the nature of her role, and in particular the aspects which caused her most stress, could not materially be changed under the circumstances that prevailed at the time. She also accepted in evidence that the demands upon her were the normal demands of a SSW. If she had fewer reports that would likely mean that another SSW in the team would have more, increasing their workload.

15 61. On 3 October 2022 the claimant emailed Ms O'Hanlon to ask for guidance on how to make a claim for overtime following an update to the respondent's electronic system [441]. She described the work as *'the SAR and the reports/notes for Natalie's reports last year'*. She was separately looking to claim for overtime incurred in completing a SAR on 4 May 2022 and again on
20 25 September 2022. Ms O'Hanlon replied to say that it would not be possible to go back more than three months under the respondent's policy for overtime. She said she would authorise the more recent requests. The claimant asked whether she would get time back instead for the earlier additional hours she had worked. Ms O'Hanlon said this could be discussed at the next supervision
25 meeting, which was on 10 October. At that time Ms O'Hanlon agreed as a concession to give the claimant a day back for the overtime she had worked in May of that year.

30 62. On 7 October 2022 the claimant emailed the member of the interview panel she had previously spoken with, seeking feedback. That person forwarded the claimant's email to the other panel members, including Ms Williamson,

commenting '*and there's more*', and '*not a happy bunny*'. This was unprofessional, as accepted by Ms Williamson in her evidence.

63. The respondent allows some employees, including those in the claimant's service, to accrue flexitime by working over and above their contractual hours. As a means of encouraging employees to take time in lieu back promptly and to control the amount accrued, every four weeks any balance of hours built up by an individual would be restricted to seven hours if the figure was higher. The claimant typically exceeded her hours by more than seven in a month, and would regularly have some of her accrued flexitime written off on a four-weekly basis.
64. The claimant notified Ms O'Hanlon on 10 October 2022 that she had stomach pains which she attributed to work-related stress, and that she would be working from home. Ms O'Hanlon said that was acceptable and reminded the claimant that she could take time off as illness-related if she felt unwell, but she said she would not do so as it would not change anything.
65. On the same day the claimant emailed Ms O'Hanlon and attached a report she had been working on in February of the previous year. She wanted to explore being paid overtime for her work on it. The claimant had felt that Ms O'Hanlon was not sufficiently trusting of her in terms of the work she had carried out.
66. The claimant attended an OH appointment on 14 October 2022. A report was prepared by the OH Advisor [87-88]. It recorded that the claimant reported work-related stress which led to physical symptoms such as disturbed sleep, chest and abdominal pain. The symptoms eased after time away from work. Joint pain in hands and across her shoulders and neck increased with prolonged typing. The Advisor agreed that the symptoms appeared to be cased or aggravated by stress at work.
67. The claimant was assessed as being fit to continue in her current role with some recommended adjustments which were listed as:

- a. Management support generally, including increased one-to-one meetings with her manager
- b. Assisting her in prioritising her workload to maintain a suitable work/life balance
- 5 c. Avoiding excessive working hours
- d. A stress risk assessment to be carried out when the claimant felt ready, potentially to identify areas for training, support or changes of process
- e. An updated workstation assessment designed to help with her joint pain, and possibly speech-to-text software to reduce time spent typing; and
- 10 f. The ability to work from home when pain was worse

68. The claimant was advised to do as follows:

- a. Visit her GP to discuss her current symptoms
- 15 b. Discuss any work-related concerns with a manager
- c. Try to find ways of relaxing and making lifestyle changes, including possibly counselling; and
- d. Taking micro-breaks from working sessions.

69. On receipt of the report on 17 October 2022 the claimant expected a meeting with Ms O'Hanlon to discuss it, and for a risk assessment to be carried out. Neither immediately happened, although Ms O'Hanlon may have been on holiday around that time. Ms Swift sent her a letter on 18 October 2022 [454] asking her to a management support meeting on 31 October 2022. The claimant was on duty that day and so at her request the meeting was later rescheduled to 10 November 2022 as detailed below.

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70. On 23 October 2022 the claimant emailed Ms Swift and the respondent's Chief Social Work Officer [457-458]. She sent a further email to Ms Swift the

following day. She said that only by leaving the respondent's service could she see matters improving. She said that she was grateful for Ms Swift's efforts in helping her, but felt she could not do enough to *'provide me with the respite I need now to begin my recovery'*. She said that the only suggestions that had been made were to go off ill or go to her GP. She reiterated her view about the value of those options, saying that *'Both are suggestive that I should, as an individual, take ownership of the impact and potentially receive medication for a chronic situation in my workplace'*. In essence, she was saying that the problem was the respondent's to fix and she would or could not alleviate it by absence leave or medication. If the role could not be changed then she needed to leave.

November 2022

71. The claimant worked on a report on 2 and 6 November 2022 which had the purpose of giving guidance to newly qualified social workers under SSSC rules. She sought to be paid overtime or to be given back time in lieu of the extra hours she had worked. She felt that Ms O'Hanlon did not give due recognition to her work or provide feedback. This made her feel undermined.
72. The claimant and Ms O'Hanlon had a supervision meeting on 3 November 2022. Ms O'Hanlon made a note summarising the meeting [461-462]. The claimant mentioned that she had applied for an external post with the Care Inspectorate and undertaken a first interview. She expected an outcome within four weeks.
73. At the meeting there was also discussion about the OH report of 14 October 2022. In relation to the recommendations made, Ms O'Hanlon said that:
- a. the claimant should not work any further overtime on a SAR she was dealing with, and some working time the following week would be allocated for it
 - b. the claimant had been taken off the duty rota, which eased her workload and also allowed her more scope to work from home – this

was true but only in the sense that it was the turn of another SSW to cover duty, and the claimant's turn would come around again

c. the claimant would have no additional line management responsibilities beyond the four social workers currently in her team, and

d. she would be given no further additional responsibilities.

74. The claimant commented in her chronology that she still had a number of non-core responsibilities. She said in her evidence that some of her additional responsibilities which had been taken away were not particularly time-consuming, such as reviewing the decisions of social service teams in other areas in relation to looked-after accommodated children (LAAC). This involved a meeting every four or five weeks, and some preparation time.

75. There was also discussion about individuals within the claimant's team. One, whose performance management had been time-intensive, had now been moved to another team. It was also agreed that the claimant would be allocated some working time the following week to complete a response to a subject access request submitted by a service user.

Management Support Meeting - 10 November 2022

76. The claimant attended a management support meeting on 10 November 2022 with Ms Swift and Mrs Wilson. Early in the meeting Ms Wilson asked the claimant some questions about her recent SAR as a means of trying to narrow down the scope of the search. The claimant was reluctant to discuss the subject as she felt that was not what the meeting was for, but said she was looking for 'all my information' without any restrictions. Ms Swift accepted her position and the rest of the discussion focused on the claimant's wellbeing.

77. The claimant explained why she felt disappointed at what she saw as a lack of action taken following the management support meeting of 2 September. She felt that Ms O'Hanlon failed to adopt a trauma-based response to the claimant's circumstances, that she was not being open and had lost faith in the claimant's ability to do her job. She said she was still experiencing burnout

and moral distress. The claimant criticised the respondent in her evidence for having Ms Wilson seek to discuss the claimant's SAR with her. However, the letter dated 8 November 2022 inviting the claimant to the meeting [474] referred in its first paragraph to the claimant '*requesting personal information*' and said in the second paragraph that 'The purpose of the meeting is to discuss your requests and the points you have raised, agree a plan for moving forward and explore any appropriate supports you may need at this time.' It therefore appeared clear that the meeting had two purposes – to see if the scope of the SAR could be narrowed and made more manageable, and to discuss ways of supporting the claimant.

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78. The claimant discussed why her role was now too difficult for her. This was because of the long hours required to complete all of her tasks and extended responsibilities, particularly in overseeing new social workers and managing those who had been in post longer. She also cited her physical health and in particular the abdominal pain she experienced and joint pain caused by long periods typing.

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79. In this meeting it was discussed and agreed that the claimant would temporarily move out of her team and work within the Centralised Services team at the Civic Centre offices, reporting to Ms Swift. She would cover some Senior Officer duties and prepare responses to data subject access requests. This arrangement would be in place from 14 November 2022 until Friday 10 February 2023. The claimant would return to her post on the following Monday, 13 February. The claimant accepted that this was a reasonable adjustment, but pointed out that it was temporary and the challenges of her substantive role would not have eased upon her return. In the event, although she did not know it at this time, she did not return to her substantive role, and her last date in the department was 11 November 2022. Ms Swift updated the claimant's team about the arrangement on 14 November 2022.

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80. The secondment was a success in terms of alleviating the claimant's stress and physical symptoms. She had a less taxing workload without short deadlines and could manage her start and finish times better. She did not have anyone to manage or any contact with the public. She used some of her

time to catch up on work from before 14 November. In evidence she said she felt that it would have been a reasonable adjustment if it had been permanent.

81. The Care Commission role was offered to the claimant on or around 16 November 2022. She told Ms O'Hanlon about the offer. It was subject to satisfactory references being given. She asked Ms O'Hanlon to approve a reference. Ms O'Hanlon asked HR for help from Ms Swift and HR on 25 November 2022 in relation to what she should say in relation to some pro forma questions the Care Commission had asked. There was discussion about taking out wording about the claimant not having been involved in any formal disciplinary procedures, as that fact was already confirmed by implication in the answers to the other questions. Ms O'Hanlon returned the completed set of questions to the Care Commission on 28 November 2022. When the claimant later saw emails in relation to this, after her resignation date, she believed she had been unfavourably treated as she thought it could be inferred that she had been the subject of informal disciplinary action. This was an unduly negative reading of the emails between Ms O'Hanlon and HR, and the answers given to the Care Inspectorate pro forma questions. She had been given positive feedback.

82. By this point Ms O'Hanlon had been unable to consider any further adjustments that she could practicably make to the claimant's role. Both she and the claimant were of the view that the better outcome was for the claimant to find another role without the same challenges. When the claimant was awarded the Care Inspectorate post Ms O'Hanlon was pleased for her and anticipated that the claimant would leave to take it up around the time that her secondment to Central Services ended. She did not therefore spend any significant amount of further time considering additional adjustments for the claimant. Had the claimant not wanted to leave she would have returned to the issue.

83. On 24 November 2022 the claimant received an automated prompt telling her that Ms O'Hanlon's diary permissions had changed, and that she now had reduced or no access. The claimant understood at the time that this was an indicator of Ms O'Hanlon wishing to distance herself from the claimant. A new

member of support staff had joined Ms O'Hanlon's team and was giving new people access to her calendar. At the same time they removed the claimant and at least one other person. Had the claimant rejoined the team she would have been given access again, but at the time it was reasonable to assume that the claimant would not be returning before leaving the respondent's service given that her role with the Care Commission was all but confirmed.

December 2022

84. On 6 and 7 December 2022 the claimant and Ms O'Hanlon discussed some details around the claimant's leaving date and administrative matters by email [492-494]. The Care Inspectorate wanted the claimant to start on Monday 13 February 2023 which had been the day that the claimant would have returned to her substantive post. Ms O'Hanlon said it would not make sense for her to return to her locality before leaving. She would complete the secondment to Central Services, using up some accrued leave at the end of that time. It was therefore around this time that the claimant knew she would not be returning to her substantive SSW role. Before that, from around 22 November at least, she understood that she might have to return for two or three days, but she knew she had the option to use annual leave and not physically go back.

85. On 13 December 2022 the claimant submitted claims for overtime on seven days in October and November 2022, totalling 26 hours. The time was mainly spent on preparing a response to a subject access request. She claimed that it had been agreed in advance with Ms O'Hanlon, who on 21 December 2022 disputed that this was the case, and would not authorise payment. Ms O'Hanlon commented that in line with the recent OH guidance, the claimant was not supposed to be working overtime. The claimant's position was that the majority of the work had been done before the supervision meeting on 3 November when Ms O'Hanlon had given her that instruction, and the remainder of the work was in finishing off the report in question.

86. On 15 December 2022 the claimant completed a report she had been working on for some time. She felt she was not given due recognition for it. The claimant raised this and the issue with her overtime claim with Ms Swift on 22

December 2022 and the two met the next day. The claimant believed she had worked 44 extra hours at the request of Ms O'Hanlon. Ms Swift explained that it would be a challenge to pay her for that given budgetary restrictions, but she could be given some time off in lieu. The claimant was content with that at the time, although as part of her claim said that she had been unfavourably treated compared with other colleagues who had been paid for overtime. She took the equivalent time off in January 2023 which, combined with some accrued annual leave, took her up to her last day of service.

January and February 2023

10 87. On 12 January 2023 the claimant submitted her resignation with notice. This was timed so that she would finish working on Sunday 12 February 2023, immediately before beginning her new role with the Care Inspectorate. As her secondment to Central Services was due to end on 10 February, a Friday, she would not return to her substantive post before leaving. There was no email or letter in the bundle which contained the claimant's formal intimation of resignation, and it appeared that the respondent's practice is for employees to submit that via an online 'Myself' portal. The claimant liaised with Ms Wilson by email in the days before to ensure she submitted her resignation properly and was treated as leaving on the day she intended [126-127]. She also wanted to understand exactly how much annual leave she would have accrued, so that she could use it before she left. The exchange was amicable.

15 88. She did little or no work after this date, using up the time off in lieu she had been granted and accrued annual leave.

20 89. The claimant said in evidence, both orally and in her chronology that she could not accept the prospect of returning to her substantive post when her temporary secondment ended. She did not think that her health would be safeguarded and felt that her relationship with Ms O'Hanlon had broken down. She said that the demands of her role at that time compared with when she began it eight years earlier were different and greater. Realistically, she would have known by around 22 November 2022 – a week into her secondment to

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Central Services – that she would be taking up the Care Commission offer and not returning to her SSW role.

- 5 90. On 8 February 2023 the claimant was emailed a document bearing to be the terms of a temporary contract from the respondent's People Operations department. This was sent in error as the claimant's secondment did not warrant a new contract. She should have been sent a letter confirming the return date to her substantive post instead. The claimant was feeling vulnerable and became suspicious about why it had been sent to her. She wondered whether it had been done in attempt to avoid disclosing the departure of a permanent employee when she left, or to deny her an exit interview. Neither was the case. She believed that she was being unfairly treated compared with a non-disabled colleague, but she was not. She suffered no disadvantage. The uncertainty she felt is accepted to be genuine, but it was based on a simple administrative error. She spoke to a trade union contact within a few days of receiving the contract and they confirmed that it had been sent to her by mistake.
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- 20 91. The claimant's last day of service with the respondent was on Sunday 12 February 2023. Immediately before that she used up some time off in lieu she had been granted, and so was not working. She began her new post with the Care Inspectorate the following day.
- 25 92. Ms Swift had been prepared to negotiate an extension to the secondment to Central Services had it not been known early on that the claimant would be leaving at the end of its original duration.
- 30 93. The claimant started working as a Complaints Inspector with the Care Inspectorate on 13 February 2023. She has been able to cope with the demands of the role and maintain full attendance.
94. Ms Swift wrote a letter to the claimant on 13 February 2023, apologising for not seeing the claimant in person the week before, as the claimant was using up annual leave and time off in lieu, and wishing her well in her new role. She undertook to look into where things were with the claimant's SAR. She emailed a number of colleagues that day to do so.

95. The Care Inspectorate and the respondent are treated as 'affiliated employers' of each other in relation to certain matters. One product of that is that an employee leaving one to join the other will be treated as having their continuous service preserved. The claimant was therefore treated as having
5 continuous service dating back to 1993/1994.

Grievance

96. On 10 February 2023 the claimant submitted a written grievance to the respondent via email [598-608]. Not all of the points raised in the grievance are matters raised in support of her current claim.

10 97. Mr Gerry Ranachan, Senior Education & Families Manager (Social Work) Justice was appointed to consider the claimant's grievance. The claimant attended a grievance meeting on 29 March 2023, by which time her employment with the respondent had ended. She had a representative with her named Beth Kinnell from the SASW trade union.

15 98. The grievance outcome was issued by letter from Mr Ranachan dated 21 July 2023 [609-615].

Subject Access Request

99. The respondent had been replying to the SAR which the claimant had made in September 2022 in a piecemeal fashion, owing to the volume of information
20 she had requested. This continued after her resignation and throughout 2023. The claimant was still of the belief that the respondent had not fully responded to her SAR by the time of her tribunal hearing.

100. The claimant complained of a lack of effort or priority given in responding to her SAR, and believed this was an act of direct discrimination based on
25 disability. There was no evidence to support that this was the case. The claimant herself knew that data subject access requests could take a long time to reply to and were normally undertaken by employees with other substantive roles in the time they could find. She would also have appreciated how extensive her own SAR was in scope. The tribunal accepted that the task
30 was a large one. Whilst it might always be said that greater priority could have

been given to it in order to complete it sooner, the claimant's disability was not a factor.

Closing submissions

101. Following the hearing of evidence the parties provided closing submissions.
5 They each provided a written note in advance and were given an opportunity to emphasise parts of their note orally, and to comment on each other's submissions.
102. As the claimant's note of submissions ran to 60 pages and the respondent's note extended to 45, they are not referred to in detail in this judgment. The
10 tribunal did however consider them in reaching its decision, and they are drawn upon in the section of the judgment which follows. The parties are thanked for the time and care applied to preparing their notes.
103. The tribunal noted the way that the claimant had summarised her claim in the
15 second case management PH held in preparation for the final hearing. This was the hearing before Judge MacLean. Whilst this does not absolutely define or limit the scope of her various complaints, it is important that any respondent has fair notice of the case it has to respond to, so that it can locate documents and ensure the attendance of witnesses who are relevant to those issues.
104. The claimant confirmed that the alleged disability to be relied on was her GH
20 condition. She said this physically impaired her, causing abdominal and joint pain, and lethargy. The joint pain occurred particularly in her neck and fingers, and abdominal pain caused by bloating occurred especially after sitting for prolonged periods.
105. In relation to her claim of **discrimination arising from disability** the claimant
25 alleged that the respondent treated her unfavourably by placing unreasonable working demands upon her, failing to provide adequate supervisory support, failing to provide her with her personal information, failing to resolve workplace issues, requiring her to return to her substantive post after a temporary transfer to other duties, and failing to provide TOIL or overtime as
30 earned.

106. She said that the things arising in consequence of her disability were (i) lethargy and tiredness, and (ii) pain, predominantly in her joints and abdomen, which were exacerbated by stress. These made it more difficult to do her job.
107. Turning to her claim of **failure to make reasonable adjustments**, she was
5 unable at the time to say precisely what provision, criterion or practice (PCP), physical feature of her workplace, or absence of an auxiliary aid was putting her at a disadvantage by comparison with non-disabled people. This, along with the other aspects of her reasonable adjustments claim, was developed in the course of the evidence in this full hearing, addressed in her closing
10 submissions, and dealt with below.
108. For her complaint of **unfair constructive dismissal**, to establish a breach of her contract she said that the respondent had breached the obligation to maintain mutual trust and confidence rather than breaching any express term of her contract, and relied upon the treatment said to be unfavourable under
15 her claim of discrimination arising from disability, as above. She argues that she resigned sufficiently promptly in response to that treatment.

Discussion and decision

Disability status

109. The claimant brought two types of complaint relating to disability status. The
20 respondent did not accept that the claimant was disabled in the sense required, i.e. by fulfilling the requirements of section 6 of EqA.
110. The legal question to be determined was whether the claimant was a disabled person at the material time for the purposes of her claim, being [2019 onwards].
- 25 111. As is made clear by the Employment Appeal Tribunal in **Goodwin v Patent Office [1999] IRLR 4**, an employment tribunal should approach the four key questions relating to disability status in order. The questions are:
- a. Does the claimant have a physical or mental impairment;

- b. Does the impairment have an adverse effect on their ability to carry out normal day-to-day activities;
- c. Is that effect substantial; and
- d. Is that effect long-term?

5 112. It was later added in *J v DLA Piper UK LLP UKEAT/0263/09* that it can in some cases be helpful to consider the effect of an alleged impairment before deciding whether there is an impairment. This may be so particularly in cases involving a claimed mental impairment which is disputed.

10 113. The onus is on the claimant to establish that each factor was present at the material time, namely from 2019 onwards. She submits that she has met that requirement.

15 114. The respondent accepted that GH caused the claimant a degree of physical impairment, and that being a lifelong condition it would do so with long-term effect. It did not accept that the effect of the impairment had a substantial effect on the claimant's ability to carry out normal day to day activities. This is because, despite the range of evidence about her health and functionality, from medical reports to her own evidence, both orally and in her impact statement, it was not possible to assign any particular physical impairment or limitation to GH specifically, as opposed to another condition (such as IBS) or factor, or combination of them.

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25 115. In its submissions, the respondent recognised that the question of whether a medical condition qualifies as a disability should be considered based on the effects of the condition in the absence of any medication or other measures used to treat it. In relation to that, it was noted that, save in the weeks immediately following her GH diagnosis when she had to have blood taken weekly, the only treatment to bring the condition under control was for her to donate blood on a quarterly basis. The tribunal found, however, that it was an oversimplification for the respondent to say that the only effect described by the claimant if that were not to happen was that she was exposed to an increased risk of cancer. The claimant also gave evidence about the gradual

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build-up of other symptoms as her iron levels increased, which were alleviated immediately after donation. Those included more severe joint pain and restricted mobility of her limbs. She also said in evidence, unchallenged, that she had been advised that unchecked excessive iron levels would lead to organ failure. Clearly therefore, without the required treatment, even if only four times per year, the claimant would have been very severely affected.

116. The tribunal therefore concluded that GH was a disability for the claimant. It was, or caused, a physical impairment, namely joint pain, restricted mobility and reduced strength and functionality. The condition had a long-term effect, and without periodic blood donation would result in the deterioration of her organs. That would cause a substantial adverse effect on her ability to carry out normal day to day activities.

117. The respondent made a separate point, that the abdominal bloating and discomfort the claimant experienced was not proven to be a symptom of GH, and was just as likely, if not more so, to have been caused by IBS. In particular the claimant's medical records were cited, in which the claimant's treating specialist expressed the view at least twice that abdominal pain was not caused by GH, and the OH report of 14 October 2022, in which IBS was recognised to have the potential to *'cause feelings of bloating and discomfort'*. The tribunal concluded that this point was well founded. The onus was on the claimant to establish what were the effects of the condition she relied on as being a disability. The most reliable evidence suggested that abdominal bloating or discomfort was not a symptom of GH.

118. The tribunal arrived at the view therefore that the claimant could rely on GH as a disability, but only to the extent that she could establish what its effects were when framing her legal complaints. The tribunal accepted that those were fatigue, joint pain and physical weakness, and vulnerability to anxiety. Those are consistent with, and supported by, medical opinion.

Failure to make reasonable adjustments

119. The claimant had been unable at the second PH to explain what PCP, physical feature of her workplace or absence of an auxiliary aid put her at a disadvantage compared with colleagues who are not disabled.
- 5 120. In the course of this hearing the issue was refined into three matters:
- a. The redeployment of a particular social worker into the claimant's team in 2020;
 - b. The demands of the claimant's role as a whole – taking in the variety of different duties, their volume in terms of the time and energy
10 required to deal with them, and the unpredictable and at times stressful nature of them; and
 - c. The respondent's policy - in essence the conditions and restrictions in place - regarding redeployment to another role.
121. The claimant asserted that the respondent knew, or ought to have known, that
15 each of those PCPs put her at a disadvantage compared to another SSW who was not disabled. This the respondent denied. It also denied that there was any such disadvantage at all.
122. The respondent's fall-back position was that if the duty was triggered, it was satisfied by the respondent making what adjustments it reasonably could.
- 20 123. The tribunal considered the PCPs which the claimant said she was relying on. The first fell within the events which were considered too historic to be validly decided, not least because it was a free-standing incident. In any event, on its merits it could not amount to a provision, criterion or practice as it was a one-off management decision. As the tribunal understood the matter, the
25 transfer of the individual into the claimant's team caused her difficulty on a personal level because that person had discussed with a previous manager making a complaint against the claimant, which the claimant believed would have been maliciously fabricated. The claimant said in evidence that she had concerns about some of the individual's practices and her overall level of

professionalism, but was prepared to work with her. Further, the tribunal could not see how the claimant would have been placed at a disadvantage by it compared to non-disabled employees, or how the respondent could have known that such disadvantage existed if it had done.

5 124. The second PCP relied on was capable of being described as a provision, criterion or practice and it was not historic, as it applied up to the end of the claimant's employment. It was also potentially possible that the claimant could establish that the demands of the role put her at a disadvantage compared to non-disabled employees, and possibly a substantial one. For example, it would conceivably be more difficult for her to cope with the intellectual and emotional demands of the job, as well as the amount of time the work required, when she was in pain, or fatigued, or experiencing stress or anxiety.

10 125. However, the picture in reality was more complicated. The respondent understood that the claimant's GH had been brought under control within some months of its diagnosis in 2019. The OH report obtained on 19 November 2021 referred to the effects of removal of the claimant's gall bladder, her IBS and her GH. In relation to the latter it was said that the condition had been under control. More comment was devoted to the other two conditions which appeared to have ongoing effects. The OH report dated 15 14 October 2022 again mentions GH, and notes the reported symptoms to be pain in the hands, shoulders and neck which can be made worse by prolonged typing. It also reports that the claimant believed the condition might contribute to the pain in her abdomen caused by IBS. By this time the focus of the report is the key issue affecting the claimant, namely situational work-related stress, related to the pressures of the role and the hours she is working due to reduced staffing numbers. This was consistent with what the claimant was saying in her supervision meetings throughout the second half of 2022.

20 126. Looking at the evidence therefore, the tribunal did not consider that the claimant had proven that the demands of her role put her at a disadvantage compared to a colleague who did not have GH. A comparator would be someone else performing the role, meeting the same demands, who

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experienced similar symptoms caused by GM, but who did not have the condition and was not disabled.

127. In any event, the tribunal also reached the view that had the claimant been put at a disadvantage by GH in a way that did not, or would not, affect a non-disabled person, then the respondent did not know that and could not reasonably be expected to know it. This goes back to the evidence it had before it over the period since the claimant's diagnosis. That suggested that the condition was under control and having little impact on her ability to do her job. The only clear work-related impact was that the claimant could have difficulty typing or doing similar desk-related work for prolonged periods, and could struggle to carry bulky equipment. Those circumstances could be shared with non-disabled colleagues, and there were options available to all to deal with them. The real issue that the claimant was experiencing and raising was work-related stress and that was simply a product of the fact that the role of SSW is inherently demanding, and had become more so since the Covid pandemic.
128. Therefore, the tribunal believed that the demands of the role, whilst a significant and very real issue for the claimant, were not a PCP according to the requirements of section 20 of the EqA.
129. The third alleged PCP was the respondent's approach to redeployment. That is, the respondent would not redeploy her into another vacant role without competition.
130. The tribunal accepted that this could by its nature be a PCP and that it was sufficiently current to be relevant to her claim, as she wished to be redeployed all throughout 2022 until the point in December when she received an unconditional offer of an external role from the Care Commission.
131. However, again it could not be seen how the respondent's policy put the claimant at a disadvantage as compared with another SSW who was challenged by the demands of their role, but not disabled. The same rules would have been applied to both. The Supporting Attendance at Work Policy states the respondent's approach to be that *"redemption will only be*

considered where all adjustment options have been exhausted and the employee remains unable to carry out the duties of their role” [647]. The OH report obtained in October 2022 did not recommend redeployment. It said that the claimant remained able to carry out her role with some suggested adjustments.

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132. Similarly, it did not appear that the claimant was put at a disadvantage because of her disability at all. She wished to be redeployed because of the demands of her role and the effect they were having on her health, but those were not linked to her disability.

10 133. Finally, if the claimant was put at such a disadvantage, the respondent could not reasonably have been expected to know that was the case. Again the information it had was that she was suffering from situational stress, and any physical symptoms reported were not obviously connected to her disability.

15 134. As the claimant was unable to establish that (a) she was placed at a particular disadvantage by a PCP as compared with non-disabled persons and (b) that the respondent knew or ought to have known about that advantage, her complaint of failure to make reasonable adjustments could go no further.

20 135. For completeness, the tribunal considered whether, had the claimant overcome these evidential hurdles, there were any reasonable adjustments which the respondents should have made.

25 136. The tribunal noted that the claimant did not put forward emphatically any suggestions for adjustments. More than once when asked, she said that the respondent should have 'looked at' her diary or her workload to gain a better understanding of what her day-to-day demands were like. This would not have been an adjustment in itself – only a specific step such as taking away a particular responsibility, or reducing the number of social workers in her team would count as an adjustment. In any event, the respondent, that is to say Ms O'Hanlon and to a lesser extent Ms Swift, knew what the demands of the claimant's role were, both generally and through regular discussion with the claimant in supervision and other meetings.

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137. The claimant did not think that any of her particular responsibilities which formed part of her SSW role should have been taken away. The tribunal reached the view that the claimant liked to improve her knowledge, expertise and qualifications as her career progressed, and wanted to experience new challenges. She liked to be involved in a variety of work areas, and have responsibility and expertise within them, but at times the overall volume of those items could be too much to manage. She operated to high standards, some self-imposed, and found it difficult to let things be taken and given to other people. She had a strong sense of responsibility and did not wish to do things inadequately or let people down.
138. The claimant did not at any time identify specific aspects of her role which she thought could be taken away. Her core responsibilities were generally no greater than any of the other SSWs in the team, and by around September 2022 they were slightly lighter.
139. Ms Wilson's view was that the claimant's workload and the demands upon her were similar to those of other SSWs. Whilst this does not dictate whether or not adjustments should reasonably have been made for the claimant, she believed that by taking elements away from the claimant's role there would have to be an equivalent increase in the demands on adjacent SSWs, which would make the adjustments unreasonable.
140. Based on the evidence, the tribunal came to the view that, whilst some adjustments could be made to the claimant's workload, the role was by its nature demanding and at times stressful. In that respect, there was a limit to what could be done for the claimant within the constraints which applied. As Ms O'Hanlon pointed out, to take something away from the claimant was to increase the workload of one of her colleagues.
141. As to the adjustments which could have been made, some peripheral responsibilities were taken away from the claimant, and a social worker was moved from her team to another which gave her fewer supervisory responsibilities and a reduced overall caseload. It appeared that the claimant enjoyed the additional responsibilities she had, which is understandable given

that she was experienced and longstanding in her area. The difficulty was that it was simply not feasible to remove her core responsibilities as those were key to the working of the team.

5 142. Finally, the tribunal noted what other measures the respondent did take. The claimant was encouraged to take comfort breaks, she could adjust her start and finish times, and work from home for some of her time. She was offered counselling but decided not to pursue that. Similarly she did not pursue the option of a stress risk assessment, as she believed it would only tell her what she already knew, albeit that it may have given the respondent more insight.
10 And ultimately she was offered the placement at Central Office, albeit on a temporary basis. This was not a substantive role and it was not within the power of Ms Swift to create one. The best she could do was seek permission to extend it if necessary, but by the claimant securing her role with the Care Commission this turned out not to be necessary.

15 143. The tribunal concluded that there were no further identifiable reasonable adjustments which the respondent could have made, had the obligation arisen.

Discrimination arising from disability

20 144. The claimant had stipulated that the 'something' arising in consequence of her disability was that she was lethargic and that she experienced pain in her joints and abdomen. As discussed above, at best her disability heightened the abdominal pain she suffered from, but it was not established as the sole cause.

25 145. Following on from this, the claimant argued that she suffered detrimental treatment because of those effects, in the form of:

- a. placing unreasonable demands on her – a reference to her workload,
- b. failing to provide adequate supervisory support,
- c. failing to provide her with personal information (a reference to the respondent's way of dealing with her data subject access request),

- d. failing to resolve workplace issues,
- e. requiring her to return to her substantive post (following the temporary transfer to Central Services) and
- f. failing to provide TOIL or overtime.

5 146. The tribunal considered each of these allegations in turn. It accepted that in
each case, what was set out could be described as a detriment. Before
considering whether each assertion could be proven on the evidence brought
forward, it looked at whether any of them, if established, could realistically
10 have occurred because of the consequences of her disability as she stated
them. It could not see how that could be established. If any of the alleged
detriments (a) to (f) did occur, the evidence suggested most strongly that they
were simply things that happened generally, and would or could apply to any
SSW, not the claimant because of the effects of her disability. As an example,
15 allegation (a) was that unreasonable demands were placed on the claimant
by virtue of her role. Were that true, it was not because of the consequences
of her disability. It was just the nature of the role itself. It would have been the
same irrespective of whether the claimant was disabled, and whatever the
effects of her condition were.

20 147. In any event, for completeness, the tribunal considered whether any of the
allegations were established by the evidence. It found as follows:

25 a. The claimant's role was demanding and at times those demands
approached the limit of what could be considered reasonable.
However, that was particular to the role rather than the claimant
herself. The only real aspects personal to the claimant was that she
had additional responsibilities linked to her seniority which she readily
accepted, she worked to a compressed hours pattern which gave her
longer working days, and over time she had taken on the additional
element of studying for a degree. It could not be said that the
respondent was subjecting her to a detriment.

- 5 b. The tribunal did not accept that there was a lack of supervisory support. There were regular meetings as well as many other opportunities for the claimant to raise any concerns about a lack of support. There was nothing obvious that the respondent could do given the structure of the team, the nature of the role and the resources it had available.
- 10 c. To say that the respondent failed (or didn't fail) to provide her with her personal information would be an oversimplification. The claimant made a data subject access request in September 2022 which was extensive, covering nearly thirty years of service across a number of localities, in which many paper rather than electronic records had been kept. The respondent provided her with materials in tranches as they became available. It appeared realistic that they would not have been able to provide every piece of relevant data within the normal
- 15 timescales for such a request.
- 20 d. The respondent considered the allegation of failure to resolve workplace issues. This was taken to refer to the claimant's relationships with various colleagues at different times. These were all within the historic time period which the tribunal found to be separate from the events which were at the heart of the claim.
- 25 e. Requiring the claimant to return to her substantive post was something that the respondent would have done, had she not secured her Care Commission role. To the extent this was a detriment, it was not imposed because of the consequences of the claimant's disability. The secondment was described as temporary, could only ever be such given the limits to the powers that Ms Swift had, and the claimant accepted that. Nothing more could have been done in any realistic alternative scenario.
- 30 f. In relation to the allegation of failure to pay TOIL, the claimant took issue with the respondent's policy of limiting TOIL carried forward from month to month to seven hours. But it was just that – a policy, applied

to all employees equally. She was not treated any differently. Regarding overtime, again the respondent was simply following its policy of only paying for overtime carried out within a recent period, and as approved by a manager.

- 5 148. The tribunal concluded therefore that wherever an allegation described as a detriment had been established, it did not occur because of anything arising in consequence of her disability.

Constructive unfair dismissal

- 10 149. The claimant relied on essentially the same allegations in this complaint as she did in relation to her complaint of discrimination arising from disability.

150. The tribunal's findings in relation to each of those allegations, (a) to (f), are set out above in paragraph 147.

- 15 151. The tribunal did not accept that the evidence supported an assertion that the claimant decided to resign because of one or more of the allegations (a) to (f) which, individually or together involved a breach of mutual trust and confidence. In particular:

- a. The demands of the role were not a breach of mutual trust and confidence, and had been relatively constant since at least 2021;
- 20 b. There was no lack of supervisory support, and again the practice followed had been essentially the same for some time before the claimant resigned;
- c. The respondent did not fail to provide her with personal information as alleged, and there was no evidence of a positive connection with her resignation;
- 25 d. The time gap between the workplace issues the claimant referred to and her resignation date was too large to realistically link them as cause and effect;

- e. The fact that the secondment to Central Services would only be temporary was not a contributor to the claimant's resignation decision. She had applied for the Care Commission role before the arrangement was even devised, and it was all but certain that she would be successful within days of the secondment beginning;
- f. In relation to TOIL and overtime, the respondent simply followed its established processes. Again, these became an issue for the claimant after she had applied for the Care Commission role. Her mind was already set on leaving if offered the job.
- 10 152. Turning to the reason why the claimant resigned, the tribunal concluded that the most likely explanation was that she was successful in obtaining a new role outside of the respondent. This was the immediate reason, hence the fact and timing of her notice being given on 12 January 2023 to allow her contract with the respondent to end immediately before her new one began.
- 15 153. The tribunal considered whether there was a more fundamental reason for the claimant seeking external roles, and whether that could be said to be a response to any breach of mutual trust and confidence by the respondent. The claimant had been considering seeking other roles since at least the summer of 2021, before her surgery in October of that year, and stepped up her efforts following her return in February 2022. It appeared to the tribunal that she found the role more demanding of her, for the two broad reasons that
- 20 her efforts following her return in February 2022. It appeared to the tribunal that she found the role more demanding of her, for the two broad reasons that it had become more difficult in itself since the Covid pandemic, and because she was experiencing pain and discomfort after her surgery.
154. The tribunal did not need to go on to decide whether the claimant resigned promptly in response to a material breach, whether that was one which was free-standing or a last straw. The claimant tendered her resignation on 12 January 2023 but she had decided to leave earlier than that, hence her application to the Care Commission. The events (a) to (f) had either existed or been present for some time before, or post-dated her decision.
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- 30 155. For the above reasons the claimant was unable to prove the necessary elements of a claim of constructive dismissal.

Conclusions

156. In relation to each of the complaints of failure to make reasonable adjustments, discrimination arising from disability and unfair constructive dismissal the onus rested initially on the claimant to prove certain primary facts. On the evidence provided to the tribunal she was unable to do so.

157. There was therefore no need to consider the question of any financial losses the claimant may have sustained, or remedy generally.

158. Each of the complaints is unsuccessful and therefore dismissed.

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B Campbell

Employment Judge

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3 October 2024

Date

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Date sent to parties **8 October 2024**
