



EMPLOYMENT TRIBUNALS

Claimant: Ms K. Truelove

Respondent: Salford Primary Care Together CIC

Heard at: Manchester

On: 23 and 24 June 2025

Before: Employment Judge Leach, Mr Q Colborn; Dr B Tirohl

Representatives:

For the claimant: In person

For the respondent: Mr Ali (counsel)

JUDGMENT having been sent to the parties on 28 July 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction

1. The claimant complains that her dismissal by the respondent amounted to a breach of section 13 Equality Act 2010 (direct discrimination) and/or section 15 Equality Act 2010 (discriminating arising). The respondent accepts that the claimant was dismissed but denies that it was an act of discrimination.

The Issues

2. The issues were identified at case management stage and the parties provided with a draft List of Issues. In April 2025, the respondent (following a change in legal representation) presented an amended response to the case. The claimant raised some objections to that, but that amendment was permitted by an Employment Judge deciding the application on the papers.

3. That amended response led to the respondent making a number of concessions. These were set out in an opening note provided by Mr Ali and enabled the issues for determination to be simplified. It included a concession that the claimant at all relevant times, had a disability within the definition at section 6 Equality Act 2010.

4. The claimant had included a complaint of wrongful dismissal, a claim for notice pay. This claim was withdrawn by the claimant part way through the hearing.
5. The amended list is annexed to this judgment and is reflected in the discussion and conclusions section below .

This Hearing

6. An order changing the names of both parties was made at the beginning of this hearing.
7. Having read into the case on the morning of day one, we heard evidence from the following:-
 - a. The claimant
 - b. Caroline Rand (CR) Head of IT at NHS Greater Manchester.
 - c. Jackie Cain (JC) HR Manager
 - d. April Hall (A H) who oversaw the claimant's induction.
8. Both parties then had an opportunity to make submissions. We were able to consider and reach a decision which we provided at the end of day 2.
9. We were given a paginated bundle of documents. References below to page numbers are references to this bundle.

Findings of Fact

10. The claimant was recruited by the respondent as an IT Trainer and Digital Facilitator.
11. The respondent is a Community Interest Company (CIC) that provides services as a hub to various GP practices in the City of Salford. It is a not-for-profit organisation that is funded by public funds and, although it is not an NHS Trust it is clearly regarded as part of the NHS family; its employees, for example, contributing to the NHS pension scheme.

Commencement of Employment

12. The start of the claimant's employment was initially delayed. The claimant was due to begin employment on 2 October 2023 but she had been waiting for a date for a surgical procedure and had been given a date that was close to the intended start date. She contacted the respondent to let them know this and agreed with Holly Walsh of the respondent to delay the start date to 30 October 2024.
13. Unfortunately the claimant's operation was delayed. Her employment with the respondent began but the claimant was then soon required to take time away from work for that operation and a period of recovery following the operation. The claimant began a period of sickness absence on 7 November, returning on Wednesday 15 November.

14. The claimant has a condition called endometriosis. It is a long-term chronic condition. The respondent accepts that the claimant has this long-term condition and that it amounts to a disability for the purposes of the Equality Act 2010. That is one concession that was made on submission of the amended grounds in April. The claimant's abdominal surgery in November was related to the endometriosis. The respondent became aware of the claimant's disability well before dismissal. There is some dispute about exactly when but what is relevant and sufficient is that the individuals within the respondent that took steps relating to the claimant were aware of the claimant's condition by 15 November 2023.

15. A return-to-work interview took place on 15 November and it was agreed that the claimant would work from home until 17 November. The claimant then asked for a wireless mouse and keyboard to help with home working due to limited space at her home. CR asked the respondent's IT Department about this as she was aware the respondent had in place restrictions about what could and could not connect wirelessly to their devices and systems. On 16 November the IT Department did indeed express caution about ordering the equipment. They had passed the query (including details of the type of devices being considered) to an IT Security adviser who had identified some security risks with the intended devices. On 17 November 2023 the respondent's IT manager suggested a call the following week to discuss solutions.

Time off for bereavement

16. On Friday 17 November, (one working day after the claimant's return to work from her operation and time off for recovery) the claimant became absent again. The claimant's best friend's dad had died and on 17 November, the claimant informed CR by Teams message that she would not be coming into work. The claimant did not attend work either on the Monday 20 or Tuesday 21 November. She sent a message on the morning of 20 November to say that she would not be in.

17. It is clear though that the claimant returned to work on 23 November. There was a text exchange between CR and A H where CR confirms that the claimant was fully back in work and was going to speak to A H about resuming the induction process following.

23/11/2023 11.30 - CR hi so Katy is fully back, I asked her to speak to you about resuming induction and any work you have for her. Thanks

23/11/2023 11:32 A H Great thanks Caroline. I've already spoken to Sharon and asked for the visits to be resumed for the tasks with Ailisha and Katy as originally planned."

18. We find that the respondent was very much hoping and expecting that the induction process that the claimant had really barely begun would be resumed, the claimant's induction process having been disrupted by the absences.

The induction process (or expected induction)

19. On commencement of employment the claimant was provided with an initial two week or ten-day induction plan, and much of that plan was dependent on being able to arrange visits to various GP surgeries that the respondent provided assistance to. In

addition, the claimant was required to work through online presentations and modules. Some of those modules were categorised as mandatory training and they included issues such as safeguarding, HR policies and lifesaving first aid. There are about 30 presentations and/or modules that the claimant was required to undertake.

20. It is apparent from the evidence that arranging meetings with GP surgeries was not always easy and we have seen an example of a surgery cancelling an appointment with little notice and therefore needing to rearrange that appointment (page 400).

21. As of 23 November (the date that it was hoped that the induction would resume and the day before the claimant resigned) the claimant still had twelve mandatory training modules to complete.

22. The respondent's intention was to provide a schedule for another two-week period once the initial ten days had been completed and after that a four-week timetable would be provided. In all, the induction and training process was expected to take about two months. Some of the respondent's witnesses in this case have talked about a longer induction period but looking at the contemporaneous documents it seems to us that two months was a reasonable estimate at the time of the length of the training and induction period.

23. We note on the claimant's return from her absence following the death of her friend's dad that CR sent a message to A H as noted above. It is clear to us that the intention was on the respondent's part to resume the activities.

The claimant's resignation.

24. The claimant had been asked to attend a training session on 24 November 2023 but she did not join. A H messaged the claimant to ask whether everything was okay, and the claimant replied at 9:24 on that morning to say that the laptop (meaning a laptop that the respondent had provided for her to use) was failing to boot again. The claimant also complained that Mrs Hall had put in a Teams group chat a comment as follows "*Hi Katy is everything alright? Are you okay?*" noting that the claimant had been able to access that Teams group chat.

25. The claimant also put messages in the Teams group chat that she had not been able to make contact with IT support. We have seen IT support logs that show that an IT engineer had been trying to make contact with the claimant and had been unable to. That was logged at 11:10 on 24 November. We accept the evidence of A H that she was not aware before the claimant's complaints on 24 November that the claimant was having issues with the laptop. That is supported by an e-mail timed at 11:46 on 24 November 2013 (page 212) as well as the IT support team's log.

26. However, the claimant gave notice of resignation at 10:52 on the morning of 24 November (page 211). The email is addressed to 2 employees, CR and the respondent's HR manager (JC).

"Dear Jackie/ Caroline,

It's is with a heavy heart that I hereby give you formal notification of my 12 weeks' notice to resign as Digital Facilitator/ Trainer.

*Kind regards
Katy Crawley*

(Katy Crawley was the claimant's name at that time)

27. CR does not work on Fridays and so did not receive the email straight away.

28. In keeping with her contractual obligations the claimant gave 12 weeks' notice. Even at an early stage of the employment the terms of employment required her to provide at least twelve weeks' notice of termination and the employer to provide four weeks. The claimant did not attempt to continue working on 24 November. The day was recorded by the respondent (understandably) as unauthorised absence.

29. On Sunday 26 November the claimant sent an e-mail to CR to say that she would not be in work on 27 November because she had a poorly tummy and that she hoped they would be able to catch up later in the week once she was feeling brighter.

30. On Tuesday 28 November the claimant sent an e-mail to say she was still not any better. CR replied to say she was sorry to hear that and to ask the claimant to let her know when she felt up to a conversation. The claimant confirmed she would, and also said, *"In the meantime, can you let me know what the next steps are in relation to my resignation made on Friday."*

31. Pausing here, we have considered that comment *"Let me know what the next steps are"*. The claimant's evidence at this hearing was that comment indicated that she wanted to discuss and possibly consider retracting her resignation. There is no indication as of 28 November 2023 (either from this comment or otherwise) that the claimant was interested in retracting/ rethinking her resignation. The respondent did not regard it as such either and considered the comment raised a question about the administrative process (i.e. what was the next thing that was going to happen in putting into effect the resignation).

32. On 28 November 2023, CR and JC corresponded with each other.

CR to JC " hi I was due to see Katy face to face today but she is off sick again. I was going to explore why she has resigned. If she still wants to go ahead (I was a bit concerned she had been ill and had a bereavement so may want to reconsider), then can we negotiate on leave period? Contract states 12 weeks, but given her first 2 months would have been training really, it will be difficult to use her beneficially. I will try and speak with her later, she has a hospital follow up later on, so may leave it until tomorrow.

JC to CR: Hi Caroline can you hold off speaking to her. We're getting advice from Bright HR as we would like to terminate her contract with immediate effect. If this is not an option we would most certainly agree to a shorter notice period. I will let you know.

Respondent's reaction to the claimant's resignation

33. CR spoke with the claimant on 30 November. The claimant's sickness absence was continuing. One of the reasons that CR wanted to speak with the claimant was to ask whether she wanted to reconsider her decision to resign (as indicated in her email of 28 November 2023 - above). We find that in that discussion the claimant told CR that she was sure about her decision. In other words, we accept what CR says on the point. But even if we are wrong about that, that meeting was an opportunity (if the claimant wanted the opportunity) to ask to retract the resignation, even to raise some uncertainty about her decision. But she did not, and further we note that the claimant did go on to confirm in the later meeting of 5 December – see below – that the role was not for her. The claimant has put forward a position in this hearing that she was ready to in some way negotiate or to retract that resignation, but the contemporaneous evidence does not point to that at all.

34. CR also told the claimant that she wanted to meet with her face-to-face. They agreed to meet on 5 December 2023.

35. By the date of that meeting, the respondent had taken advice and made the decision they wanted to dismiss the claimant, even though she was at that stage serving notice following her resignation. We have noted above, the difference in notice periods under the terms of the employment contract.

36. Given those differences in notice periods, dismissal would bring the termination date forward. We are satisfied that the respondent saw no point in continuing the employment any longer than it needed to: the induction was still at an early stage, particularly given the impact of absences on the commencement of employment and on the induction process. Whilst the claimant had been by then been employed for a month, or just over a month, she had only in fact attended work for about ten or eleven days.

37. Whilst the respondent's decision was understandable, they did adopt a clumsy process to bring that decision into effect as we set out below.

Meeting on 5 December 2023.

38. CR sent a message to the claimant on the morning of 5 December asking whether she was still okay to come in. The claimant was still at that stage absent due to sickness. She replied, *"Yes, of course, I have a frozen shoulder so I'm in agony but so long as there's no heavy lifting I should be fine lol"*.

39. CR had not written to the claimant to tell her what the meeting was about and by the time of the meeting the respondent had already decided that the claimant's employment should be ended. There was a pre prepared letter of dismissal ready to give to the claimant at the meeting.

40. The respondent decided to use the probationary review process as the method for dismissing the claimant. The claimant was therefore told at the beginning of the meeting, not before, that it was a probationary review meeting. Understandably, that took the claimant by surprise. Furthermore, whatever the claimant was able to say during the meeting (and she was given no advance notification that a probationary review meeting would take place) there was only to be one outcome: the claimant's dismissal.

41. The claimant was told in the meeting that she had not passed the probationary requirements and that is why her contract was to end. The reason given in the meeting and in the letter confirming the decision was that the claimant had not “reached the standards we require to demonstrate your suitability for the role.” It was, we find, a clumsy way to communicate a decision to dismiss the claimant even though we understand why the respondent had concluded that ongoing employment in these circumstances was pointless. The principal reason for the claimant’s dismissal was reflected in the exchange of emails on 28 November and noted at 32 above; in short, that ongoing employment in the circumstances was pointless.

42. The claimant had the presence of mind at the meeting to raise an issue about notice pay. She was provided with and read the dismissal letter, noting there was a reference to four weeks’ notice. As far as she was concerned, she provided, (because she had been obliged to) twelve weeks’ notice and there were still ten or so weeks of that notice period remaining.

43. The note of the meeting records CR’s response that the issue with the claimant being there for the full twelve weeks of her resignation notice period was that the first couple of months of that period would be taken up with training. We note here that there were just over ten weeks remaining and the claimant was still at that point absent due to sickness. Assuming that the couple of months was an accurate estimate of time for induction and training, there would be hardly any period (if any) of the claimant’s employment remaining following that training.

44. The claimant has intimated that the respondent was already considering the claimant’s dismissal before she handed in her resignation, even that the respondent had already decided to dismiss her. She does not rely on any evidence to support that position and we are satisfied that the evidence in fact indicates the contrary: the evidence indicates that those involved in managing the claimant were sympathetic about the absence for the surgical procedure and the absence for the bereavement. The evidence shows their intention to recommence the induction training following the claimant’s return from her absences and the expectation that her employment with the respondent would continue.

The Law

Direct Discrimination – section 13 Equality Act 2010 (“EqA”)

45. Section 13 states:

“A person (A) discriminates against another if, because of a protected characteristic, A treats B less favourably⁷ than A treats or would treat others.”

46. An important question for us is whether the claimant’s disability was an effective cause of the respondent’s treatment of the claimant. As was made clear in the case of **O’Neill v. St Thomas More Roman Catholic School [1996] IRLR 372** the relevant protected characteristic need not be the only cause of the treatment in question.

47. We also note the following:-

- a. the House of Lords in **Nagarajan v London Regional Transport [1999] ICR 877, HL**, held “discrimination may be on racial grounds even if it is not the sole ground for the decision.....If racial grounds or protected acts

had a significant influence on the outcome, discrimination is made out.”
(judgment of Lord Nicholls)

- b. Paragraph 3.11 of the EHRC Employment Code which states that *‘the characteristic needs to be a cause of the less favourable treatment, but does not need to be the only or even the main cause’*

48. Section 13 provides that direct discrimination occurs where an individual is treated “*less favourably*” than another. It is generally necessary therefore to identify a comparator who does not share the claimant’s protected characteristic, although claimants can rely on a hypothetical comparator (the term “or would treat others” within the wording of section 13 makes this clear).

49. Section 23(1) EqA requires that there is “*no material difference*” between the claimant’s position and his/her comparators position. Case law makes clear that the comparator’s circumstances do not have to be the same in all respects; rather they have to be the same (or nearly the same) in those circumstances which are relevant to the claimant’s claim. (see for example the decisions of the House of Lords in **Shamoon v. Chief Constable of the Royal Ulster Constabulary 2003 ICR 337** and **MacDonald v. MOD; Peace v. Mayfield School 2003 ICR 937**).

50. The judgment of the Court of Appeal in **Stockton on Tees Borough Council v. Aylott 2010 EWCA 910**, provides guidance on comparators in direct discrimination claims where disability is the protected characteristic relied on. This includes guidance that a hypothetical comparator is not required to be a “clone” of the claimant except for the protected characteristic (disability) although a Tribunal must attribute the same abilities and other relevant circumstances to the hypothetical comparator. (See particularly paras 38-50).

Discrimination arising – section 15 Equality Act 2010

s.15 EqA 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.*

51. Subsection 2 above does not apply to this case. The respondent now accepts it knew that the claimant had the disability.

52. In **Secretary of State for Justice and anr v Dunn UKEAT 0234/16** the Employment Appeal Tribunal (“EAT”) noted 4 findings to be made, for the claimant to succeed in a section 15 claim:-

- a. there must be *unfavourable treatment*;
- b. there must be *something* that arises in consequence of the claimant's disability;
- c. the unfavourable treatment must be *because of* (i.e. caused by) the something that arises in consequence of the disability; and
- d. the alleged discriminator cannot show that the unfavourable treatment is a proportionate *means of achieving a legitimate aim*.

53. In **Paisner v.NHS England (UKEAT/0137/15/LA)** the EAT provided guidance to Employment Tribunals when considering these claims which we summarise below.

- a. The Tribunal should decide what caused the treatment complained of – or what the reason for that treatment was.
- b. There may be more than one cause. The “something” might not be the sole or main cause but it must have a significant impact.
- c. Motives are irrelevant.
- d. The Tribunal should decide whether the/a cause is “*something arising in consequence of*” the claimant's disability. There could be a range of causal links under the expression “*something arising in consequence of...*”

54. When deciding whether a measure is proportionate in the context of the legitimate aim being pursued (s15(1)(b) EqA above) a tribunal must weigh the real needs of the employer against the discriminatory effect of the proposal. (see **DWP v. Boyers UKEAT/0282/19)**).

Burden of Proof

55. We are required to apply the burden of proof provisions under section 136_EqA when considering complaints raised under the EqA.

56. Section 136 states:

This section applies to any proceedings relating to a contravention of this Act.

(2) If there are any facts from which a court could decide in the absence of any other explanation, that a person (A) has contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection 2 does not apply if A shows that A did not contravene the provision.”

57. We have also considered the guidance contained in the Court of Appeal's decision

in **Wong v. Igen Limited [2005] EWCA 142**. This case concerned the test as set out in discrimination legislation that pre-dated the EqA but the guidance provided in there remains relevant. The annex to the judgment sets out guidance. (the amended Barton guidance)

58. Finally, on the issue of burden of proof, we are mindful of guidance from case law indicating that something more than less favourable treatment may be required in order to establish a prima facie case of discrimination; see for example **Madarassey v. Nomura International [2007] ICR 867**, where the following was noted in the judgment:

“The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.”

Discussions and conclusions

59. We record our conclusions and reasons against each relevant complaint and issue, noting that (1) the wrongful dismissal complaint has been withdrawn and (2) the respondent accepts that the claimant has a disability for the purposes of section 6 Equality Act 2010.

1. **Direct disability discrimination (Equality Act 2010 section 13)**

1.1 *What are the facts in relation to the following allegations:*

1.1.1 *It is not in dispute that the claimant was dismissed on 05 December 2023.*

1.2 *Has the claimant proven facts from which the Tribunal could conclude that in respect of dismissal the claimant was treated less favourably than someone in the same material circumstances without a disability was or would have been treated? The claimant relies on a hypothetical comparison.*

Response.

60. She has not. This is a case in which the claimant has not satisfied the first stage of the requirements of s136.

61. A hypothetical comparator is someone without a disability with the same or very similar absence record as the claimant, with the same or very similar length of service as the claimant, up to the same or very similar stage in their induction training and who had given notice of resignation. The evidence provided indicates that hypothetical comparator would have been treated in the same way as the claimant was treated. There is no evidence whatsoever that provides a contrary indication. Put another way, there are no facts provided from which we could conclude (in the absence of any other explanation) that the respondent directly discriminated against the claimant.

1.3 *If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of disability?*

1.4 *If so, has the respondent shown that there was no less favourable treatment because of disability?*

62. If we are wrong on our conclusion above, and the burden of proof does pass to the respondent to explain its actions then we are satisfied that it has. It has been clear to us that this really is a case that falls to be considered under section 15 Equality Act 2010, particularly in light of the respondent's admission that the claimant's absences were a reason (or part of the reason) for the decision to dismiss.

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

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

63. Yes. The respondent accepts that at all relevant times it had actual or constructive knowledge of the claimant's disability:

2.2 *If so, did the respondent treat the claimant unfavourably in any of the following alleged respects:*

2.2.1 *Dismissing her on 05 December 2023*

64. The respondent accepts that it dismissed her and that was unfavourable treatment.

2.3 *Did the following things arise in consequence of the claimant's disability:*

2.3.1 *The claimant's sickness absences between 07 and 10 November 2023, between 13 and 14 November 2023 and on 24 November 2023?*

65. We find that the absences between 7 November and 14 November did. The absence on 24 November did not

2.4 *Did the respondent dismiss the claimant because of those sickness absences?*

66. In part. We find that the main reason for the claimant's dismissal was the fact that she had given notice of resignation when she had been in employment for just under 4 weeks and, within that time, only been in the workplace for about half of the working days. See our findings at paragraph 41 above. The claimant's contract of employment obliged her to give 12 weeks' notice.

67. Had the contractual notice provisions (employer to employee and employee to employer) been equivalent, the respondent would probably not have found itself facing

this case As it was, those responsible for the operational activities at the respondent then had to deal with the difficult circumstances that the claimant's resignation and long notice period caused. They chose an option of bringing forward the termination date in accordance with the contractual terms.

As we make clear in our findings of fact, we find that the decision to bring forward the termination date was an understandable and sensible one; the way the respondent went about the dismissal was very clumsy.

2.5 *If so, can the respondent show that there was no unfavourable treatment because of something arising in consequence of disability?*

68. There was unfavourable treatment. The claimant lost about 6 weeks of a paid notice period.

2.6 *If not, was the treatment a proportionate means of achieving a legitimate aim?*

69. The respondent identified the legitimate aims it relies on in the further amended response.

a. avoiding the wasted costs which it would incur if it continued to employ the Claimant for the duration of the 12-week notice period she had served on the Respondent when she resigned (on the basis that, during such a period, the Claimant would have been exclusively undergoing training and would have been unable to make a substantive contribution to the Respondent); and/or

b. complying with its obligation to spend public money appropriately; and/or

c. ensuring that it is able to meet its obligations to its patients and/or the public to deliver a safe and/or efficient service; and/or

d. fulfilling the economical and operational requirements of the job role and/or service; and/or

e. maintaining high professional standards; and/or

f. adherence with professional obligations.

70. We accept each of these aims as legitimate. We also conclude that the decision to dismiss the claimant, thereby bringing forward the date of termination, was a proportionate means of achieving most if not all of those aims. Continuing the employment would have required the claimant to have continued her induction process from a date when her latest absence came to an end (remembering that the claimant was still absent due to sickness as of 5 December and showing no signs of that period of absence being about to end). The continuation of the induction process would have been futile. The claimant's employment was coming to an end anyway on 23 February

2024. Little, if any, of the claimant's period of employment would have remained on completion of the induction and training.

71. Continuing the employment would have required the time and energies of employees at the respondent (and in GP practices) spending time with the claimant but for no gain or benefit to the respondent or those GP practices.

72. Given that any period of ongoing employment would have been pointless and a drain on resources we are satisfied that there was no less discriminatory way of meeting the legitimate aims identified.

73. Continuing the claimant's employment would have:

- a. Incurred costs unnecessarily and without any benefit (thus failing to meet aims a, b and d above)
- b. Needlessly taken resources away from the service that the respondent was providing (thus failing to meet aims c and e above).

74. The claimant's dismissal avoided the incurrence of unnecessary costs and diverted resources. The alternative (of continuing employment) would not have. The dismissal was a proportionate means of achieving the legitimate aims identified.

For these reasons the claim fails.

Approved by:

Employment Judge Leach

31 July 2025

JUDGMENT SENT TO THE PARTIES

1 September 2025

FOR THE TRIBUNAL OFFICE

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

ANNEX

Complaints and Issues – Liability

~~1. Wrongful dismissal / Notice pay~~

~~1.1 What was the claimant's notice period? The claimant says she was entitled to 12 weeks' notice, whilst the respondents says that as the claimant was in probation when dismissed she was only entitled to 4 weeks' notice.~~

~~1.2 Was the claimant paid for that notice period? It is agreed by the parties that the claimant was paid 4 weeks' notice.~~

~~1.3 If not, can the respondent prove that the claimant was guilty of gross misconduct which meant that the respondent was entitled to dismiss without notice?~~

(WITHDRAWN)

~~2. Disability~~

~~2.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about, namely at the date of dismissal on 05 December 2023? The Tribunal will decide:~~

~~2.1.1 Did she have a physical impairment: endometriosis?~~

~~2.1.2 Did it have a substantial adverse effect on her ability to carry out day-to-day activities?~~

~~2.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?~~

~~2.1.4 If so, would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?~~

~~2.1.5 Were the effects of the impairment long-term? The Tribunal will decide:~~

~~2.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?~~

~~2.1.5.2 if not, were they likely to recur?~~

(RESPONDENT CONCEDES CLAIMANT HAS DISABILITY).

3. Direct disability discrimination (Equality Act 2010 section 13)

3.1 What are the facts in relation to the following allegations:

3.1.1 It is not in dispute that the claimant was dismissed on 05 December 2023.

3.2 Has the claimant proven facts from which the Tribunal could conclude that in respect of dismissal the claimant was treated less favourably than someone in the same material circumstances without a disability was or would have been treated? The claimant relies on a hypothetical comparison.

3.3 If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of disability?

3.4 If so, has the respondent shown that there was no less favourable treatment because of disability?

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

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

(RESPONDENT CONCEDES IT KNEW OR COULD REASONABLY HAVE KNOWN THAT THE CLAIMANT HAD A DISABILITY)

4.2 If so, did the respondent treat the claimant unfavourably in any of the following alleged respects:

4.2.1 Dismissing her on 05 December 2023

(IT IS NOT DISPUTED THAT THE CLAIMANT WAS DIMSISSED)

4.3 Did the following things arise in consequence of the claimant's disability:

4.3.1 The claimant's sickness absences between 07 and 10 November 2023, between 13 and 14 November 2023 and on 24 November 2023)?

(RESPONDENT ACCEPTS THAT SOME OF THE CLAIMANT'S SICKNESS

ABSENCE AROSE IN CONSEQUENCE OF HER DISABILITY)

4.4 Did the respondent dismiss the claimant because of those sickness absences?

(RESPONDENT ACCEPTS THAT THE CLAIMANT'S SICKNESS ABSENCE PLAYED SOME PART IN ITS DECISION TO DISMISS THE CLAIMANT)

4.5 If so, can the respondent show that there was no unfavourable treatment because of something arising in consequence of disability?

4.6 If not, was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were:

- a. avoiding the wasted costs which it would incur if it continued to employ the Claimant for the duration of the 12-week notice period she had served on the Respondent when she resigned (on the basis that, during such a period, the Claimant would have been exclusively undergoing training and would have been unable to make a substantive contribution to the Respondent); and/or
- b. complying with its obligation to spend public money appropriately; and/or
- c. ensuring that it is able to meet its obligations to its patients and/or the public to deliver a safe and/or efficient service; and/or
- d. fulfilling the economical and operational requirements of the job role and/or service; and/or
- e. maintaining high professional standards; and/or
- f. adherence with professional obligations.

4.7 The Tribunal will decide in particular:

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

4.7.2 could something less discriminatory have been done instead;

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

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