EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000036/2024

Held in Glasgow on 20-23 May and 18, 20 and 22 August 2025

Employment Judge P O'Donnell
Tribunal Members M McAllister
Tribunal Member E Farrell

Mrs M-E Cross	**Claimant** **In Person**
Glasgow City Council	**Respondent** **Represented by:** **Ms O'Neill -** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claimant's claims under the Equality Act 2010 are not well-founded and are hereby dismissed.

REASONS

Introduction

1. The claimant has brought complaints under the Equality Act 2010 relying on the protected characteristic of disability.

2. The respondent accepts that the claimant is disabled as defined in the Act but otherwise resists the claims.

3. There had been a lengthy case management process involving three case management hearings at which the Tribunal sought to clarify the claims being pursued.

4. As a result of that process, the following list of issues was identified:

    1. Direct Discrimination – s13 Equality Act 2010 (EqA)

        1.1. Did the respondent subject the claimant to less favourable treatment (i.e. did the respondent treat the claimant less

favourably than it treated or would have treated others ('comparators') in not materially different circumstances) by:-

1.1.1. Deborah Kelly continuously pressurising the claimant to work through her breaks and to work late, beyond her contracted hours.

1.1.2. On/around 4 December 2023, Pauline McGill stating to the claimant that the respondent would not have hired her, if they had known about her disabilities.

1.1.3. On/around 9 January 2024, Yvonne Rice not taking the claimant's complaints seriously.

1.2. She asserts that the respondent's attitude towards her changed after she handed in letters from her GP and mental health team, which confirmed that she has ADHD, dyslexia, anxiety and depression. After she did so, she was singled out for treatment which her colleagues were not subjected to.

2. Harassment – s26(1) EqA

2.1. Did the respondent engage in the following conduct:

2.1.1. Deborah Kelly continuously pressurising the claimant to work through her breaks and to work late, beyond her contracted hours, when she knew she could not as she required to take medication for her ADHD at lunchtime and after work.

2.1.2. On/around 4 December 2023, Pauline McGill stating to the claimant that the respondent would not have hired her, if they had known about her disabilities.

2.1.3. On/around 9 January 2024, Yvonne Rice not taking the claimant's complaints seriously.

2.2. If so, was it unwanted conduct?

2.3. If so, was it related to disability?

2.4. If so, did the conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

3. Victimisation – s27 EqA

3.1. Did the claimant do a protected act(s) by raising oral complaints/concerns with Pauline McGill regarding Deborah Kelly's treatment towards her, such as pressurising her to work through her breaks and beyond her contracted hours which she asserted was disability discrimination.

3.2. Was the claimant subjected to the following detriments?

3.2.1. Deborah Kelly informing the claimant, on/around 3 December 2023, that she required to return to the home of a service user, who had refused to answer the door to the claimant when she had attended earlier that day, and threatening to report the claimant if she did not do so. The claimant asserts that it was a regular occurrence for that particular service user not to answer her door, but that neither she, nor any of her colleagues, had ever been asked to return to the service user's home previously.

3.2.2. Deborah Kelly making a complaint asserting that the claimant had not signed in, when Deborah Kelly knew the claimant could not as the claimant had already reported to her that another colleague had taken her phone.

3.2.3. Pauline McGill indicating to the claimant that the claimant could change shifts – to the opposite week in Drumchapel area – and that this had been agreed, when this had not been agreed.

3.2.4. Pauline McGill indicating the claimant could take paid time off, with a view to then disciplining her for unauthorised absence.

3.2.5. Pauline McGill seeking to move the claimant to a different area, so the claimant would not be managed by Deborah Kelly and Pauline McGill.

3.3. If so, did the respondent subject the claimant to those detriments because of the protected act?

4. Dismissal – s39(2)(c) & s39(7)(b) EqA

4.1. Did the respondent discriminate against the claimant by dismissing her, as defined in section 39(7) EqA - i.e. was the claimant entitled, because of the conduct set out above, to terminate her employment?

5. Remedy

5.1. If the claimant establishes any of their complaints, to what remedy are they entitled Specifically:

5.1.1. What financial losses has the discrimination caused the claimant?

5.1.2. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

5.1.3. Is it appropriate to make a recommendation?

5. During the course of the hearing, it came to the Tribunal's notice that the claim for dismissal was not one which could have been part of the case when the ET1 was presented to the Tribunal; the ET1 was presented on 9 January 2024 and the claimant's employment did not terminate until 9 February 2024. There had been no formal amendment of the claim to add the dismissal claim and it had found its way on to the list of issues without that fact being noticed. The respondent had no objection to the claim being amended to include the dismissal claim as they had prepared to answer it. The Tribunal, therefore, allowed the case to be amended to add the dismissal claim.

Evidence

6. The Tribunal heard evidence from the following witnesses:

a. The claimant.

b. Louise Cross, the claimant's mother.

c. Deborah Kelly (DK), a home care coordinator.

d. Pauline McGill (PMcG), a home care manager.

7. The respondent had intended to call a third witness, Yvonne Rice, but she was unwell and unable to attend the hearing. The respondent decided to proceed without calling Ms Rice and did not seek a postponement of the August hearing dates to allow her to attend.

8. There was an agreed file of documents prepared by the parties. A reference to a page number below is a reference to a page in that bundle. During the course of the hearing, particularly during the claimant's evidence, it became apparent that there were documents to which the claimant wished to refer that she had not asked to include in the file. The Tribunal permitted these to be added after the start of the hearing.

9. The claimant also wished to play a covert recording she had made of a meeting between her and PMcG. The respondent made no objection to this and had prepared a transcript of the recording. However, the claimant insisted on the recording being played because she did not consider the transcript to be accurate. The recording was played and the Tribunal considered that the transcript was accurate. In any event, although the transcript was of assistance in confirming what was said at the meeting in question, the recording itself did not particularly assist the claimant's case or have any real evidential value.

10. The broad outline of events in this case were not really in dispute. It was only some events that were in dispute between the witnesses. For example, there was a very sharp dispute between the claimant and PMcG as to whether the comment about not hiring the claimant was actually made and there was a dispute as to whether PMcG and DK had seen the letter at p73 of the file. The Tribunal will address those particular issues in more detail below.

11. In general, the Tribunal considers that all the witnesses were making every effort to tell the truth to the best of their recollection and that none of them were seeking to deliberately mislead the Tribunal.

12. However, the Tribunal did not consider that the claimant's evidence was reliable. She had difficulty in recalling the detail of events and there were multiple occasions when she revised her evidence about certain matters during the course of her evidence-in-chief as well as in cross-examination. The claimant's evidence was often confused and required the Tribunal to go over events multiple times in order to get a clear understanding of what she said had happened.

13. There were also issues with the detail and sufficiency of her evidence on certain points. For example, she could not give any real detail of when she was asked to work through her breaks beyond broad assertions that it happened "a lot" or "all the time". Similarly, the claimant could not give a date for when she made the complaint to PMcG which was said to be the protected act for the purposes of the victimisation claim; the claimant could only say that it was shortly before her first meeting with PMcG on 4 December 2023 but, in cross-examination, the date of the "first" meeting was changed by the claimant to a date in May 2023.

14. It was also clear that much of the claimant's case was based on assumption and supposition by her rather than actual knowledge of the facts. For example, when asked how DK knew about the protected act the claimant could only reply *"they all talk, nothing is private"* rather than point to any actual evidence that DK had been told about this.

15. The claimant was also unwilling to answer questions in cross-examination even where the answer was obvious and straightforward. For example, when asked to whom the letter at p73 was addressed or whether the transcript at pp69-71 was the transcript of the recorded meeting, the claimant became combative and would not accept these simple facts. Rather than answering these questions, she sought to give evidence about other matters and it took the intervention of the Judge to secure answers to such questions.

16. None of this is intended as a criticism of the claimant; the Tribunal recognises that she was a party litigant trying to deal with an unfamiliar and stressful process. Further, the Tribunal is conscious of the fact that, as asserted by the claimant multiple times during the hearing, there were reasons why she faced particular difficulties in recalling events.

17. However, the Tribunal has to assess the evidence as it is presented to it and, whilst it can recognise why the evidence has been presented as it has, it cannot ignore that in assessing the reliability of the evidence.

18. The Tribunal found the respondent's witnesses to be both credible and reliable. They gave evidence in a forthright and honest manner. They would indicate where they had no clear recollection of particular events and sought to avoid speculating about what might have happened when they did not have a clear memory of any event. Their evidence was consistent with the email and text correspondence from the time. They were willing to accept, in some instances, that they had mis-remembered a particular event or sequence of events when it was put to them.

19. For all these reasons, where there has been a dispute of evidence between the claimant and the respondent's witnesses, the Tribunal has preferred the evidence of the respondent's witnesses.

Findings in fact

20. The Tribunal made the following relevant findings in fact.

21. The claimant was employed as a home carer by the respondent from 21 March 2022 until she resigned with effect from 23 February 2024.

22. The claimant's immediate line manager was DK and the area manager was PMcG.

23. The claimant was diagnosed with dyslexia and ADHD around the age of 11. The respondent, specifically DK and PMcG, were aware that the claimant was dyslexic relatively early in her employment with the respondent. None of the witnesses could recall the precise date but nothing turns on that given that all the witnesses agree that they knew about the claimant's dyslexia before the events giving rise to the claim. The circumstances in which the claimant's

dyslexia became known to her managers was when her phone was not working properly and she was having to keep a paper record of when she visited and left a client's home. She had difficulties with this due to her dyslexia and disclosed this to DK and PMcG.

24. PMcG became aware that the claimant had ADHD during the events giving rise to the claim as set out below but DK did not know that the claimant had ADHD until after these proceedings were commenced.

25. The claimant worked a shift pattern of one week on and one week off. She would work Monday to Friday, 4.30pm to 8.30pm. She would also work Saturday and Sunday, 7.30am to 10am, 11am to 2pm and 4.30pm to 8.30pm.

26. The claimant worked in the Knightswood area of Glasgow and would visit clients in their homes. Some clients are described as "singles" where only one carer is required to carry out the tasks for that client and others who are described as "doubles" where two carers are required given the nature of the care tasks involved with that client.

27. The claimant worked with a partner using a car provided by the respondent to travel to client's homes were a double was required. At the time relevant to this case, the claimant worked with another carer called Donna but had previously worked with a carer named Cheryl. The claimant would also do some singles as well.

28. Carers are provided with a smartphone which they can use for work emails. The phone also has an app called Caresafe which is used to register when the carer attends and leaves a client's home. There is a book in each client's home with details of their care package and other information such as family contacts. The book has a barcode on it which is scanned with the phone and logs the visit on Caresafe. The respondent's systems are then updated to show that the carer has visited the client. There is a central monitoring team who track visits and would contact the carer if a visit is missed to check why (for example, whether the carer is ill or delayed or whether they have not been able to gain access to the premises).

29. If a carer cannot get access to the premises then there is a protocol whereby additional steps are taken to contact the client to make sure that they are not ill, have fallen or if something else is wrong. This can involve the carer being asked to revisit the premises in case the client has, for example, been sleeping as well attempts being made to phone the client or contact family members.

30. The respondent will regularly offer overtime to carers and this is done on a voluntary basis. The claimant's wage slips (pp45-58) show that she was paid

for doing overtime. DK would email or text carers to see if anyone was interested in any overtime that was available. Overtime was not compulsory.

31. If a carer had finished their run before the end of their shift then they may be asked to make additional visits where other staff are off sick or have been held up. The claimant described her and Donna being asked to do so on a regular basis because they had the only car in the area.

32. On 16 May 2023, the claimant sent PMcG a text message (p59) asking if she could change her hours at the weekend giving the reason as being how her hours affect her Universal Credit and that it would be better for her childcare. PMcG replied inviting the claimant to a meeting. At that meeting she explained to the claimant that she cannot create or change shift patterns.

33. On 2 December 2023, the claimant visited a client on a single. She was making something for the client to eat and put an egg (whole in the shell) in the client's microwave. The egg exploded and damaged the microwave causing the electricity in the house to go off. The claimant was reluctant to turn the trip switch back on to restore the electricity as she was not comfortable dealing with electricity. She contacted both DK and PMcG by telephone; DK arranged for another carer, Cheryl, who was nearby to go to the house to help; PMcG talked the claimant through the process of turning the electricity back on over the phone. Both DK and PMcG wanted the power restored given the time of year and the bad weather at that time; they did not want to leave the client in the cold and the dark.

34. The claimant restored the power with the assistance of PMcG over the phone. Cheryl had attended the premises at this point but was not needed. She left and shortly thereafter realised that she had taken the claimant's jacket (with her phone in the pocket) rather than her own. She phoned DK to inform of this and returned to the client's house to give the claimant her jacket back.

35. The claimant subsequently stated to PMcG at a meeting on 4 December 2023 (p70) that DK had deliberately sent Cheryl to steal the claimant's phone but there was no evidence of this and the Tribunal finds this to be pure speculation on the claimant's part.

36. On 3 December 2023, the claimant informed DK by text message at 12.28 that she had been unable to gain access to a particular client. DK replied asking the claimant to go back after her last lunch call to try this client again. The claimant replied *"Am home now now you where gonna do this hahah".* She goes on to say that she phoned DK when standing at the client's door and she did not answer. DK replied that the claimant was paid to work to 2pm and if she was refusing to go back to the client then DK would have to report this. The claimant replied that she would be reporting DK for bullying. The

exchange continued with the claimant accusing DK of getting angry and stating that she would report DK for her attitude with DK stating that she was not angry but was simply asking the claimant to do her job when she was paid to be working until 2pm. The exchange of messages is at pp60-62.

37. At 1.52pm on 3 December 2023, the claimant sent a message to PMcG (p63) stating that she would not be on shift that night because she had taken a panic attack due to DK's bullying of her. She states that DK is trying to get her sacked and is *"going for her"*, that she sent Cheryl round the day before to make the claimant feel uncomfortable. The message continues making allegations about DK bullying her and that this is the reason nobody wants to work for her.

38. On 4 December 2023, the claimant attended the office and met with PMcG. This was the claimant's off week. The claimant made a covert recording of this meeting and a transcript of the recording appears at pp69-71. The recording does not cover the whole meeting; the first few minutes has no audio and the start of it is part of a continuing discussion. Similarly, the end of the recording is not a natural end to a meeting.

39. The transcript sets out the following relevant matters:-

    a. It starts with the claimant and PMcG discussing the fact that Cheryl had been sent by DK. PMcG states that DK had sent Cheryl to help the claimant and the claimant asserts that "she" (on the face of it a reference to Cheryl) had taken her phone and was going to throw it away.

    b. The claimant states "she" (now, on the face of it, a reference to DK) is gunning for the claimant and had bad-mouthed the claimant to other staff.

    c. The claimant states that she wants to move to the "other side" (a reference to working the opposite week) because DK is affecting her mental health. The claimant goes on to state that she has asked to not do doubles but DK has said that she needs to. The claimant complains about these not being shared fairly.

    d. PMcG explains to the claimant that most clients coming through are now doubles and they are employed to do doubles. The claimant complains about the number of doubles she and Donna have to do and states that Cheryl only get singles.

    e. The claimant complains that DK is gunning for her and PMcG replies that she cannot see it.

f. The claimant complains about what happened at the weekend and asserts that DK sent Cheryl to steal her phone. There is a discussion about whether the claimant signed into the visit on 3 December and if she had her phone. The claimant replied that she did have her phone but had not signed in because of the incident with the microwave.

g. There is then a discussion about the claimant flipping the switch to turn the power back on and what happened with the microwave. The detail of this is not relevant to the claim.

h. PMcG asks the claimant if DK asked her to work right through and the claimant replies no. She states that DK does "this" all the time and that she is not the only staff DK does this to. The Tribunal pauses to note that it was not clear what "this" referred to. The claimant complains that when she puts up a fight then DK makes her life hard.

i. The claimant goes on to state that DK then phoned her and tried to manipulate her. She states that PMcG knows that the claimant needs a break to take ADHD medication and if she does not take this then she gets withdrawal symptoms.

40. In order to try to resolve the situation, PMcG agreed with the claimant to move her to the opposite week. This would mean that the claimant would not be regularly managed by DK as a different coordinator covered the other week. However, there may still be circumstances where DK would supervise if she was providing cover when the other coordinator was off.

41. The reason why PMcG felt able to move the claimant was because a new carer had been recruited to work the same weeks as the claimant. This meant that moving the claimant would not lead to a reduction in the staff numbers for the relevant week. There was not a particular need for staff on the opposite week but PMcG felt that there was sufficient work for the claimant who could cover for absences. The new arrangements would take effect from week commencing 11 December 2023 which was when the claimant was due to be back on shift. She would, instead, go back on shift in week commencing 18 December.

42. Unfortunately, the new member of staff did not attend their induction and never took up the job. This meant that PMcG could not move the claimant as it would leave the claimant's week understaffed. This only came to light at the last minute and the claimant was rostered to work week commencing 11 December.

43. PMcG did not require the claimant to work on 11 December and gave her authorised leave for that day. This was a paid day off that would not be deducted from the claimant's holiday entitlement. The claimant was required

to work the remainder of the week and, in an effort to reduce the chance of the claimant having to interact with DK, PMcG told the claimant to contact her directly about any issues that need a manager involved.

44. The claimant did not work the remainder of the week and went off sick instead.

45. PMcG again met with the claimant, this time accompanied by her trade union representative, early in January 2024. The precise date is not known and nothing turns on it. At the meeting, the claimant asked for a move to night shift which she felt suited her childcare. PMcG explained that she cannot just move the claimant and was not sure if there were any vacancies on night shift. If there were then the claimant would have to go through the interview process. The option of swapping weeks was discussed and PMcG explained that they could not do this at that time because they did not have anyone to cover the claimant's week. PMcG raised the suggestion of a move to an entirely different area (the Yoker area of Glasgow was suggested) under different managers and asked if the claimant would be interested in that. The claimant indicated that she was not interested in a move. She would not be familiar with a different area and would struggle to find her way around.

46. At the end of the meeting, the claimant asked if she could go to a higher manager and PMcG stated that she would ask her manager, Yvonne Rice (YR), to speak to the claimant. The claimant also emailed YR directly on 9 January 2024 (p74).

47. PMcG contacted YR and gave her the claimant's contact number. She explained the situation to YR and explained there was nothing she could offer to the claimant. She explained that the claimant had asked for a change due to childcare but also alleged that DK was bullying her. She also informed YR of the claimant's dyslexia and ADHD.

48. The claimant and YR spoke by phone on or around 9 January 2024; the call was made by YR to the claimant. There was no discussion of the claimant's disabilities or anything related to them during the call. The evidence heard by the Tribunal about the call was very brief. The claimant explained to YR that she felt that she was not being heard and she was not happy. YR stated that she was too busy to meet with the claimant and encouraged the claimant to return to work. The claimant said that she was going to take things further and the call ended. The Tribunal notes that the claimant did not lodge any formal grievance nor did she take any further action in relation to her complaints.

49. The claimant did return to work for two weeks in January 2024 working in Drumchapel. On or around 9 February 2024, she found out that she was to return to Knightswood and decided to resign. She emailed PMcG on 9

February 2024 (p42) stating that she was resigning with effect from 23 February 2024 and had a sick note covering her up to the end of her employment.

Submissions

50. The claimant produced a written submission which the Tribunal read. The respondent's solicitor gave oral submissions. For the sake of brevity, the Tribunal does not intend to set out the submissions in details. These have been noted and the Tribunal will refer to any point raised that requires to be specifically addressed in its decision below.

Relevant Law

51. The Equality Act 2010 protects individuals from discrimination on the grounds of various protected characteristics. These include, for the purposes of this case, disability.

52. The definition of direct discrimination in the 2010 Act is as follows:-

13 Direct discrimination

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

53. The burden of proof in claims under the 2010 Act is set out in s136:

136 Burden of proof

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

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) 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.

54. The burden of proving the facts referred to in s136(2) lies with the claimant. If this subsection is satisfied, however, then the burden shifts to the respondent to satisfy subsection 3.

55. Although the test for direct discrimination forms a single question, the caselaw indicates that it is often helpful to separate this into two elements; the less favourable treatment and the reason for that less favourable treatment.

56. In order for there to be less favourable treatment, the claimant must be subjected to some form of detriment. The question of whether there is a

detriment requires the Tribunal to determine whether "by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work" (*Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 HL).

57. A claimant can rely on an actual or hypothetical comparator for the purposes of establishing less favourable treatment. There must be no material difference in the circumstances of the claimant and comparator (s23 of the Equality Act 2010). In deciding how a hypothetical comparator would have been treated, the Tribunal is entitled to have regard to the treatment of real individuals (see, for example, *Chief Constable of West Yorkshire Police v Vento* [2001] IRLR 124).

58. However, a difference in treatment and a difference in protected characteristic is not enough to establish that the difference in treatment was caused by the difference in protected characteristic; "something more" is required (*Madarassy v Nomura International* [2007] IRLR 246). The Tribunal needs evidence from which it could draw an inference that race was the reason for the difference in treatment.

59. It is important to remember that unreasonable or unfair behaviour is not enough to allow for an inference of direct discrimination (*Bahl v The Law Society* [2004] IRLR 799).

60. It is a well-established principle that Tribunals are entitled to draw an inference of discrimination from the facts of the case. The position is set out by the Court of Appeal in *Igen v Wong* [2005] ICR 931 (as approved by the Supreme Court in *Hewage v Grampian Health Board* [2012] IRLR 870).

61. The *Igen* case was decided before the Equality Act was in force but it is submitted that the guidance remains authoritative, particularly in light of the *Hewage* case.

62. Any detriment does not have to be solely by reason of the protected characteristic; if any protected characteristic has a 'significant influence' on the treatment of a claimant then direct discrimination is made out. (*Nagarajan v London Regional Transport* [1999] ICR 877, HL; *Villalba v Merrill Lynch and Co Inc and ors* 2007 ICR 469, EAT. In *Igen* (above) Lord Justice Peter Gibson clarified that for an influence to be 'significant' it does not have to be of great importance and is something more than trivial.

63. Harassment is defined in s26 of the Equality Act 2010:

26 Harassment

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) …

(3) …

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

…

disability;

…

64. In Hartley v Foreign and Commonwealth Office UKEAT/0033/15 (27 May 2016, unreported) it was held that the question whether there is harassment must be considered in the light of all the circumstances of the case. Where the claim is based on things said it is not enough only to look at what the speaker may or may not have meant by the wording.

65. However, even where certain elements of the test for harassment are met (for example, unwanted conduct and the violation of the claimant's dignity), the Tribunal must still consider the *"related to"* question and make clear findings as to why any conduct is related to a protected characteristic (*UNITE the Union v Nailard* [2018] IRLR 730; *Tees, Esk and Wear Valleys NHS Foundation Trust v Aslam* [2020] IRLR 495, EAT).

66. The test for victimisation is set out in s27 of the Equality Act 2010:

27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

67. The provisions relating to the burden of proof set out above apply equally to a victimisation claim as they do to a claim for direct discrimination. It is also the case that the protected act simply has to have a significant influence for a detriment to amount to victimisation in the same way that a protected characteristic has to have for a detriment to amount to direct discrimination.

68. A “constructive” dismissal arises where an employee terminates the contract in circumstances in which he or she is entitled to terminate it without notice by reason of the employer's conduct.

69. The circumstances in which an employee is entitled to terminate their contract by reason of the employer’s conduct is set out in the case of *Western Excavating v Sharp* [1978] ICR 221. The Court of Appeal held that there required to be more than simply unreasonable conduct by the employer and that had to be a repudiation of the contract by the employer. They laid down a three stage test:

a. There must be a fundamental breach of contract by the employer

b. The employer’s breach caused the employee to resign

c. The employee did not delay too long before resigning thus affirming the contract

70. A breach of contract can arise from an express term of the contract or an implied term. For the purposes of this case, the relevant term was the implied term of mutual trust and confidence.

71. The test for a breach of the duty of trust and confidence has been set in a number of cases but the authoritative definition was given by the House of Lords in Malik v Bank of Credit and Commerce International SA [1997] IRLR

462 that an employer would not, without reasonable or proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

Decision

72. The Tribunal will deal first with the three allegations of direct discrimination and harassment. Each factual allegation is said to amount to either direct discrimination and/or harassment so the Tribunal will address each allegation in turn.

73. Before turning to the individual allegations, the Tribunal would make an initial comment relating to the claimant's case that the direct discrimination and harassment occurred only once the claimant informed DK and PMcG that she had ADHD and dyslexia by providing them with the letter at p73 on or around 2 September 2022.

74. Both witnesses denying seeing the letter until after the Tribunal proceedings commenced and the Tribunal accepts their evidence on this for the reasons set out above in terms of the credibility and reliability of these witnesses. They were, however, aware the claimant was dyslexic from early in her employment but deny knowing about her ADHD until much later; PMcG's evidence was that she was aware of this for the first time at the meeting on 4 December 2023; DK states that she was not aware of this at any time before the proceedings commenced.

75. For the reasons set out above, the Tribunal accepts the evidence of both respondent witnesses as credible and reliable. In particular, the Tribunal accepts that DK had no knowledge that the claimant had ADHD at the time of the alleged discrimination. This means that DK could not have discriminated against the claimant due to her ADHD (that is, by allegedly pressurising her to work through her breaks or past her contracted hours). The claimant's ADHD cannot have had any influence on DK's conduct (let alone a significant influence) if DK did not know about it.

76. Even if the Tribunal had found that the letter at p73 was provided to DK and PMcG, there was no evidence led by the claimant about how she was treated before this date as compared to after this date. Indeed, the claimant's evidence was that she was being asked to work late or work through her breaks throughout her employment. At most, she made a broad assertion that things "got worse" after the letter was handed in but there was no detail of this.

77. The claimant does not allege any worsening treatment by PMcG after the letter was allegedly provided until the one alleged comment said to have been made either in May or December 2023. In relation to the allegation against

YR, there was no evidence of any connection between the alleged discrimination and the letter at p73.

78. In these circumstances, the Tribunal does not consider that there was any evidential basis on which it could conclude that the letter at p73 was some trigger for the alleged discrimination against the claimant.

79. The first allegation of direct discrimination and/or harassment is that the claimant was being pressurised by DK to work through her breaks or to work late. Although the claimant did not give very detailed evidence of what was said to her about this, the Tribunal is willing to accept that the claimant would be asked to make visits to additional clients and that the consequence of this is that she would work through her breaks or work late to accommodate this.

80. To put it another way, the Tribunal does not consider that DK was specifically asking the claimant to work through her breaks or to work late but, rather, that she was asking the claimant to take on additional work which caused the claimant to work through her breaks or work late in order to do that work.

81. The Tribunal also accepts that the claimant, in common with other carers, would be offered overtime by DK. There was evidence given by DK that she offered overtime to all staff and the claimant's wage slips show that she was paid for overtime.

82. However, the Tribunal does not consider that there is any evidence that this had anything to do with the claimant's disability.

83. There was no evidence led by the claimant of how any other home care staff were treated in respect of taking on additional visits. When she was asked about this, the claimant stated that she could only speak for her and her partner who would also be asked to take on additional visits as well.

84. In these circumstances, for the purposes of the direct discrimination claim, there is no evidence of any actual comparator being treated more favourably than the claimant. The only evidence is of the claimant's partner being treated the same as her. Further, there is no evidence from which the Tribunal could draw an inference that a hypothetical comparator would be treated differently.

85. In any event, there was no evidence that the claimant was being asked to do extra work because she was disabled or that such requests were related to her disability. When asked why she thought she was being asked to do additional visits, the claimant's response was that when she started saying no to this, DK would be "nippy" and put a guilt trip on her, trying to manipulate her; she had too much heart to say no and being quiet kept the peace. None of this bears any connection or relation to her disability.

86. Indeed, the only evidence which the claimant gave about the reason why she believed she was asked to do additional visits was that she and her partner had the only car in the area. This has no connection with her disabilities at all.

87. In these circumstances, the Tribunal considers that there was simply no evidence from which it could conclude that the claimant was being asked to carry out additional visits because of her disability or that such requests were related to her disability. The claimant's own evidence was that there was a reason entirely unrelated to her disability for these requests being made.

88. For these reasons, the claims of direct discrimination and harassment in respect of the first allegation are not well-founded and are hereby dismissed.

89. The second allegation of direct discrimination and/or harassment relates to a comment which PMcG is said to have made to the claimant that the council would not have hired her if they knew about her disabilities. PMcG denies making any such comment.

90. As set out above, the Tribunal did not consider the claimant to be a reliable witness and it preferred the evidence of the respondent's witnesses in respect of any dispute of evidence. The Tribunal very much prefers the evidence of PMcG in relation to this allegation for the following reasons.

91. The claimant's case in the latter case management hearings was that this comment was made at a meeting held on or around 4 December 2023 as set out in the list of issues. The claimant's evidence-in-chief was consistent with this; she said that she had a meeting with PMcG on or around this date when the comment was made and then a second meeting was held between them shortly after that, on or around 6 December 2023. She gave evidence initially that it was the latter meeting that was covertly recorded and the claimant said that she did this because of what PMcG had said at the first meeting.

92. However, in cross-examination, the claimant conceded that the recorded meeting was the one that took place on or around 4 December and that PMcG had not made the comment at that meeting (no such comment appearing in the transcript of the recording). She also accepted that there had been no second meeting on or around 6 December 2023. The claimant continued to insist that the comment had been made at the "first meeting" and when asked when that meeting took place gave a date of May 2023. However, this was not, on the face of it, a situation where the claimant had recalled the date after further reflection but, rather, she had leafed through the file of documents and found a screenshot of a text message dated 16 May 2023 (p59) in which PMcG asked her to come to a meeting before giving this as the date of the "first meeting".

93. The Tribunal considers that the claimant's evidence on this was confused and contradictory. Whilst the Tribunal could understand the claimant not recalling the precise date and being a few days off target, this was a difference of 7 months between her original position and her revised position. It was also inconsistent with the claimant's evidence-in-chief that there was only a few days between the meeting where the comment was alleged to have been made and the recorded meeting.

94. By contrast, the Tribunal found PMcG to be a credible and reliable witness as set out above. In particular, the Tribunal considered that she was going to great pains to give an accurate account of events and was very concerned not to say anything that might be untrue and inaccurate.

95. For these reasons, the Tribunal does not find the claimant's evidence on this allegation to be reliable and prefers the evidence of PMcG that the comment was never made. The claims of direct discrimination and harassment in respect of this allegation are, therefore, not well-founded and are hereby dismissed.

96. The third allegation of direct discrimination and/or harassment relates to an assertion that YR did not take the claimant's complaints seriously. It was not clear from the claimant's evidence why she considered that YR did not take her complaint seriously; it was certainly the case that when the claimant asked to speak to her that she contacted the claimant to discuss her issues and so YR did not ignore the claimant entirely. The Tribunal has proceeded on the basis that this allegation is founded on YR not taking the complaint forward and resolving the claimant's situation to the claimant's satisfaction.

97. There is, again, no evidence that, even assuming this assertion is correct, this was because of the claimant's disability or was related to her disability. The Tribunal is satisfied that YR knew the claimant had disabilities; PMcG gave evidence that she had informed YR of these when explaining the claimant's situation. However, the claimant's evidence was that nothing about her disabilities was discussed with YR and there is simply nothing from the Tribunal could draw any inference as to why YR did not take matters forward.

98. The claimant's evidence about the discussion was very brief and she asserted that YR stated that she was too busy to meet with the claimant. No other details about the conversation was given in evidence.

99. There is no evidence about how YR dealt with, or would deal with, any other employee in similar circumstances. The Tribunal cannot, therefore, draw any inferences about how a comparator would be treated for the purposes of the direct discrimination.

100. Similarly, there is no evidence from which the Tribunal can draw an inference that the claimant's disabilities were a significant influence on YR or that her conduct towards the claimant was related to the claimant's disability. The claimant has simply not produced sufficient evidence to discharge the burden of proof in relation to this allegation.

101. For these reasons, the claims of direct discrimination and harassment in respect of the third allegation are not well-founded and are hereby dismissed.

102. Turning now to the claim of victimisation, the first question for the Tribunal is whether the claimant carried out a protected act. The claimant alleges that the protected act consisted of verbal complaints made to PMcG about how DK was treating her but had never specified when these complaints had been made.

103. In her evidence-in-chief, the claimant stated that the complaints were made about two weeks before the meeting she had with PMcG on 4 December 2023 and made reference to an email in November 2023 at p36 (which was an email from another manager to PMcG about an interaction with the claimant rather than an email from the claimant making any complaints). However, this was at a point in her evidence when she had stated that she had had two meetings with PMcG in December 2023 (4 and 6 December) and before she changed her evidence to state that the first meeting had been in May 2023 rather than 4 December 2023. It was not, therefore, clear whether the complaints were made two weeks before the May 2023 meeting or whether the claimant maintained the position that her complaints were made two weeks before the meeting on 4 December.

104. In terms of what the claimant said she had complained about, it was her evidence that she had told PMcG that DK was giving her into trouble for making mistakes and was gunning for her, that she manipulates the claimant and that she got the claimant to clean a client's house. The Tribunal notes that a number of these matters were raised by the claimant in a text message to PMcG on 3 December 2023 (pp63-64) and in the meeting of 4 December 2023. It was not clear from the evidence whether the claimant was conflating separate complaints made at different times or whether she made the same complaints multiple times. In terms of the complaint about cleaning a client's house, PMcG agreed that this was raised with her but could not remember when this occurred.

105. More importantly, none of these matters fall within the scope of a protected act as defined in s27(2) of the Equality Act. It is not sufficient that the claimant complained about DK; the complaints must be capable of amounting to an allegation that DK has contravened the EquAlity Act. The claimant does not need to use the technical language of the Act for a complaint to amount to a

protected act but there must be evidence which indicates that she is complaining about something which is capable of amounting to a protected act.

106. The matters set out above are not, on the face of it, allegations of discrimination. At no point did the claimant seek to link DK's conduct to her disability nor could a reasonable person have interpreted these complaints as being complaints of discrimination.

107. The closest the claimant comes to saying something capable of falling within the scope of s27(2) is at the end of the meeting with PMcG on 4 December 2023 when she states that DK knows that the claimant needs to take a break because she has to take her ADHD medication. The Tribunal considers that this is capable of being a protected act as the claimant is alleging that she is being disadvantaged in relation to her disability. It may not be set out in the technical language of the Equality Act but the Tribunal does consider that it is sufficient to be a protected act.

108. The claimant does not specifically rely on this comment as a protected act but the Tribunal has taken account of the fact that she is a party litigant and, applying the Overriding Objective to ensure that parties are on an equal footing, considers that it can proceed on the basis that there is evidence of something said to PMcG that is capable of being a protected act.

109. However, the Tribunal does not consider that the claimant has led sufficient and satisfactory enough evidence to discharge the burden of proof that she did anything else which falls within the scope of a protected act.

110. Proceeding on the basis that the claimant did a protected act on 4 December 2023, the Tribunal considers that this causes a fundamental problem for her in relation to the first two allegations of victimisation. These relate to the conduct of DK and, specifically, to events which occurred on 2 and 3 December 2023 before the claimant carried out the protected act. It simply cannot be the case that something which had not happened yet can have had any influence on DK's conduct towards the claimant on 2 and 3 December 2023.

111. Further, the Tribunal notes that, in respect of the events of 3 December 2023, DK was doing nothing more than what any manager would have done in the same circumstances. The claimant had refused to obey a lawful and reasonable instruction from her manager to return to a client's home to check on them when she was still within working hours. In the Tribunal's industrial experience, such behaviour would be considered to be misconduct by many employers and would lead to a disciplinary investigation at the very least. It

is the claimant's conduct that led to DK stating she would report the claimant rather than any protected act.

112. In relation to the allegation about DK's conduct on 2 December 2023, this concerns the claimant's wholly speculative and fanciful assertion that DK sent Cheryl to the client's house to steal her phone and prevent the claimant from signing in to the visit rather than the far more plausible and likely explanation that DK sent Cheryl to assist the claimant to restore power in circumstances where the claimant did not feel capable of doing so.

113. For that reason, the first two allegations of victimisation are not well-founded.

114. The remaining allegations all relate to the conduct of PMcG and all occur after 4 December 2023 so the same issue does not arise in respect of those allegations.

115. The third allegation is that PMcG had agreed to move the claimant to opposite weeks but did not follow through with this. The Tribunal accepts as genuine the explanation given by PMcG that this was because the additional employee who had been recruited to work on the claimant's original weeks did not turn up to start the job and that would have left the service understaffed on those weeks if the claimant had moved. There was no evidence to contradict this explanation and it is something that the Tribunal considers to be perfectly plausible.

116. In any event, there was no evidence that the reason why PMcG did not follow through on her promise to move the claimant was because the claimant had done a protected act. PMcG had agreed to move the claimant to try to resolve the difficulties between the claimant and DK by reducing how often they would interact with each other. It simply makes no sense for her to then renege on that for the reason contended for by the claimant. The far more plausible explanation is the one given by PMcG.

117. In these circumstances, the Tribunal finds that the reason why the claimant was not moved from one week to another was not because she had done a protected act.

118. The fourth allegation is that PMcG offered the claimant paid time off with a view to disciplining her. Again, the Tribunal prefers the evidence of PMcG in relation to the events giving rise to this allegation and finds that she had offered the claimant one day's authorised leave for 11 December 2023 because she was not able to move the claimant to the other week at that time at short notice but otherwise expected the claimant to attend work after that date until steps could be taken to recruit a new employee to cover the claimant's move.

119. The Tribunal does not consider that a reasonable employee would consider this to disadvantage them. They are getting a paid day off which was not coming off their holiday entitlement.

120. Contrary to the claimant's evidence, PMcG was not telling her to stay off work beyond 11 December. The claimant was expected to attend work after that date as normal.

121. The suggestion that PMcG was somehow trying to entrap the claimant and take disciplinary action against her is pure speculation by the claimant, bordering on fantasy. There was no evidence whatsoever to suggest that PMcG was intending to take some sort of action against the claimant or set the claimant up for disciplinary action. If anything, the evidence before the Tribunal was that PMcG was trying to resolve the situation and help the claimant.

122. For these reasons, the Tribunal does not uphold the fourth allegation of victimisation.

123. The fifth and final allegation of victimisation was that PMcG was trying to move the claimant to another geographical area. Again, the Tribunal prefers the evidence of PMcG that she made a suggestion to the claimant that a move to a different area would allow for a fresh start and mean that there would be no possibility of the claimant having to work or interact with DK. It was not the case that she was trying to move the claimant but simply asking the claimant if she was willing to try this as a solution.

124. A manager must be allowed to make such suggestions to try to find a solution to the sort of complaint the claimant was making and it is not something that a reasonable employee would consider disadvantaged them. A reasonable employee would recognise that their manager was simply exploring options in an effort to resolve a situation where the relationship between the employee and their immediate line manager had become strained and fractious.

125. In these circumstances, the Tribunal does not consider that the fifth allegation of victimisation is well-founded.

126. The final claim is one of constructive dismissal. This claim is pursued under the Equality Act (the claimant did not have the necessary length of service to be able to pursue a constructive unfair dismissal claim under the Employment Rights Act 1996). A constructive dismissal claim under the Equality Act requires a claimant to show that the conduct of the respondent which is said to amount to a fundamental breach of contract were unlawful acts under the Act.

127. In the present case, the Tribunal has found that none of the allegations of discrimination or victimisation relied upon by the claimant are well-founded and so, even if the Tribunal concluded that there was a fundamental breach of contract, it could not find that the conduct said to give rise to any such breach amounted to unlawful discrimination. For that reason alone, the Tribunal would dismiss the constructive dismissal claim.

128. In any event, the Tribunal does not consider that there had been a fundamental breach of contract by the respondent. It does not consider that the respondent was acting in a way which was likely or calculated to destroy or seriously undermine the employment relationship. If anything, the actions by PMcG were an attempt to keep the relationship intact and find a resolution to the claimant's issues. There was, therefore, no fundamental breach of contract and so no constructive dismissal.

129. For all these reasons, the Tribunal finds that all of the claimant's claims under the Equality Act are not well-founded and they are all hereby dismissed.

Postscript

130. During the course of the hearing, the claimant sought to present evidence about a range of matters which went beyond the claims in the list of issues. The claimant's written submissions also addressed claims which were not before the Tribunal (for example, she asserts that there was a failure to make reasonable adjustments but no such claim had been raised).

131. It was quite clear to the Tribunal that there were a number of matters about which the claimant was aggrieved that went beyond the claims to be determined at the final hearing. The Tribunal recognises that the claimant, as a party litigant, may not appreciate that her claim was limited to what was set out in her ET1 claim form and later clarified in the case management process. It does not, therefore, criticise the claimant for raising these issues or seeking to lead evidence about these but the Tribunal's judgment only deals with the claims that were before the Tribunal as set out in the list of issues.

Date sent to parties **29 August 2025**