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EMPLOYMENT TRIBUNALS

Claimant ***Respondents***

Ms C Watson **AND** The London Borough of Islington

Heard at: London Central **On**: 9-12 April 2018
11 September 2018
12-13 September 2018 (in Chambers)

Before: Employment Judge Glennie
Ms O Stennet
Ms S Plummer

Representation
For the Claimant: In person
For the Respondent: Ms A Palmer, of Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that the complaints of direct discrimination; discrimination arising from disability; failure to make reasonable adjustments; harassment; constructive unfair dismissal; and wrongful dismissal are all dismissed.

REASONS

1. By her claim to the Tribunal the Claimant, Ms Watson, made the following complaints:

(1) Direct discrimination (because of race and/or disability and/or perception of disability)

(2) Discrimination arising from disability

(3) Failure to make reasonable adjustments

(4) Harassment related to race and/or disability and/or perceived disability

(5) Constructive unfair dismissal

(6) Wrongful dismissal

2. The Respondent by its response disputes those complaints.

3. The Tribunal is unanimous in the reasons that follow.

The Issues

4. The issues were the subject of an agreed list, a copy of which has been attached as an Annex to these reasons.

5. Further to the issues, at a Preliminary Hearing on 27 February 2018 Employment Judge Pearl ruled that the matters raise in paragraph 54(f) of the Particulars of Claim were irrelevant to the claim and should not be pursued, and that the Claimant should give further particulars in relation to the matters raised under paragraph 54(d) and (e). In the event the Claimant was not able to produce any further particulars and so only the matters canvassed in paragraphs 54(a), (b) and (c) were pursued at the Hearing, these relating to instances involving other persons on which the Claimant sought to rely by way of comparison with the way in which she was treated.

Procedural Matters

6. It was also agreed at the Preliminary Hearing on 27 February 2018 that this hearing would address liability only, and that it should be approached on the basis that the hearing would inevitably go part heard. This was because five days were believed not to be sufficient to hear the case and because one of the Respondent's witnesses, Ms Davies, was unable to attend during the original trial period.

7. Employment Judge Pearl also addressed the question of witness orders and granted the Claimant three such orders addressed to Ms Eden, Ms Kastrinou and Ms Blair. Of these, Ms Blair attended on the first day of the hearing and gave evidence. Ms Eden and Ms Kastrinou were both unable to attend during the original trial period. The Claimant agreed that it was not in the event necessary to call Ms Eden, but wished to call Ms Kastrinou. However, as a result of an administrative oversight in the Tribunal's office, the correspondence advising Ms Eden that she need not attend and Ms Kastrinou that she should attend the adjourned hearing date was not sent out until the day before the hearing resumed. Miss Kastrinou did not attend. The Claimant stated that in the circumstances she would prefer to continue the hearing without calling her rather than delay the matter further.

8. On the first day of the resumed hearing the Claimant sought to introduce a Family Court report on a family identified as "Family H" with whom the Claimant had dealings, as will be explained later in these reasons, although under the name "F". The Claimant said that this report had been delivered to her anonymously by being put through the letter box at her home. The Tribunal declined to admit this report for two reasons, namely:

8.1 The report was marked as confidential to the Family Court and the parties to the matter before that court.

8.2 It seemed unlikely that the contents of the report would have any bearing on the issues that the Tribunal had to decide. So far as Family H were concerned, these involved the Claimant's recording of her interaction with the family and her decision about whether to refer the family for further assessment, rather than any question as to what the eventual outcome for the family was.

Evidence and Findings of Fact

9. The Tribunal heard evidence from the following witnesses:

(1) Ms Katherine Blair, former Corporate Director of Children and Family for the Respondent, called by the Claimant under a witness order;

(2) The Claimant;

(3) Mr John Lawrence-Jones, Team Manager for Children's Services Contact Team and the Claimant's line manager;

(4) Ms Deborah Idris, Service Manager, Children in Need and Mr Lawrence-Jones' line manager;

(5) Ms Melanie Davies, Head of Service, Children in Need and Ms Idris' line manager

10. There was an agreed bundle of documents and page numbers in these Reasons refer to that bundle.

11. As well as the other functions of a Local Authority, the Respondent provides social services to children in need of those services. The Claimant is a qualified and registered social worker. She has worked as a social worker since obtaining her BSc in Social Work in March 2000, initially working on an agency basis and thereafter for Hackney Council, and then Haringey Council.

12. The Claimant was diagnosed with type 2 diabetes in September 1997. She also suffers from a neurological condition. The Tribunal will set out the evidence about these conditions when it deals with its conclusions on the issue of disability.

13. On 30 March 2005 the Claimant applied for a job with the Respondent. The application form included a question as to whether the applicant considered that he or she had a disability under the Disability Discrimination Act definition. The Claimant ticked the box to indicate "no". On the same page there was the opportunity to give a description of any disability that had been indicated and under the heading "reduced physical capacity" the examples given included diabetes. Again, the Claimant did not tick this box.

14. The Claimant began work for the Respondent on 7 September 2005. In August 2008 she applied for the role of Specialist Social Worker in Mental

Health, Drugs and Alcohol. In connection with this application the Claimant completed a section of the online form headed "equal opportunities monitoring" and indicated that she did not consider that she had a disability under the Disability Discrimination Act definition. In a similar way to the earlier form this form included diabetes as an example of a condition giving rise to reduced physical capacity and again the Claimant did not indicate that this applied to her.

15. In paragraph 12 of her witness statement Ms Idris said that in early 2014 the Claimant's then team manager informed her that the Claimant had had a scare a few years earlier that she might have multiple sclerosis, but that this was never formerly diagnosed. This evidence, which the Tribunal accepted, was consistent with an entry in the Claimant's medical records for July 2012 which read "multiple sclerosis likely (first)". The Claimant's evidence, which again the Tribunal accepted, was that for a formal diagnosis of multiple sclerosis to be made it was necessary for there to be two incidents that were symptomatic of this, and that this was the significance of the word "first" that was applied to this entry in her GP records. She has not been diagnosed as suffering from multiple sclerosis as there has not been a second such incident.

16. On 8 July 2014 at page 346 the Claimant's manager at the time, Ms Marrow, recorded in an email to herself a note about a concern that had arisen on a file dealt with by the Claimant and which she had marked no further action (NFA). The concern was that NFA might have been inappropriate in a case where a child was reported to have been hit with a stick by his mother. In a supervision record of 6 August 2014 at pages 347-348 Ms Marrow noted that the Claimant was to be mentored and supported in her work because of concerns, and that the Claimant felt happy with this decision. The note also recorded that the Claimant had been told that she may have multiple sclerosis but that she did not have a full diagnosis, and that she did not feel that she needed any support regarding this possible condition.

17. Mr Lawrence-Jones became the Claimant's line manager in January 2015. In a supervision record of 23 March 2015 at page 355 Mr Lawrence-Jones recorded that there had been discussions about some of the Claimant's NFA decisions, which he considered not to have been adequately explored. This was reflected in the Claimant's appraisal for the year 2014/15, completed by Mr Lawrence-Jones on 9 April 2015. At page 357 he stated "there have been some occasions where I have felt that Carol has perhaps made NFA decisions without fully considering all of the factors within the referral information, we have discussed this in supervision".

18. In a supervision record dated 25 January 2016 at page 388 there were entries that related to issue 1.1 regarding the Claimant's request for training. The Claimant's case in paragraph 4 of her Particulars of Claim was that it was agreed that she would liaise with the training department to find out the next available date for risk and analysis training, but that Mr Lawrence-Jones refused to allow her to attend this when a date became available.

19. The supervision record included the following entries:

> "We have discussed some of the NFA audits particularly with respect to the need to provide a rationale for decisions rather than just the decision plus the need to explore all strands of referral information thoroughly... Carol accepts these points and has advised that she will try to address this. Carol feels that some training on analysis would be helpful which I have agreed with"
>
> "Carol will explore analysis training options on My HR and book on when dates are available"

Against "action required" the entry read:

> "Carol to gain details of dates by next supervision"

20. From the next supervision record dated 9 March 2016 at page 389 it appears that the Claimant had not by then obtained any dates because an entry in the record read as follows:

> "We have checked My HR today and the next date is 21 March. However, there are already other staff off that day, so Carol will need to attend another time".

Alongside "action required" the entry read:

> "Carol to book on to next date after 21 March".

21. The Tribunal accepted Mr Lawrence-Jones' evidence in paragraph 42 of his witness statement that the reason why he was not able to agree to the Claimant attending the training on 21 March was that, because other people were already booked to be away on that date, there would not be sufficient staff to cover the functions of the office. Hence he asked her to book the next available date. In cross-examination the Claimant stated that these training opportunities arose once every few months, and not weekly or monthly. Subsequently on 16 June 2016, as evidenced by an email exchange of that date on pages 539-540, Mr Lawrence-Jones was asked to approve a training request that the Claimant had submitted via My HR to attend the course on analysis, planning and decision-making. Mr Lawrence-Jones approved this and asked the Claimant to let him know when a date arose so that he could add it to the team calendar.

22. In these circumstances the Tribunal found that it was not the case that Mr Lawrence-Jones had refused the Claimant's request for training; he in fact approved it, although for operational reasons he was not able to agree to the first date that arose, namely 21 March 2016.

23. The next issue chronologically is that numbered 1.8 in the list of issues, referring to an alleged incident on 24 March 2016 in which the Claimant said that Mr Lawrence-Jones spoke to her in a rude and aggressive manner stating, "you really don't understand". Mr Lawrence-Jones denied speaking to the Claimant in this way on this or any other occasion. The difficulty for the Tribunal about the Claimant's evidence on this point is that Mr Lawrence-Jones' alleged remark was not given any context. There was an email of 24 March 2016 at page 400 in

which the Claimant apologise to a colleague for the late transfer of a file to her team, and in cross-examination the Claimant said that she had forwarded the relevant details to the correct team and that Mr Lawrence-Jones could have picked up the file himself and passed it on.

24. In paragraph 48 of his witness statement Mr Lawrence-Jones referred to this particular file and said that he had asked the Claimant to forward the details to the correct team. This seemed to the Tribunal to be, on the face of the matter, a fairly ordinary incident such as would occur in many work places. It did not assist the Tribunal in trying to understand how Mr Lawrence-Jones might have come to say that the Claimant did not understand, or why he might have said so in an aggressive manner. Ultimately, the Tribunal did not find that he had spoken in an aggressive or rude manner. Mr Lawrence Jones may on some occasion have said something about the Claimant not understanding, but if he did so, the Tribunal found this to be of no real significance.

25. The Claimant also identified March 2016 as being the date of an occasion when she said that Mr Lawrence-Jones raised his voice and told her that he expected better of her, this occurring after she told him that the manager of the Finsbury Team had complained about a case she had put through to that team. The supervision record of the 5 April 2016 contained at pages 414-415 the following note

> "... Carol acknowledged that John [Mr Lawrence-Jones] had previously used the example of CIN Finsbury Team Manager……raising something about the quality of her referral on this occasion. Carol had responded by saying "she didn't give a shit about Finsbury". John had been taken aback and felt her response was unprofessional, he was the person speaking to her at the time, and her response was disappointing".

26. In cross-examination the Claimant accepted that she had said "I don't give a shit about Finsbury" on this occasion. The Tribunal found that Mr Lawrence-Jones did say something to the effect that he would expect better of the Claimant than that, and that this was a natural response in the circumstances. Whether or not he did so in a raised tone of voice, the Tribunal found that Mr Lawrence-Jones responded in a way that one would expect a line manager to do when a team member made a remark of this sort, which the Claimant herself accepted in cross-examination had been a wrong thing to say.

27. The Claimant was off sick for two days on 29-30 March 2016. Her GP records at page 787-788 identify the problem as pain in the neck and contain the comment "seems like neck pain, does not sound suggestive for flair of MS". When the Claimant returned to work on 31 March she completed the self-certification form at page 402 stating that the details of the sickness were high blood pressure and indicating that the absence was not disability related.

28. There was on the same date a return to work interview and this gave rise to issue 1.2 in which the Claimant alleged that Mr Lawrence-Jones raised his voice, told her that she was being belligerent, and shouted at her in front of other staff "I think you should" in an aggressive way.

29. This allegation was effectively identical to that made in respect of 20 May 2016 and involved the same alleged words. Mr Lawrence-Jones' evidence was that the return to work meeting was held in private, that he did not shout or become belligerent and that he did not use the words "I think you should". In cross-examination the Claimant maintained this allegation but was somewhat confused in her evidence. She agreed that there was a return to work interview in a closed meeting room, but then said there were two meetings. She said that the incident in which she was called belligerent was separate and that Mr Lawrence-Jones shouted across the office and was hostile. The Tribunal found as a matter of probability that there was no incident of this nature on 31 March 2016 at the back to work interview and that the Claimant has somehow confused her evidence about events on 20 May (which the Tribunal will describe below) with her account of the return to work interview.

30. On 5 April 2016 there took place a meeting between the Claimant, Ms Idris and Mr Lawrence-Jones, with a view to trying to resolve the issues that had arisen between the Claimant and Mr Lawrence-Jones. There were notes of this meeting at pages 411-416. The discussion included Mr Lawrence-Jones' concern about the quality of the Claimant's decision making, analysis and recording after a series of NFA audits. The Claimant said that she did not like speaking about her health and did not think it was relevant to do so, and there was the note previously mentioned about the Claimant's inappropriate response regarding the Finsbury team.

31. On 14 April 2016 a father and his three sons aged from 6 to 10 years attended the Respondent's office on a "walk-in" basis, meaning that they arrived unannounced. It was the Claimant's turn to take the next walk-in attendance and so she spoke to the family. When a walk-in attendance occurred the role of the social worker who saw the attendee or attendees was to decide whether or not any further action was required. If none was required the file would be marked NFA and no further steps would be taken. If the social worker thought that further action was necessary they would not deal with this themselves, but would immediately refer the clients on to the appropriate team. In either case a record of the attendance would be created.

32. The record created by the Claimant on this occasion is at pages 422-429. In common with other records of this nature, this contact record was created electronically and stored on the Respondent's system. The record created by the Claimant on this occasion included the following entries (which were anonymised for the purposes of this hearing):

> "F came in to the office with his three sons who have been residing with him since 24 March 2016. F advised that the children have been physically and emotionally abused by their mother, and since they have been in his care are refusing to return to their mother's care".
>
> "I spoke to the children on their own to ascertain what the issue was. Z the oldest expressed that is mother would "put thins in his head", has pulled their ears as punishment, slaps them with a slipper, and swears"

> "Sibling expressed that he would prefer to go in to foster care when I asked sibling what was foster care, he expressed he did not know"
>
> "I advised F that both parents appear to be exposing their children to emotional damage. I advised F that he should not speak openly in the presence of the children, as they appear to want to please both parents, and at present do not want to upset their father, who was being quite emotional throughout"

Against "action taken" the Claimant ticked the box marked "No Further Action" and under "reason for action taken" wrote the following:

> "F has presented to Children Services with his three sons, wanting advice. F has been caring for children since 24 March 2016, F has parental responsibility of the children, due to marriage F was advised to seek advice from Legal Service, and Citizen Advice for further support".
>
> "An assessment was undertaken in March 2012, due to the conflict between the parents, and emotional impact on the children. The last notification to Islington, 6 April 2016 was M raising concerns that F would not return the children to her care following contact.
>
> "This remains an issue where both parents will need to seek legal advice. No further role identified."

33. In paragraph 48 of her witness statement the Claimant said that marking the form "NFA" reflected her view at the time, although this changed following further investigation. She asserted that there were no comments made by the children on that day that required further investigation in her opinion, and that they said nothing more than that their mother was putting thoughts into their heads and that they wanted to go in to care. In paragraph 50 of her witness statement the Claimant said this:

> "I discovered later ... that I had in error recorded an allegation of physical violence made by the child of ear pulling and slaps with a slipper (page 425) this was an error in my recording. The reason I did not escalate the matter further and indeed had recorded "NFA" was because the child did not make allegations of physical abuse and/or violence by his mother. It was the father who made this allegation and the children did not repeat it in my discussion alone with them"

34. When cross-examined on this point the Claimant said that she had spoken to a social worker colleague, who had dealt with the children in 2012, and who told her that F was using the children in a malicious way against the mother. The Claimant asserted that NFA was the correct response at the time, and she said that to the best of her recollection it had been F who had made reference to ear pulling and slapping. She said that she was finding this (i.e. giving evidence on this point) difficult. The Claimant added that she did refer the family for assessment on 18 April (as to which see below). When Ms Palmer put it to the Claimant that, whether it was the child or the father who made the allegation, she should have referred the case for assessment, she replied that as a social worker

you risk assess every case; that F wanted to find out what he could do about the non-molestation order against him; and that this was basically a case of F trying to "up the ante".

35. To the extent that it may be necessary to decide this point, the Tribunal found as a matter of probability that it was child Z who had made the allegation about his mother, as recorded by the Claimant on the contact form. The Claimant's record is quite specific that she spoke to the children on their own and that it was Z who made the allegation rather than F. The Tribunal, however, agreed with the point made by Ms Palmer that it made little, if any, difference whether the allegation was made by Z or by F, and that in either case the Claimant should have referred the file for assessment rather than marking it NFA. It appeared to the Tribunal that the Claimant had somehow become distracted by the issues about the father's concerns and motivations and had lost sight of the potential risk to the children.

36. On 18 April 2016 the Claimant heard from the children's school that there were concerns for their wellbeing. F again attended the office on that same day and spoke to the Claimant, who made a record of the contact at page 430. This showed action taken as "referral to Children Services" and under "reason for action taken" the Claimant recorded the following, among other matters:

> "Today F has made an allegation that his children have been regularly beaten with shoes, initially slippers by their mother. F advised that the children had refused to go to school today as the head teacher had kept them in a room last week and their mother had attended the school. The children were adamant that they would not leave with their mother. The parents agreed that the children would return to their mother's care on Saturday. On Saturday the children refused to go to their mother's home therefore F attended Stoke Newington Police Station. According to F the police had expressed that they could arrest M which F expressed that he did not want, therefore left the station.
>
> "The children remain in the care of F as according to F do not wish to return to their mother's care. Z and his siblings refuse to return to their mother's.
>
> "There are two concerns that require further exploration, the children have disclosed to their father of regular physical chastisement by their mother, F has advised that there are no bruises, as due to the children's complexion.
>
> "An assessment is required due to allegation of physical abuse and continuous exposure to emotional abuse".

37. The case was then referred to Children's Services and on 4 May 2016 the manager of the Finsbury Team noted at page 456 that F had expressed concerns about the Claimant and wanted to meet a manager to discuss these. Mr Lawrence-Jones met F on 5 May 2016. His evidence in paragraph 75 and 76 of his witness statement, which the Tribunal accepted, was that F stated that the children had directly made allegations of physical abuse to the Claimant and that

he, F, was angry that despite this the Claimant did not seem to take the matter seriously. Mr Lawrence-Jones continued that on reviewing the case file there was a significant conflict between the records of disclosures made in the contact record of 14 April 2016 and those in the subsequent contact on 18 April 2016. Mr Lawrence-Jones commented that, in spite of the explicit description and seriousness of the allegations reported by the children, the contact was closed as NFA and the reasoning provided for that decision made no reference to the disclosure of physical harm made by child Z. Mr Lawrence-Jones stated that the matter should have been immediately referred to the relevant team for assessment and that, even if the Claimant's view changed following further investigations, the NFA closure of the contact was the wrong decision, and was in his opinion indefensible. He stated that it was clear that the contact met the threshold for requiring immediate referral to Children's Social Care.

38. The Tribunal accepted and agreed with Mr Lawrence-Jones' assessment of the situation. Although, as we have recorded above, the Claimant asserted in her oral evidence that her original decision to take no further action was not wrong, the Tribunal accepted Mr Lawrence-Jones view to the contrary. The Claimant had recorded a ten-year-old child making an allegation of physical abuse by one of his parents.

39. The Claimant's next supervision session was on 11 May 2016, the note of this being at pages 462-465. Mr Lawrence-Jones referred to the contacts on 14 and 18 April and pointed out that each contained essentially the same information, but that it was only on the second occasion that a referral to Children's Social Care was made. The notes recorded that the Claimant acknowledged that the decision and recording on 14 April 2016 were not acceptable. (In cross-examination the Claimant agreed that she had said this at the time, although as noted above, it was not a view that she maintained at the hearing.) Mr Lawrence-Jones stated that he and Ms Idris were both concerned about the lack of a defensible decision or a coherent analysis and the obvious inconsistency between the two records. He said that the outcome of this would be that the Claimant's performance would be monitored in line with the informal part of the performance management policy, with the aim of achieving the necessary changes without escalating to the formal level straight away. There was some discussion of the particular case of Family H, and the meeting concluded with a note that the Claimant was to find dates for the next analysis training session available and to book onto it.

40. On the following day, 12 May 2016, the Claimant again accessed child Z's file on the system, although there had been no further contact with him or any other member of the family at that stage, and added some general case notes that appear at pages 466-472. These included further notes about the contacts on 14 and 18 April 2016. Part of this new note about the contact on 14 April read as follows:-

> "F expressed in the presence of the children that they had been physically and mentally abused. F explained that he had been served with a restraining order. F expressed that the children are sworn at, and hit with a slipper, F throughout told the children "tell the social worker" what has

> happened to you all. F stated that M swears at the children and chews Kat and consumes alcohol".

And then later:

> "I advised F that this was unfair to state these things in the presence of the children as it appeared they were being coached in what to say. F was asked to leave the room and allow the children to speak freely. The youngest child expressed that he wanted to go in to care, when was asked what care was he expressed that he did not know."

41. In paragraph 67 of her witness statement the Claimant explained this additional note in the following terms

> "I added another note to the case file... as I was concerned following my supervision session of the day before that my note did not accurately reflect the initial visit on 14 April and I wanted to rectify the situation. This note was a correct reflection of the situation, I verbally told Mr Lawrence-Jones that I had added this note"

42. In paragraph 26 of her Particulars of Claim the Claimant said that she had told Mr Lawrence-Jones verbally that she had made these changes to the record and that she had emailed him about them. When cross-examined on the point the Claimant said that she had indeed told Mr Lawrence-Jones about the changes and emailed him although she could not recall the dates concerned. She was not able to point to any email in the bundle that reflected this and she said that when she told Mr Lawrence-Jones about this he replied that it was not on the system. She denied trying to change the record surreptitiously.

43. Mr Lawrence-Jones denied that the Claimant either emailed him or told him about this addition to the record. The Tribunal found that the Claimant did not send an email to Mr Lawrence-Jones on the matter; if she had it would have been disclosed. The Tribunal also found that the Claimant did not tell Mr Lawrence-Jones about the addition to the record, for the following reasons:-

43.1 If, when the Claimant was asked about her contact record for 14 April at the supervision session, she had had any doubts about the accuracy of what she had recorded, she could have raised then the possibility of consulting her notes once more and if necessary amending or adding to the record. She did not do so.

43.2 The Tribunal found it implausible that if, the day after the supervision when the matter had been discussed and made the subject of a performance improvement plan, the Claimant had told Mr Lawrence-Jones that she had added to the record in the way that we have described, he would have reacted only by stating that it was not on the system. It is likely that he would have been very concerned by the notion of amending the record of what was said on 14 April, or more particularly by whom it was said, in a way that made it consistent with what was recorded for 18 April, at which point the Claimant had referred the family for assessment. The Tribunal

considered that not only would he have been very concerned, but also that he would have said so.

43.3 Mr Lawrence-Jones' email of 16 June 2016 at page 543 (referred to below) is consistent with his only then having discovered the new case note made on 12 May 2016. He would not have expressed himself in this way if the Claimant had already told him about it.

44. On 18 May 2016 there was a further meeting between Mr Lawrence-Jones and the Claimant in which the former said he was instigating from that day the informal phase of the procedure for managing poor performance, that the review period would be three months and that progress would be reviewed at monthly supervisions and in between each supervision, so that there would be fortnightly meetings. This formed the subject matter of issue 1.4.

45. On the following day, 19 May 2016, the Claimant sent an email to Ms Idris at pages 485-486 in which she complained about contact between Mr Lawrence-Jones and HR in the following terms: -

> "... John had stated in the informal action meeting that you had informed him that Cathy Callaghan had gone to HR. I am not aware that I was on informal standards or even if it was being considered. I just wanted to ascertain, if there is a paper trail of this, should I need to discuss further with the union.
>
> "I suppose what I am saying, Deborah, John is one of your managers and you can share anything you choose to but I find this unfair I suppose, unless you have this written, and I am able to respond to some degree. This may have also influenced the decision of informal standards"

46. In paragraph 24 of her Particulars of Claim the Claimant said she had discussed this point with her union who had advised that this was a breach of the Data Protection Act. The Tribunal did not consider that the Claimant had any grounds for complaint about this aspect. In the circumstances there was no reason why Mr Lawrence-Jones should not have discussed the Claimant with HR. Mr Lawrence-Jones further explained in his witness statement at paragraph 98 that the Claimant had said he was the only manager who had ever raised concerns about her work and that he mentioned his contact with HR in reply to that. The Tribunal considered that the Claimant could not reasonably contend that it was relevant for her to assert that there had been no previous complaints or concerns but not relevant for Mr Lawrence-Jones to establish whether or not that was so and to share the information with her.

47. On 20 May 2016 there occurred an incident that was the subject of discussion at the next Performance Improvement Plan (PIP) review meeting on 2 June, notes of this being at pages 495-496. This formed issue 1.6. The Claimant said in paragraph 8 of her Particulars of Claim that Mr Lawrence-Jones shouted at her saying "I think you should" in an aggressive way in front of other staff and told her that she was being belligerent. Mr Lawrence-Jones agreed that there had been an incident of a sort on this occasion. The office had received a call about a five-month-old baby being left at home alone and there had been

some delay in following this up. A senior administrator was concerned about the level of risk and brought this to Mr Lawrence-Jones' attention, and following some discussion in the office the Claimant offered to make the necessary telephone call to check on the situation. Mr Lawrence-Jones' account of what he said was "I think it should be you really Carol". The Claimant had reported this matter to Ms Idris in terms of Mr Lawrence-Jones shouting at her across the office; he denied shouting but accepted that his tone had been a "little terse"

48. On this point the Tribunal found that there was no material difference between Mr Lawrence-Jones saying "I think you should" or "I think it should be you". He said this in the office in front of other social workers. Whether the way in which he spoke could correctly be described as rude, aggressive or terse he was not speaking in an everyday tone of voice, but in one that indicated that he was angry or dissatisfied. The Tribunal accepted that he may well have spoken in a louder tone than usual. However, we also accepted that the reason why Mr Lawrence-Jones spoke the way that he did was that which he gave in paragraph 102 of his witness statement, namely because he felt the matter could and should have been resolved much earlier in the day.

49. The Tribunal considered that, if Mr Lawrence-Jones was displeased and showed it, that was understandable. There had been an oversight as a result of which a five-month-old baby might have been left at risk, potentially for some time. In the event, no harm was done. The Tribunal however, concluded that even if Mr Lawrence-Jones' reaction was a little more severe than the situation reasonably demanded, the reason why he spoke as he did was because he was concerned about the situation and what could have happened, and nothing more.

50. The Claimant was off sick for one day on 23 May 2016. In her self-certificate at page 488 she cited flu-like symptoms and indicated that the absence was not disability related.

51. On 6 June 2016 at page 501 the Claimant sent an email to Ms Idris, copied to Mr Lawrence-Jones, saying that once the informal performance process had been concluded or escalated she would like to be transferred to a different team because she was constantly feeling anxious and under pressure, and this was affecting her health.

52. This led to an email of 7 June 2016 at page 512 from Mr Lawrence-Jones. He said that there was no corporate transfer policy and that there was no right to a transfer. He added that the Claimant "could be referred to Occupational Health for medical redeployment" but added that if that were granted, there would be possible negatives. The system was that if an individual was put on notice for redeployment they would have to apply for posts and meet the criteria in the normal way. If that at the end of the notice period there had not been a successful redeployment then they would be dismissed, subject to a hearing.

53. In issue 1.7 the Claimant complained, as said in paragraph 27 of the Particulars of Claim, that Mr Lawrence-Jones suggested that she be referred to Occupational Health for medical redeployment, but that this could result in her dismissal. The Tribunal did not consider that this was an accurate reflection of what Mr Lawrence-Jones had said. He did not suggest that the Claimant should

be referred to Occupational Health for medical redeployment, but rather that she could be. What he said he about dismissal was only a warning about the possible risk that applying for medical redeployment involved. In any event the Claimant replied stating that she was not interested in redeployment on medical grounds at that stage.

54. A further supervision took place on 13 June 2016, following which the Claimant left the office at lunch time having sent an email to Mr Lawrence-Jones stating that she felt overly stressed and would go to her GP. This involved a half day off sick which, with the previous two episodes noted above, meant that the Claimant had taken three separate sickness absences within a period of three months. The Claimant's self-certificate for this half day at page 529 recorded that she was absent due to feeling extremely stressed due to manager's approach during informal standard setting, and indicated that the absence was not disability related.

55. Mr Lawrence-Jones held a return to work interview on 14 June, the notes of which are at pages 531-532. He recorded the cause of the absence as stress and that the Claimant had planned to see her GP but felt able to return work without doing so. He recorded that stage one of the short-term absence part of the managing attendance procedure was triggered, as there had been three episodes in three months.

56. The managing attendance procedure identified at page 81 the triggers for operation of that procedure as 8 working days sickness in the past 12 months; or 3 separate periods of sickness absence (albeit less than 8 days in total) in a 3 month period. Either of these would trigger the short-term absence procedure.

57. At page 538 Mr Lawrence-Jones sent a letter to the Claimant dated 14 June 2016 stating that stage one of the policy had been triggered and that a 4 week period would run during which the target was not to have more than one day's absence. He stated that if this target were met then there would be no need to meet again. These events form the subject matter of issue 1.9, namely subjecting the Claimant to sickness monitoring.

58. On 16 June 2016, as already mentioned, there was an exchange of emails concerning the Claimant's arrangement to attend the analysis, planning and decision-making course.

59. On the same date there was at page 541 an email exchange between the Claimant and a social worker in the Finsbury team, concerning Family H. The social worker said that when she had spoken to the Claimant she had said there was "a typo" and that the children had not disclosed that they were being hit by their mother and instead in was F who said it. The social worker had looked at the records and noticed that on the 14 April it was recorded that Z reported violence by his mother. The Claimant replied to the email saying that none of the children made a disclosure, and it was F who had made the allegations. The Claimant wrote "I apologise for the typo error".

60. The Claimant copied her email to Mr Lawrence-Jones, who also on 16 June forwarded the exchange to Ms Idris, saying that he was concerned that the

Claimant had retrospectively added a case note for 14 April which was not consistent with the earlier contact record. He said that this raised two concerns, one that the Claimant might be rewriting history having been challenged with regard to her poor practice around this contact, and second that there were now two records of the same visit that were not consistent with one another.

61. The Tribunal accepted Mr Lawrence-Jones' evidence that this was the first occasion on which he had become aware of the case note dated 14 April but entered on 12 May 2016. Had he previously been aware of this he would have raised it with Ms Idris at the time and would not have written in the terms that he did on 16 June without referring to his previous knowledge.

62. Then on 24 June 2016 at page 555 the Claimant sent an email to the Assistant Director of Safeguarding and Support, in which she complained that she was being put through an unjust process of informal standards. She referred to her diabetes and likely diagnosis of multiple sclerosis, and said that HR had advised that this would be seen as a disability due to taking medication on a daily basis. The Claimant continued that she had not been able to tell her manager of her diabetes explicitly, but had made him aware of the neurological condition. The Claimant referred to her manager having said that she needed to demonstrate how she reached the outcome for her decisions, and that following an error on a case she was immediately put on informal standards. She referred to the contact between Mr Lawrence-Jones and HR and she concluded as follows: -

> "No matter how or what I try to explain to my manager, he remains rigid in his approach with me. I was quite stressed and frustrated by his behaviour towards me recently and had to leave the office as I could not hold back my tears, this was after 2pm. But I returned the following day, I was put on sickness monitoring for three episodes of sickness inclusive although not at the maximum suggested in the sickness policy.
>
> "I am micromanaged, put under stressful pressure, but try with the best will to remain positive".
>
> "I am unclear how this behaviour meets Islington's Dignity For All Policy".

63. The reference to micromanaging reflects issue 1.11, drawn from paragraph 41 of the Particulars of Claim. Here the Claimant said that Mr Lawrence-Jones constantly watched what she was doing, stood over her and made her nervous. She said that he sent emails with times on wanting to know what she was doing, and would go over minor details in a separate room. She said that she felt constantly harassed and uncomfortable and that he did not treat her comparators in that way. Mr Lawrence-Jones denied micromanaging and said that the informal standard setting process involved supervising and monitoring the Claimant's casework more closely than would usually be the case. He said that other members of the team were not subject to the same level of monitoring simply because they were not subject to performance standard setting measures.

64. The Tribunal accepted Mr Lawrence-Jones' evidence about this. The PIP necessarily involved a closer level of supervision of the Claimant's work than would usually be the case. There was a reason for this, namely the concerns about her work that had arisen.

65. On 7 July 2016 Mr Lawrence-Jones, Ms Idris and Ms Davies met to discuss the Claimant's recording of matters regarding Family H. Ms Davies decided that there would be a management investigation.

66. Then on 11 July 2016 Ms Idris sent an email at pages 559-560 to the Claimant in response to the complaint made to the Assistant Director. Ms Idris referred to the informal standards setting procedure, saying that Mr Lawrence-Jones had confirmed that he was not aware that the Claimant had diabetes until her email of 24 June, although he was aware that she had had some tests for multiple sclerosis. Ms Idris said that she agreed that the Claimant had not previously been on informal standard setting and said that it had never been stated that she had, but that managers often consulted with HR regarding staff. She referred to the Claimant's allegation of micromanagement and said that there needed to be some evidence of this for it to be substantiated, and that if the Claimant had any information she would look into the matter.

67. Ms Idris also said that following a meeting the Claimant had sent her an email asking for her workload to be reduced and, in response to this, that she recommended a referral to Occupation Health (OH) which she said the Claimant had agreed was necessary. Under "action" Ms Idris concluded her email as follows: -

(1) Mr Lawrence-Jones was to complete a referral to OH by 15 July 2016.

(2) The Claimant was to inform Ms Idris whether she wished to engage in work place resolution in respect of Mr Lawrence-Jones.

(3) Once the OH report was completed a decision could be agreed regarding the work load and how best to support the Claimant within the team.

68. Mr Lawrence-Jones completed an OH form on 14 July 2016. This referred to the three absences within three months, and said that in general terms the Claimant's level of attendance had not been a cause for great concern, and that this was not the reason for the referral. He continued that the Claimant was worried that her blood pressure could trigger the condition of multiple sclerosis and that she had indicated more recently that she felt that her blood pressure and her diabetes affected her work performance. Her referral was therefore for assessment of the impact, if any, of these conditions on the Claimant's capacity to carry out the duties associated with her role to the required standard.

69. On 20 July 2016 Mr Lawrence-Jones told the Claimant that there would be a management investigation with regard to the Family H case, to be conducted by Ms Abosede Onaboye. He followed this up with an email the following day at page 575. This was the subject matter of issue 1.10, namely the Claimant being subjected to a formal investigation. In her Particulars of Claim the Claimant identified this as occurring on 25 July 2016. Given the email from Mr Lawrence-

Jones the Tribunal found that this date was incorrect, although this made no material difference to matters.

70. There was then at page 583 a letter dated 1 August 2016 from Ms Onaboye to the Claimant giving her notice that a formal investigation meeting had been arranged under the Respondent's disciplinary procedure. She stated that the purpose of the meeting was to investigate the allegation that the Claimant falsified information on a contact record on 14/04/16 for child Z. The meeting was set for 10 August 2016.

71. Before that meeting took place the OH report was produced, dated 3 August 2016, at pages 592-593. It followed a telephone consultation with the Claimant. The Claimant's evidence, which the Tribunal had no reason to doubt, was that this consultation lasted about fifteen minutes. The OH advisor recorded the Claimant's conditions and the possible multiple sclerosis. The advisor said that the Claimant stated that she often suffered from fatigue and felt that her eyesight was deteriorating. The Claimant said that she found she was requiring more effort to concentrate and she found it difficult to focus at times and could be forgetful. She said that she was suffering from stress due to the extra pressure of being monitored. The advisor said that she had advised the Claimant to attend her GP to discuss the symptoms, particularly around forgetfulness and difficultly concentrating.

72. The advisor gave some guidance about the possible symptoms of multiple sclerosis and then under "management advice" wrote as follows: -

> "It is advisable that Carol's work load is reduced as her symptoms have increased since April. She will benefit from a reduced workload in order to give her time to carry out tasks and avoid mistakes or vital pieces of information for her work until she has been seen by her GP regarding her symptoms and receives the appropriate treatment. In the meantime, it will be beneficial that Carol attends the training course to improve her confidence in her work standard and eliminate the need for the frequent informal standards monitoring. Carol should refrain from complex decision making at this time to avoid safety issues. A stress risk assessment is also recommended in order to identify triggers and find ways to tackle them. Successful programmes of workplace stress management have seen a significant reduction in sickness absence."

73. Ms Onaboye interviewed the Claimant as part of the disciplinary investigation on 10 August 2016, this meeting being the subject of issue 1.12. The recording of the contacts with family H was discussed. Following this, on 11 August 2016, Ms Davies wrote to the Claimant at pages 608-9 recording that she had decided to place her on limited duties of project work, in other words that the Claimant was withdrawn from frontline social work. This was the subject of issues 1.13 and 2.1-2.4. Ms Davies explained this decision in the following terms:

"These arrangements will continue to be followed pending the completion of the management investigation that is currently taking place and in line with the recent

recommendation from occupational health that you should not currently be making or taking part in complex decision making."

74. On the following day, 12 August 2016, the Claimant sent an email at page 610 to Ms Davies, which read as follows:

"Following our discussion yesterday, I would like to thank Islington for the many opportunities and experience it has afforded me.

"I apologise for any embarrassment I have caused to Islington, as this was not my intention.

"I am resigning from my position as social worker with immediate effect."

75. In paragraph 46 of the Particulars of Claim, the Claimant said that she had no choice other than to resign, and that having been taken off her job and moved to a totally different role was the last straw for her. In issue 1.14 she contended that she had been constructively dismissed.

76. The Claimant then promptly made applications to three employment agencies, with a view to securing alternative employment. The agencies sought references, and their requests were passed to Mr Lawrence-Jones. In all three of the references he provided (pages 613, 614.1 and 614.3) Mr Lawrence-Jones included the following words:

"Carol worked to the required standard some of the time, but at other times her work gave cause for concern and required more intensive management than would be usual for a senior social worker."

Mr Lawrence-Jones also gave "unsatisfactory" or "poor" gradings for aspects of the Claimant's work, including work performance, report writing skills and relationships with seniors. These references were the basis of issue 1.15.

77. The Claimant sent emails on 25 August 2016 to Ms Davies (page 615) and on 26 August 2016 to Ms Davies and others (page 617) protesting about the references and asking that Mr Lawrence-Jones should not provide any further references for her. Ms Davies provided an amended reference on 19 September 2016 which included the statement that the Claimant's practice was satisfactory from 2008 to 2015 and that:

"Concerns raised in July 2016 led to a disciplinary matter that was being investigated. This was unresolved at the time Carol resigned."

Instead of "poor" or "unsatisfactory" grades, Ms Davies included the words "see below".

78. Meanwhile, on 7 September 2016, the Claimant had notified a potential claim to ACAS. On 19 September 2016 Ms Onaboye sent her investigation report (pages 624-627) to the Claimant. This concluded that the matter should be referred to a disciplinary hearing. In the covering letter Ms Onaboye stated that the report would have to be sent to the relevant professional body, the

Health and Caring Professions Council (HCPC) for consideration of the Claimant's fitness to practise. This referral was the subject of issue 1.16.

79. The Claimant presented her claim to the Tribunal on 17 November 2016. There followed a fairly extensive procedural history, which need not be set out in detail here.

80. The HCPC hearing took place in November 2017: the outcome was that the Claimant was suspended from practice for 12 months.

The applicable law and conclusions

81. The first issue that the Tribunal addressed was that of disability. As stated above, the Claimant relies on two conditions as giving rise to disability, namely a neurological condition (which may be MS but which has not been diagnosed as such) and diabetes.

82. Section 6 of the Equality Act 2010 provides as follows:

(1) A person (P) has a disability if –

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

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

83. Section 212(1) of the Act provides that "substantial" means "more than minor or trivial".

84. Schedule 1 to the Act makes further provisions regarding the determination of disability, including the following:

2. Long-term effects

(1) The effect of an impairment is long-term if –

(a) It has lasted for at least 12 months,

(b) It is likely to last for at least 12 months, or

(c) It is likely to last for the rest of the life of the person affected.

(2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

5. Effect of medical treatment

(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if –

(a) Measures are being taken to treat or correct it, and

(b) But for that, it would be likely to have that effect.

(2) "Measures" includes, in particular, medical treatment…….

6. Certain medical conditions

(1) Cancer, HIV infection and multiple sclerosis are each a disability.

85. In her impact statement at pages 66-68, the Claimant made brief reference to her neurological condition in paragraphs 17 to 21. She described an episode in 2012, when she experienced darkness in her eye, a limp, spasms in her right arm, and an effect on her balance. She was told that this was highly likely to be the first stages of MS, but that there had to be two such episodes for a formal diagnosis to be given. She also experienced a sensation of tingling in the brain in 2016, but this subsided.

86. The Claimant's GP records included at pages 798-9 references to transient neurological symptoms and the entry "multiple sclerosis (first) likely". There was also recorded in March 2016 an episode of neck pain with the note "does not sound suggestive for flare of MS".

87. The Tribunal concluded that the Claimant's neurological condition did not give rise to disability within the statutory definition, for the following reasons:

87.1 There has been no formal diagnosis of MS, and in the absence of the same the Tribunal did not consider that it could find as a matter of probability that the Claimant has the condition. Presumably the requirement of two episodes for a diagnosis to be made exists because there may be other explanations for transient MS-like symptoms. Paragraph 6 of Schedule 1 did not therefore apply.

87.2 The evidence to date is that the episode in 2012 was a one-off occurrence, and could not be regarded as causing long-term effects. There was no evidence of an effect on the Claimant's day-to-day activities beyond this.

87.3 Although the Claimant is taking folic acid and vitamin D with a view to assisting with her neurological condition, there was no evidence as to what the position would be if she did not take these. The Claimant was not therefore able to rely on paragraph 5 of Schedule 1.

88. The Claimant said rather more in her impact statement about her diabetes. She stated that this was diagnosed in September 1997 and is a lifelong condition. She takes 4 types of medication, some to treat the diabetes and some to deal with the side effects of the condition. The Claimant stated that she feels lethargic when her blood sugar dips, and has problems with her vision when the level is raised. In paragraph 16 of her impact statement she said:

"Without the medication I take for my diabetes, I would not be able to function normally at all. Symptoms of uncontrolled diabetes include increased thirst and hunger, dry mouth, frequent urination, fatigue and weakness, blurred vision and headaches. I sometimes have these symptoms now and when I do I find it

difficult to concentrate and focus and difficult to use a computer without several rest breaks. Fatigue, weakness, headaches and blurred vision would have a substantial impact on my normal day to day activities; certainly all activities would take much longer without medication, if they were possible at all."

89. The Tribunal accepted the Claimant's evidence about the effects that her diabetes would have if she were not to take the medication for it. We also accepted that these effects would have a substantial impact on normal day to day activities including (but almost certainly going beyond) concentrating and using a computer. There was no dispute that diabetes is a lifetime condition.

90. Given the terms of paragraph 5 of Schedule 1 to the Equality Act, we found that the Claimant's diabetes gave rise to disability within the Act, and did so at all times material to the present claim.

91. The Tribunal then turned to the complaints of discrimination and/or harassment. Section 13 of the Equality Act makes the following provision about direct discrimination:

> *(1) 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.*

92. Discrimination arising from disability is defined in section 15 of the Act in the following terms:

> *(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.*

93. Harassment is defined in section 26 of the Act as follows:

> *(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*

94. Section 136 of the Act makes the following provision about the 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.

95. In **Igen Limited v Wong [2005] IRLR** and **Madarassy v Nomura International PLC [2007] IRLR 246** (both cases decided under the equivalent provisions of the earlier legislation) the Court of Appeal identified a two-stage approach to the burden of proof. At the first stage, the Tribunal should ask whether, in the absence of an explanation from the Respondent, the facts are such that it could properly find that discrimination had occurred. In **Madarassy** the Court of Appeal emphasised that this must be a finding that the Tribunal could properly reach. It would not be enough to find only a difference in protected characteristic and a difference in treatment: there would have to be something more (which might not need to be in itself very significant) to support that finding. If the facts were not of this nature, the claim would fail: if they were, then the burden would be on the Respondent to prove that it had not discriminated against the Claimant.

96. The Tribunal reached the following conclusions on the individual issues.

97. Issue 1.1 (direct discrimination because of race and harassment related to race). The Tribunal has essentially found against the Claimant on the facts of this allegation: Mr Lawrence-Jones did not prevent the Claimant undertaking the training she requested. There were operational reasons why he did not agree to the Claimant attending the training concerned on the first available date. There was no basis on which the Tribunal could properly find that Mr Lawrence-Jones' decision was in any way influenced by or related to the Claimant's race.

98. Issue 1.2 (direct discrimination because of race and harassment related to race). The Tribunal has found against the Claimant on the facts of this allegation, in that we have found that the Claimant has confused this with issue 1.6. Our conclusions on that issue are given below.

99. Issue 1.3 (direct discrimination because of race and harassment related to race). The Tribunal has essentially found that the Claimant has proved the basic factual elements of this allegation: Mr Lawrence-Jones did say that he expected better of her. We have also found, however, that this was a reasonable response in the circumstances. There was no reason to believe that Mr Lawrence-Jones would have said anything different to any other individual in the same circumstances, and no basis on which the Tribunal could properly find that what he said was in any way influenced by or related to the Claimant's race. He said that he expected better of her because that was how he felt about the situation.

100. Issue 1.4 (direct discrimination because of race and harassment related to race). There was no dispute that the Respondent put the Claimant on a

Performance Improvement Plan. The Tribunal concluded that this decision was entirely justified given the Claimant's decision to take no further action on 14 April 2016 and what was known about her recording of that decision at the time (18 May 2016). Mr Lawrence-Jones had, and was entitled to have, serious concerns about the Claimant's performance. There was no reason to believe that he would have treated any other individual differently in the same circumstances, and no basis on which the Tribunal could properly find that his decision was in any way influenced by or related to the Claimant's race. He placed her on the PIP because he believed that it was necessary to do so.

101. Issue 1.5 (direct discrimination because of race). Mr Lawrence-Jones discussed the Claimant with a member of HR. The Tribunal has already found that there was no reason why Mr Lawrence-Jones should not have discussed her situation with HR, especially as she was contending that there had been no previous complaints or concerns about her. In fact, one would expect a manager to consult HR in the circumstances. Again, the Tribunal found no reason to believe that Mr Lawrence-Jones would have acted differently had any other individual been in the same situation as the Claimant, and there was no basis on which the Tribunal could properly find that what he did was influenced by the Claimant's race.

102. Issue 1.6 (direct discrimination because of race and harassment related to race). The Tribunal has essentially found in the Claimant's favour on the factual basis of this allegation: Mr Lawrence-Jones said something like "I think you should" in a way that showed that he was angry or dissatisfied. We have also found that it was understandable that he was displeased with what had happened, and that he said what he did and in the way that he did because he was concerned about the situation. Once again, we found no reason to believe that Mr Lawrence-Jones would have spoken any differently to any other individual in the same circumstances, and no basis on which we could properly find that that what he did was influenced by or related to the Claimant's race.

103. Issue 1.7 (direct discrimination because of race and/or disability and harassment related to race and/or disability). The Tribunal has found that Mr Lawrence-Jones did not suggest that the Claimant should be referred to OH for medical redeployment, but rather that she could be, and that he gave only a warning about the risk of dismissal that this entailed. To that extent, the factual basis of the allegation has not been made out. In any event, the Tribunal finds that this was an innocuous observation, and that there was no reason to believe that Mr Lawrence-Jones would have written anything different to any other individual in the same circumstances. There was no basis on which the Tribunal could properly find that what Mr Lawrence-Jones wrote was in any way influenced by or related to either protected characteristic.

104. Issue 1.8 (direct discrimination because of race and harassment related to race). The Tribunal has essentially found against the Claimant on the facts of this allegation. If Mr Lawrence-Jones said that the Claimant did not understand something, this was no more than a routine observation, and there was no basis on which the Tribunal could properly find that it was in any way influenced by or related to the Claimant's race.

105. Issue 1.9 (direct discrimination because of race and/or disability; discrimination because of something arising from disability (i.e. the Claimant's sickness record / absence from work and the perception that she was less able to focus and/or concentrate because of her disabilities; harassment related to race and/or disability). This issue related to Mr Lawrence-Jones' decision to invoke stage 1 of the managing attendance policy, which he communicated to the Claimant on 14 June 2016. The Tribunal found that Mr Lawrence-Jones took this step for the reason stated in his letter of that date, namely that stage one had been triggered by the Claimant's 3 separate absences in a 3 month period. There was one absence of 2 days, which the Claimant attributed to high blood pressure; one of one day which she attributed to flu-like symptoms; and another of one day which she attributed to stress.

106. The Tribunal found nothing in the evidence on which it could properly base a finding that Mr Lawrence-Jones' decision was in any way influenced by or related to the Claimant's race or disability. We have found that he decided as he did because of the Claimant's sickness absence record at that point. On the Claimant's own account, her record was not something arising from her disability. Nor was there any evidence that Mr Lawrence-Jones perceived the Claimant as being less able to focus or concentrate because of her disability or any perceived disability. His concern was not the Claimant's ability to concentrate, but the fact that she had had 3 short periods of sickness absence in a 3 month period.

107. Issue 1.10 (direct discrimination because of race and/or disability and harassment related to race and/or disability). It is the case that the Claimant was made the subject of a formal investigation. The Tribunal considered that it was entirely reasonable that such an investigation should be instigated, given all that had come to the Respondent's attention about the Family H case. The Tribunal thought it likely that the Respondent would have been open to criticism had it not investigated the Claimant's actions. Given this, we found no reason to believe that any other individual who had acted in the same way would have been treated any differently from the Claimant.

108. The Claimant relied on three other instances by way of comparison with how she was treated. In paragraph 104 of her witness statement, the Claimant referred to Ms Idris closing a case without assessment and said that she did so "for fear of being challenged by a white middle class professional" (paragraph 54(a) of the Particulars of Claim). The Tribunal found that this did not disclose any valid comparison with the Claimant's case, which is about how she was treated, rather than how a service user was treated. In paragraph 105 of her witness statement, and paragraph 54(b) of the Particulars of Claim, the Claimant referred to a white social worker not being sanctioned for swearing at a father. The Tribunal considered that this was a completely different situation from that involving the Claimant, whatever the details of the incident may have been.

109. The third comparator relied on by the Claimant was that of a white social worker who had closed a case "NFA", after which the file was reviewed and re-opened, essentially because Mr Lawrence-Jones did not agree with that assessment. This appeared in paragraph 106 of the Claimant's witness statement and paragraph 54(c) of the Particulars of Claim. Mr Lawrence-Jones' evidence was that this was a different situation, and did not lead to any

investigation, because the social worker concerned had given an identifiable and arguable rationale for the decision. His considered view was that the decision was not the right one: but the situation did not give rise to the same degree of concern as in the Claimant's case. The Tribunal accepted Mr Lawrence-Jones' evidence about this, finding that the situation was different, and that it was understandable that he would take a different view in that case.

109. The Tribunal concluded that there was no basis on which it could properly find that the Respondent's decision had been in any way influenced by or was related to the Claimant's race.

110. Issue 1.11 (direct discrimination because of race and/or disability and harassment related to race and/or disability). The Tribunal has accepted Mr Lawrence-Jones' evidence that he did not micromanage the Claimant, but that being on a PIP necessarily involved a greater than usual degree of supervision and monitoring. The Tribunal's earlier conclusions regarding the PIP itself are applicable also to this issue.

111. Issue 1.12 (direct discrimination because of race and/or disability and harassment related to race and/or disability). The Claimant attended a disciplinary meeting with Ms Onaboye on 10 August 2016: the Tribunal's earlier conclusions about the instigation of the disciplinary process are also applicable to this issue.

112. Issue 1.13 (direct discrimination because of race and/or disability; discrimination because of something arising from disability (as under issue 1.9 above); harassment related to race and/or disability). It is the case that Ms Davies removed the Claimant from frontline work and instructed her to undertake alternative work. The Tribunal found that it was clear that she did so for the reasons that she expressed in her letter of 11 August 2016, namely the ongoing investigation and the OH recommendation that the Claimant should not be involved in complex decision making.

113. In relation to the complaints of direct discrimination, the Tribunal found nothing in the evidence on which it could properly base a finding that Ms Davies' decision was made because of, or was influenced by, the Claimant's race or disability. Ms Davies made the decision because of the investigation and the OH recommendation. We found that her decision would have been the same in the case of an employee of a different race, or who was not disabled, but in respect of whom the same factors arose for consideration.

114. The Tribunal considered whether it could be said that there was a basis for a finding of discrimination because of something arising from disability, the "something arising" being all or any of the symptoms referred to in the OH report of fatigue, deteriorating eyesight, problems with concentration and forgetfulness. We concluded that there was no evidence that these symptoms in fact arose from the Claimant's diabetes. If anything, the OH report suggested that stress and/or possible multiple sclerosis might be behind the symptoms.

115. In any event, the Tribunal found that the Respondent had established that Ms Davies' decision was a proportionate means of achieving a legitimate aim.

The legitimate aim was the safe and efficient provision of social work services. We were satisfied that, from the Respondent's point of view, it was necessary to move the Claimant from frontline work while there remained concerns about her ability to carry that out safely and effectively. (In this connection, the Tribunal noted that the outcome of the referral to the HCPC was that the Claimant was suspended from practice). From the Claimant's point of view, she was not removed from work altogether, and suffered no detriment in terms of pay. The Tribunal found that the decision was a proportionate means of achieving the legitimate aim identified.

116 In issue 1.14 the Claimant relied on her constructive unfair dismissal as an act of direct discrimination because of race and/or disability. For reasons that will be explained below, the Tribunal found that the Claimant was not constructively dismissed. This allegation therefore failed on the facts.

117. Issue 1.15 (direct discrimination because of race and/or disability or harassment related to race and/or disability). Mr Lawrence-Jones sent out references in the terms noted above, and subsequently Ms Davies provided revised references in terms also recorded above, and which could be seen as more favourable than those provided by Mr Lawrence-Jones.

118. Given what the Claimant had done in relation to recording her interactions with Family H, and the pre-existing concern about her use of NFA rather than making referrals, the Tribunal considered that the references given by Mr Lawrence-Jones were within the range that a manager could reasonably have given in the circumstances. Ms Davies provided references that the Claimant found preferable and which were potentially more helpful to her, but the Tribunal could not say that those provided by Mr Lawrence-Jones were wrong or unfair. There was no reason to find that Mr Lawrence-Jones would have provided a different (more favourable) reference for a different individual in the same circumstances. The Tribunal found that what he wrote reflected his view of the Claimant's performance, etc. There was no basis on which the Tribunal could properly find that Mr Lawrence-Jones gave the references that he did because of the Claimant's race or disability, or that he was influenced by the Claimant's race or disability when he decided what to write in the references.

119. Issue 1.16 (direct discrimination because of race and/or disability or harassment related to race and/or disability). This allegation concerned the decision to refer the Claimant to the HCPC. The Tribunal considered that the decision to refer the Claimant was entirely justified given what she had done in relation to her recording of her interactions with Family H: indeed, we considered that a decision not to refer her would have been unjustified. The HCPC evidently took a serious view of the matter as they suspended the Claimant from practice.

120. Essentially, the Tribunal found that Ms Onaboye referred the Claimant to the HCPC because she was morally and professionally obliged to do so. There was no basis on which the Tribunal could properly find that the decision was made because of the Claimant's race or disability, or was in any way influenced by those characteristics.

121. Having considered the complaints of direct discrimination, discrimination arising from disability, and harassment individually, the Tribunal paused to review the evidence as a whole, as sometimes a different conclusion may be reached when the whole picture, as opposed to individual allegations, is considered. We did not reach any different conclusion on reviewing the case as a whole. We could not discern any basis on which we could properly conclude that any of the relevant forms of discrimination or harassment had occurred.

122. The complaints of discrimination and harassment therefore failed at the first stage of the analysis under section 136. If the Tribunal is wrong about this in relation to any particular allegation, the same reasoning would, where applicable, have led us to conclude that we accepted the Respondent's evidence as showing that in no respect whatever had there been discrimination against the Claimant.

123. The Tribunal has dealt with the complaints of direct discrimination, discrimination arising from disability, and harassment in the course of its reasons above. There remains a further complaint under the Equality Act of failure to make reasonable adjustments. Section 20(3) of the Equality Act makes the following provision about the duty to make reasonable adjustments:

(3) The first requirement is a requirement, where a provision, requirement or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

124. Issue 3.1 identified 2 PCPs, namely

124.1 Obliging all social workers in the Child Care Planning team to work with high caseloads / high levels of work;

124.2 Obliging employees to work without appropriate training.

125. The first PCP involves a subjective element, being that of a "high" caseload or level of work. Ultimately that did not greatly matter, as the Respondent agreed that there was a PCP that social workers should have a caseload or a level of work, however an individual might characterise that. The proposed adjustment was the simple one of reducing the Claimant's workload.

126. The Tribunal therefore asked itself whether the PCP placed the Claimant at a substantial disadvantage in comparison with persons who were not disabled. We concluded that it did, in that the OH report of 3 July 2016 recommended a reduction in the Claimant's workload, at least partly on account of her diabetes. The Tribunal then considered whether there was an adjustment to the Claimant's caseload that it was reasonable for the Respondent to have to make, and which it failed to make, such that there was a failure to comply with the duty to make reasonable adjustments.

127. From the chronology set out above, the Tribunal noted that on 24 June 2016 the Claimant had emailed the Assistant Director stating (with reference to her need of daily medication for her diabetes) that she was disabled, but that she had not informed Mr Lawrence-Jones of this. The Claimant asked for a reduced

workload on 11 July 2016, and Ms Idris recommended an OH referral. That referral was made and led to the report of 3 August 2016, following which the Claimant was placed on limited duties on 11 August 2016. The Claimant resigned on 12 August.

128. The Tribunal concluded that, in this regard, the Respondent had complied with the duty to make reasonable adjustments. The possible need for a reduced workload had come to the Respondent's attention in late June / July 2016. An OH report was obtained promptly, and acted upon on 11 August 2016. It is, perhaps, ironic, that the Claimant felt moved to resign in response to being placed on limited duties, but now maintains that there was a failure to make reasonable adjustments by way of reducing her workload. In any event, however, the Tribunal concluded that the Respondent took such steps by way of reducing the Claimant's workload as it was reasonable to have to take in the light of the information made available about the Claimant's disability.

129. The second PCP relied upon was that of obliging employees to work without appropriate training. As explained above, the Tribunal has found that there was no such practice, but rather that Mr Lawrence-Jones was unable for practical reasons to allow the Claimant to attend the course concerned at the very first opportunity. The Claimant had therefore failed to establish this PCP.

130. The complaint of failure to make reasonable adjustments therefore failed.

131. The complaint of unfair constructive dismissal involved considering whether all of the matters that the Claimant complains of amounted to a repudiatory breach of contract that entitled her to treat herself as having been dismissed.

132. The Tribunal had no hesitation in finding that they did not. For all the reasons given above, the Respondent had good reason to invoke the managing attendance policy; to investigate the Claimant's reporting in relation to Family H; to remove the Claimant from frontline duties; and to refer the Claimant to the HCPC. The Tribunal further considered that if the Respondent had not taken the steps that it did in relation to the last three of these four points, it would have been failing in its duty to the public. The Tribunal concluded that there was no basis on which it could be said that the Respondent had breached the contract of employment in these respects, and certainly not in a way that amounted to a repudiatory breach.

133. It follows from the Tribunal's finding on the complaint of unfair constructive dismissal that the Claimant was not dismissed. This is necessarily fatal to the complaint of wrongful dismissal (breach of contract).

134. The complaints are all therefore dismissed.

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Employment Judge Glennie

Dated:. 7 January 2019

Judgment and Reasons sent to the parties on:

8 January 2019

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For the Tribunal Office