



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

MS R GOLLENBERG-RYDER AND

Respondent

SOUTH GLOUCESTERSHIRE
COUNCIL

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 25TH / 26TH / 27TH / 28TH NOVEMBER 2019 2ND /
3RD / 4TH / 5TH / 6TH DECEMBER 2019
12TH DECEMBER 2019 (TRIBUNAL ONLY)

EMPLOYMENT JUDGE MR P CADNEY

MEMBERS: MS Y RAMSARAN
MS P RAY

APPEARANCES:-

FOR THE CLAIMANT:- IN PERSON

FOR THE RESPONDENT:- MR D LEACH (COUNSEL)

JUDGMENT

The Judgment of the Tribunal is that:-

The claimant's claims of :-

- i) The failure to make reasonable adjustments (s 20 Equality Act 2010);
- ii) Direct discrimination (s13 Equality Act 2010);
- iii) Harassment (s26 Equality Act 2010);
- iv) Constructive Dismissal;
- v) Unlawful deduction from wages;

Are dismissed save as is set out below:-

vi) The claimant's claim of the failure to make reasonable adjustments in the period 6th February to 6th March 2017 is well founded and is upheld.

Reasons

1. By a claim form presented on 15th December 2017 the claimant brought claims of the failure to make reasonable adjustments, direct discrimination and/or harassment (the protected characteristic for all the discrimination claims being disability); constructive dismissal, and unlawful deduction from wages. It has been the subject of extensive case management which resulted in an Agreed List of Issues (which is to be read in conjunction with Further Information and a chronology supplied earlier by the claimant in the case of the constructive dismissal claim).

The Hearing

2. The claimant was not represented at the hearing and did not have anyone present to support her, and in consequence of her CPTSD clearly found it very difficult at times, in particular when having to give evidence about, or cross examine about, particularly upsetting or stressful events. As a consequence, it was necessary to take extensive breaks and sit short days. The tribunal requested that she be supported by Support Through Court and a number of different volunteers accompanied her on each day of the hearing. The tribunal is extremely grateful to them for the assistance they provided, and very grateful to the claimant for the efforts she made to continue in very difficult circumstances. For those reasons it was difficult to adhere to the anticipated timetable which resulted in some of the respondent's witnesses having to attend but not give evidence, and re-arrange their attendance. All did so with very good grace, and we are equally grateful to the respondent and its witnesses for their flexibility and co-operation ensuring that it was possible to conclude the evidence within the original hearing timeframe.
3. The tribunal heard evidence from the claimant herself; and on behalf of the respondent from Sonia Millar (Head of Children's Integrated Services), Fiona Parfitt (HR Team Leader) , Nicholas Lowe (Service Manager) , Francesca Hepden (the claimant's Team Leader from 29th May 2015 to February 2017); and read witness statements of Rebecca Toms, Tracey Merrett, Katie Targett, Maureen Goodfield and Juliette Britton, whose evidence the claimant did not challenge.

Amendment Application

4. During the course of the hearing the claimant applied to amend her claim, to which the respondent objected. As is recorded at paragraph 14.i) of the Case Management order of REJ Pirani of 26th February 2019 "*For the purposes of the failure to make*

reasonable adjustments claim only physical disability is relied on.” This is also reflected in the List of Issues which make reference only to adjustments require in respect of the physical disability. However, as is set out in greater detail below the claimant relies both on a physical disability and a mental disability (Complex Post Traumatic Stress Disorder). The claimant gave her evidence first and at the conclusion of her case, but before the respondent’s witnesses had given their evidence, she applied to amend to include claims of the failure to make reasonable adjustments based on her mental impairment. The respondent objected to amendments to include new claims during the hearing itself and after the claimant’s evidence had concluded. For the reasons given orally at the time we did not grant permission to amend to add the proposed new claims. Those reasons as given orally were:-

The claimant has made an application to be permitted to rely on three further allegations not set out in the agreed List of Issues. These in summary are that she wishes to rely on allegations of the failure to make reasonable adjustments relating to the protected characteristic of disability and specifically to the mental impairment of CPTSD. There are three adjustments she contends should have been made. The first was to accede to a request for a transfer allegedly made on or about 30th July 2014; the second relates to an application for protected time for attendance at EMDR sessions after 29th May 2015; the third is a further application for a transfer on 25th May 2017. We have considered the application in principle without descending to the merits of the proposed claims. It would for example, if the amendment were allowed be necessary to identify the PCP in each case and it is not obvious what they would be. However, at this stage we are simply considering the application in principle.

*The respondent objects to the claimant be given permission to amend. It contends that in order to amend the claimant would require permission and refers us to the well-known Selkent principles as set out in *Abercrombie v Aga Rangemaster*. The respondent submits they are all new claims. They rely on the specific characteristic relating mental impairment and are legally entirely new claims. They are very significantly prejudiced if they are required to meet them in that all three would require further investigation, potentially further cross examination of the claimant ; and potentially they would need to obtain further evidence themselves and request permission to rely on potentially further documentary evidence and call further witnesses. The application is being made in the course of the final hearing after the claimant’s evidence has already been given, and in circumstances in which any such claims were specifically disavowed at the case management stage; that the balance of prejudice necessarily favours dismissing the application. Any prejudice to the claimant would be outweighed by prejudice to them in requiring them to investigate and call evidence as to wholly new claims at this stage in proceedings. In addition, depending on the extent of those investigations it might result in the hearing going part heard, with the consequent delay and increase in costs.*

In relation to at least two of the claims the claimant asserts that they are referred to in her previous documents and that this is not therefore an amendment application but an application to allow her to revisit and withdraw the concession made at the

earlier case management hearing, and to allow her to rely on existing pleaded claims. It is therefore a case management issue, not an amendment issue.

However, looked at in that light the question of whether to permit the application would still have to be determined by reference to the prejudice to the parties and the consequences of allowing or not allowing the application. The purpose of case management is to allow both parties to know what case they have to call evidence to advance or meet; and to rely on the appropriate documentation and call the appropriate witnesses. In the hearing on 26th February before REJ Pirani, the claimant is specifically recorded as not relying on the mental impairment as the basis for any reasonable adjustment claims, and it follows that the respondent necessarily cannot and did not anticipate having to meet any such claims.

In our judgement whether viewed as an application to amend or as a case management decision, to vary the list of issues would at this stage in proceedings would be extremely prejudicial to the respondent, and the prejudice to the respondent of allowing the application outweighs that to the claimant of rejecting it.

Accordingly, the claimant's application to be permitted to advance the further three allegations is not permitted.

Disability

5. The claims of the failure to make reasonable adjustments are based on the claimant's physical disability; and the claims of direct discrimination and/or harassment on her mental condition of CPTSD.
6. Physical Impairment – The claimant suffers from Ehlers Danlos/ Joint Hypermobility syndrome. It is not in dispute that by reason of this condition she was a disabled person within the meaning of s6 Equality Act 2010 at all material times. However as is set out and dealt with below the respondent asserts that it did not have knowledge of this condition and/or that it was disabling until it received an Occupational Health report on 4th May 2016. The question of the date of knowledge is dealt with below in the discussion of the individual claims.
7. Mental Impairment – The condition relied on is Complex Post Traumatic Stress Disorder. The respondent accepts that the medical evidence shows that the claimant was exhibiting symptoms consistent with CPTSD as early as 14th August 2014, which is prior to the earliest of the events of direct discrimination and/or harassment alleged; and that the claimant still suffers from the symptoms of CPTSD and that if the question were to be determined by reference to her condition and its symptoms at present, that she would fall within the statutory definition of disability.
8. However, the respondent does not accept that any point relevant for these proceedings (i.e. at any point at which there is a claim) that the claimant's condition fell within the s6 Equality Act definition. The basis for that is that while the respondent accepts that there is medical evidence at least by implication, that between August

- 2014 and January/February 2015, that the claimant was symptomatic; it submits that that period is not in and of itself twelve months and does not meet the statutory requirement to be long lasting. If that is correct, in order to qualify as a disability we would need to conclude that as at that point the condition was likely to recur, and the respondent submits that there is no medical evidence which would allow us to draw that conclusion. Although it may subsequently have recurred, we must ignore that fact and judge the question as at the dates of alleged discrimination, and in particular as at May and November 2015 the medical evidence does not allow the conclusion that the claimant was disabled.
9. The claimant in essence submits that to approach the question in that way is to fundamentally misunderstand the condition. She was diagnosed in 2003, when she was in her early twenties, and it is a permanent condition of which she has symptomatic episodes of varying severity. It is not a question of the condition recurring but only the symptoms. As a consequence of events in her childhood which it is not necessary to set out in this judgment, she has for many years suffered from CPTSD. There is, we understand, much academic discussion about the diagnosis of and inter relationship between CPTSD and PTSD. In essence the difference between the two (if there is a difference) is that PTSD is normally diagnosed following a reaction to and as a consequence of a specific event or time limited series of events, whereas CPTSD is more normally diagnosed as a reaction to a series of events spanning a much longer duration and often in relation to events that occurred in childhood. For our purposes and the purposes of the Equality Act definition of disability the distinction (if there is a distinction) is of no relevance. Certain events can trigger specific responses but the underlying condition does not change. She submits that for all practical purposes she is and has been since childhood disabled by the condition.
10. The claimant's evidence as set out in her witness statement, and Impact Statement, is that the symptoms of her PTSD had been in remission since her early twenties but events surrounding a colleague triggered moderate CPTSD symptoms in 2012 (paras 11 and 12) and that following the allocation to her of a case following a colleague going on long term sick that she began to having recurring nightmares (para 13/14). In January 2014 the publication of a serious case review triggered intense CPTSD symptoms including occasional suicidal thoughts. Between February and July 2014 she underwent EMDR treatment with a clinical psychologist Dr Julie Harper. She complains that her treatment by a locum manager triggered further moderate PTSD symptoms at or about the end of 2014 early 2015 (para 35). She had further EMDR and at about the same time she was diagnosed with the emergence of CPTSD/PTSD symptoms. She describes further compound CPTSD/PTSD symptoms in April 2017 (para 86), and June 2017 (para 89). In her Impact Statement she has extensively set out the physical and psychological consequences of mild, moderate and severe symptomatic episodes. On any analysis the effects described for the moderate and severe episodes fulfil the requirement to have a substantial effect on normal day to day activities. The claimant was not challenged about this and, in any event, we accept the claimant's evidence as to it.

11. It follows that the question for us is whether we accept the claimant's contention that she has a permanent condition with varying levels of symptomatology, in which case she fulfils the statutory definition; or accept the respondent's submission that in the absence of specific medical evidence it is not possible to identify an underlying condition but only the symptomatic episodes which is insufficient to allow us to conclude that the condition is long lasting in that it had at the relevant time not lasted twelve months, or if having occurred over a period shorter than twelve months was likely to recur.
12. Our conclusion is that the evidence is clear that the claimant has a long-term condition of CPTSD/PTSD. Whilst the symptoms may vary in severity and whilst there may be relatively lengthy periods of remission, when symptoms do occur they do have a substantial effect upon the claimant's normal day to day activities, and the underlying condition and diagnosis does not change whether at any given point in time the claimant is symptomatic or asymptomatic. It follows that in our judgement she does and did at the relevant time fulfil the statutory definition of disability by reason of this condition.

Background Facts

13. In this section we will set out the background facts. If the full factual background necessary to understand the specific disputes is not set out here it will be addressed in relation to the individual claims.
14. The claimant is a qualified social worker. Her career began as a Certified Nurses' Assistant in 2000. She obtained concurrent degrees in Social Work and Sociology from Seattle University in 2005. She immigrated to the United Kingdom in 2007 and in 2008 became Team Manager at North Yorkshire County Council respite facility for adults with learning difficulties. In 2010 she moved to Bristol and in February 2011 she commenced working for the respondent as a social worker. In 2012 she was promoted to Senior Practitioner. She has set out at paragraph 8 of her witness statement the specialist training she undertook, which it is not necessary to repeat here, and in 2014 she commenced a Masters in Advanced Social Work with Children.
15. The claimant's employment history is that she was firstly appointed a Social Worker in the Children and Young Person's Department of the respondent. In September 2011 she was appointed to the North Locality Team. On 1st December 2012 she was appointed Senior Practitioner North.
16. On 5th May 2015 the claimant moved to the South Social Care Team. With the exception of one of the reasonable adjustment claims (equipment) which covers the period from January to July 2015, all of the claimant's claims postdate the move to the South Social Care Team. The claimant's line manager in that team was Francesca Hepden and all of the claimant's claims of direct discrimination / harassment are allegations against Ms Hepden arising initially from comments made in supervisions.

17. The claimant was absent through sickness from 23rd March 2016 until her return to work on the 6th February 2017. During that period the claimant attended a number of sickness absence review meetings. Although there are no specific claims relating to this the claimant in evidence complains that the respondent failed to allow her to return to work in the autumn of 2016 when she could have done so, and so it is necessary to set out a little of the events during this period to make the narrative comprehensible.
18. The first Formal Sickness review meeting took place on 18th October 2016 and is recorded in a letter of 21st October. It records that the claimant's existing fit note expired on 1st October 2016 but she provided one covering the period up to 24th November 2016. The claimant is recorded as saying that she was not able to wash or dress herself and was receiving 15 hours support per week. She expressed the hope that she would be able to return to work at the expiry of that fit note.
19. The second meeting took place on 18th November 2016 and on 22nd November 2016 the claimant submitted another fit note which expired on 3rd January 2017. On the 1st February 2017 the meeting took place at which it was agreed that the claimant would return to the 0-25 team as from 6th February 2017.
20. Although not strictly relevant for any issue we have to decide there are a number of complaints about that process. Firstly the claimant complains that (although there is no specific claim in relation to this) that with the appropriate adjustments, such as those that were subsequently put in place in February 2017 that she could have returned to work at some point in the autumn of 2016. The evidence she relies on in support of this are the Occupational Health reports of Deborah Thompson of 3rd May 2016 and in particular 13th September 2016. She contends that by the first formal sickness review meeting of 18th October 2016 that with appropriate adjustments she could have returned to work.
21. Secondly she considers it unfair that she was transferred permanently to the 0-25 team in February 2017 rather than being seconded from her existing role, which have allowed an easier return to her existing role if and when it became appropriate (again there is no specific claim in relation to this, although the claimant does, as part of the constructive dismissal claim complain that others were subsequently permitted to join the 0-25 team on secondment later in 2017).
22. The respondent does not accept these criticisms. Firstly, it points to the medical evidence which did not in the autumn of 2016 indicate that the claimant could have returned with adjustments. There is simply it contends no evidence to support this contention and all the evidence there is contradicts it. Secondly, and in any event, its capacity to transfer the claimant and provide a phased return to work was significantly different in November 2016 to the situation in February 2017. The evidence of Sonya Miller , Head of Children's Integrated Services is that whilst there were places at that time in the 0-25 team it was a team "in crisis" and it would have been *"difficult for anyone to join the team at that time, but it would have been very damaging to put someone in it who needed support and a phased return as was the case with the claimant. It was a chaotic service in crisis. I could not between*

November 2016 and end of January 2017 guarantee that the claimant would have had the level of supervision, support needed to return to work. It would have been unethical of me to have agreed a plan knowing I could not deliver on it.”.

23. In terms of secondment Ms Miller’s evidence is that the claimant could not at that stage return to child protection work as it could not be performed part time and in any event was not suitable as it was very stressful for someone who need support.
24. Whilst it is not strictly necessary to determine these issues as none of the claims turn on them, we accept Ms Miller’s evidence, and that it genuinely represents the respondent’s thinking and the reasons for it acting as it did during this period.
25. On 24th February 2017 the claimant lodged a grievance. In summary the claimant complained of the delay in allowing her to return to work between October 2016 and February 2017; the failure to make reasonable adjustments in respect of parking; the comments recorded by Ms Hepden in the November supervision (these form part of the basis of the direct discrimination/harassment claims set out below); and being placed on performance management.
26. A meeting with Juliette Britton who had been appointed to investigate the grievance took place on 22nd March 2017. Ms Britton interviewed Ms Hepden on 14th June.
27. In the course of the grievance process on 30th June 2017 the claimant resigned on notice.
28. On 15th July Ms Britton submitted her report for peer review and on 17th August a meeting was arranged between the claimant and Sonya Miller to discuss the report. For the reasons set out below as the claimant had resigned before receiving the investigation report or outcome, neither can have contributed to her resignation and therefore to the constructive dismissal claim, and as there are no discrimination claims arising from the report or its outcome it is not necessary to set out the conclusions of either in detail. What is clear in our view is that the allegations were thoroughly investigated, and the conclusions drawn in respect both of the investigation and outcome were rationally and reasonably open to Ms Britton and Ms Miller respectively in our judgment. On 15th September 2017 the grievance outcome was sent to the claimant.
29. On 30th September 2019 the claimant’s employment terminated.

Reasonable Adjustments

30. The law (as it is relevant to this claim);-

Duty to make adjustments – section 20 Equality Act 2010

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

(2) The duty comprises the following three requirements.

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

31. We will deal with the issues as they are set out in the list of Issues.

32. PCPs – There are three relevant PCPs all of which are accepted to be PCPs by the respondent-

i) R's hot desking policy/practice;

ii) R's parking policy;

iii) Rs Managing Absence due to ill health policy.

33. As is set out above these PCPs are alleged to place the claimant at a substantial disadvantage by reason of her physical disability Ehlers Danlos/ Joint Hypermobility syndrome. The respondent accepts this in relation to i) above but not ii) and iii).

34. **Hot desking Policy** – The claimant alleges that this placed her at a substantial disadvantage as she required specific office equipment which was not standard and that to require her to hot desk is to require her to use equipment which is not suitable given her disability.

35. **2015 claim** - The first period during which she alleges a failure to make reasonable adjustments is 28th January 2015 to July 2015. She contends that the adjustments should reasonably have been made by 13th March 2015, which is one month after the Occupational Health Assessment. The adjustments contended for are an ergonomic office chair, a rise and fall desk, an adjustable monitor, and an adjustable keyboard/mouse.

36. On 28th January 2015 the claimant was signed off work due to the onset of sciatica and a worsening of her existing lumbago. On 13th February 2015 there was an

- Occupational Health assessment. It records that the claimant had managed back pain on and off for some time. She had previously received outpatient physiotherapy at a time when she worked in care, and had three single absences due to back pain prior to the current episode. The OH Nurse was unable to establish any link with the previous episode. By this stage the symptoms are recorded as having improved and that she was likely to return to work the following Monday. No phased return to work was required but it was recommended that the claimant be allowed to rotate tasks to ensure that she was not seated for too long either at her work station or whilst driving; that she would benefit from making shorter rather than longer car journeys and should have a Display Screen Assessment.
37. Moreover, the claimant was off sick between 2nd March 2015 and 13th April 2015 and then moved to the South Team on 5th May 2015. The workplace assessment which was recommended was carried out on 15th May 2015, within 10 days of the transfer. It recommended a rise and all desk which could be used either sitting or standing; and a separate screen, keyboard and mouse for use with her laptop. However, Mr Rogers who conducted the assessment concluded that the claimant could use the existing chair if it was correctly adjusted. The claimant did not agree with that conclusion and sought an ergonomic ball instead. She had a meeting with her line manager Ms Hepden on 22nd May 2015 at which it was agreed that all the equipment was available and would be provided save for the ergonomic ball which would need to be ordered.
38. The respondent makes a number of submissions as to this claim. Firstly that on the medical evidence they self-evidently had no actual knowledge of any disability, or any link between any underlying disability and this episode, and nor could they be deemed to have constructive knowledge on the basis of that information. Secondly the adjustments contended for by the claimant were explicitly not recommended by the Occupational Health report. It cannot be reasonable to require it to take steps of which it is entirely unaware, and which have no medical support. Thirdly it is on any analysis out of time given the claimant's own identification of 13th March 2015 as the point at which the adjustments should have been made. Fourthly when the workplace assessment was carried out they made all the adjustments recommended, and in fact went beyond what was recommended in that the ergonomic ball was provided.
39. Knowledge of Disability – The respondent contends that it did not know and could not reasonably be expected to know that the claimant had a disability, or that she was likely to be placed at a disadvantage by the arrangements in question (the statutory test as set out at Equality Act 2010 Sch 8 para 20(1)(b)). It contends that on the information available to it at the time, that the claimant had sustained a back injury falling off her bike in December 2014. She was, as is set out above, sporadically off work between January and April 2015 before moving to the South team on 5th May 2015 from which point she was not again off sick until 19th January 2016. During this period the fit notes refer simply to low back pain and sciatica. There was at that stage no evidential link or suggestion of any link to an underlying disability.

40. The task for the tribunal is firstly to determine whether the employer did know both of the disability and that it would place her at a substantial disadvantage (actual knowledge); and if not to go on to consider whether the employer ought to have known of both (constructive knowledge) (*SoS for Work and Pensions v Alam 2010 ICR 665*).
41. In terms of actual knowledge, the respondent contends that, given that the physical disability relied on is Ehlers Danlos/Joint Hypermobility syndrome, that there was no information at all before it between February and July 2015 that that condition was present or engaged in any way. On the basis of the information from both the fit notes and the Occupational Health report they understood, and reasonably understood, that the claimant was suffering from a discrete episode of back pain which commenced in December 2014 and from which she had made a significant recovery by February 2015. For the same reason they were not on notice nor could reasonably be expected to make any further enquiry and therefore equally had no constructive knowledge.
42. The claimant contends that she was entirely open with her managers and colleagues about both the physical and mental conditions from which she suffered, and therefore that within the respondent organisation a number of people were aware of the condition. The difficulty for the claimant in our judgment is that even if that is true, and we accept the claimant's evidence as to it, that it had not even on the claimant's case required any previous adjustments. Thus, even those who knew of it, and even assuming that those who knew were also aware of the medical evidence would have had no reason to link an underlying condition which had previously required no adjustment with this particular episode.
43. In our judgment the respondent is correct in its assertion that it had neither actual nor constructive knowledge of either the disability, nor that it would place the claimant at a substantial disadvantage during this period.
44. It follows that this claim must fail on that ground alone, as the requirement to make reasonable adjustments did not in those circumstances arise.
45. 2017 claim – The 2017 claim is for the failure to provide an ergonomic chair, rise and fall desk, an adjustable monitor, adjustable keyboard and priority allocation of an android smart phone. Save for the phone this is very similar to what had already been provided in 2015. The claimant contends that these adjustments should have been made by 6th March 2017, one month after the transfer.
46. It is not in dispute, as is set out above that all of the equipment recommended in 2015 had, including the ergonomic ball, been provided by July 2015. The 2017 claim arises from the claimant's transfer to the 0-25 team which was based at a different location at Badminton Road on 6th February 2017. A new workplace assessment took place on 7th February 2017. This assessment again recommended a rise and fall desk, a laptop stand, separate keyboard and mouse and a properly adjusted chair. Again, it was not thought that an ergonomic ball was necessary, but it had already

- been provided and was moved over at some point prior to the 20th February 2017, which is within the timescale the claimant herself identifies as reasonable in any event.
47. The central difficulty appears to have been the rise and fall desk. One was present but not initially in the right place; when it was moved to the correct location on 21st March 2017 it was discovered not to be working, but at some point thereafter was fixed. Certainly, by the time the claimant sent an email on 8th May 2017 the issue had been resolved. However, she still did not have an ergonomic mouse. It appears that all issues were finally resolved by 25th May 2017, with exception of the android smartphone.
48. Dealing first with smartphone, the respondent does not accept that the provision of an android smartphone was a reasonable adjustment. In our judgment this must be correct. Firstly, it is in our judgment impossible to identify a PCP (which presumably would have to be the provision of a non-smart phone) which placed the claimant a substantial disadvantage because of the Ehlers Danlos/Joint hypermobility syndrome, which is the disability relied. There is in our view no medical or other evidence which could support such a conclusion, and that part of the claim must fail.
49. However, in our judgment there was a failure to make a reasonable adjustment in the failure to provide a functioning rise and fall desk until some point between 21st March 2017 and 8th May 2017. In our judgement it must be borne in mind that on the respondent's own case it was aware of the disability and the requirement to make adjustments from May 2016. Accordingly, when the claimant moved to the new team in February 2017 the obligation was not a new one but an existing obligation and it was incumbent on the respondent to ensure that the existing equipment adjustments were in place when the claimant started, or in any event within a relatively short time thereafter. This in our judgment they failed to do. In the course of the grievance the explanation provided was that the claimant's manager was simply not aware of the requirement. This may be true (we have no specific evidence about it) but in our judgment that does not in and of itself provide a reasonable explanation for the failure to make the adjustment. There was a delay of a minimum of six weeks (and possibly significantly longer) in providing the desk. For the reasons set out above in our judgment the reality is that the claimant was deprived of an existing adjustment by the failure to organise for equipment, all of which was in the respondent's possession, to be brought to her new workstation by or very shortly after the transfer and that that failure is a failure to make a reasonable adjustment.
50. It follows that in our judgement, subject to the time point which we will deal with below this claim is well founded.
51. **Car Parking Policy** – The claimant's case is that her mobility problems caused her difficulty if she had to park any distance from her office and that an adjustment should have been made in respect of this in the provision of car parking spaces.
52. **2015/16 claim**- The first claim relates to the period 5th May 2015 to 23rd March 2016. The claimant suggests that accessible parking should have been provided by 22nd

- June 2015. This is the point at which the claimant transferred to the South Social Care Team which meant that she was based at the Kingswood hub which had limited access for staff parking on a first come first served basis with a single disabled bay reserved for blue badge holders. From November 2015 two further spaces were made available at the civic centre, which allowed easy access to the building, but these were provided on a time limited ad hoc basis. It is accepted that this placed the claimant at a substantial disadvantage during this period (although knowledge is in dispute prior to 29th February 2016.)
53. The respondent's evidence is that it was not until the claimant raised the parking problem in a supervision meeting with her line manager Francesca Hepden on 29th February 2016 that it knew there was an issue with parking. In her chronology the claimant suggest it was raised on 9th February 2016 during a meeting with Helen Moore and resulted in an email being sent on 15th February 2016 to Parking Services. The claimant is correct as to this in that her application was refused by an email the same day saying that use of the civic centre car park for employees based at the locality hub was restricted to those who held a blue badge. As and when the claimant acquired one she would be permitted to park there. However, by 15th March 2016 the claimant had been provided with one of the two civic centre passes for her personal use. The adjustment was therefore made by this date.
54. In fact, the claimant went off sick on 23rd March 2016. An OH referral on 3rd May 2016 recommended that arrangements be made to allow her to park closer to the building, and whilst off sick she acquired a blue badge on 29th June 2016 in any event.
55. Knowledge of Disability – As is set out above the respondent contends in relation to the Ehlers Danlos/Joint Hyper mobility syndrome that it did not have knowledge of disability until receipt of the OH report of 3rd May 2016. For the reasons set out above we have accepted this submission. However, it accepts that it acted on the claimant's request to be able to park closer to the building and that a pass was provided on 23rd March 2016. In our judgement it follows automatically that the adjustment had in fact already been made at the point at which the legal obligation to make it arose and it must follow that this claim must be dismissed.
56. 2017 claim – The claimant returned to work on 6th February 2017 at the Badminton Road site. There was a delay of some 10 days before her pass to gain access for parking at Badminton Road was activated. From that point she was able to use the staff disabled parking bays and prior to that point the visitors disabled parking bay as she was a blue badge holder.
57. The respondent submits that in this case there is no evidence that there is any PCP which placed her at a substantial disadvantage at any point. Her disability required her to have access to a disabled parking space. For some ten days she was able to use the visitors disabled parking space and thereafter test disabled parking spaces. Accordingly, the respondent submits that there is no evidence that as a matter of fact it operated any PCP which placed the claimant at a substantial disadvantage at this point. Alternatively, if there is any substantial disadvantage it had made appropriate

- adjustments in providing at all times disabled parking spaces to which she had access.
58. Thus, it submits that on either basis this claim must fail. In our judgement this analysis is correct, and this claim must be dismissed.
59. **Managing Attendance due to ill health policy** – The policy provides for a standard phased return to work of six weeks; and the claimant contends that this placed her at a substantial disadvantage as she need longer.
60. The respondent contends that the policy did not place her at any substantial disadvantage as here is no evidence that a longer phased return was needed, or alternatively that a reasonable adjustment was made in any event. As is set out in a letter of 20th February referring to a meeting on 1st February 2017 it was agreed that the claimant would transfer to the 0-25 team and that although the post was full time, that she would be allowed a six week phased return, moving onto her permanent hours in week seven. Furthermore, it was agreed that during the phased return she would work Mondays Wednesdays and Fridays and that this would be reviewed at the end of the phased return. She was not thereafter required to work full time hours to perform the role, but part time hours for 22 hours a week for between six months and a year. The phased return allowed for a build up from 10 hours to 22 hours per week. A review would take place at six months to see if it was possible to increase her hours.
61. Thus, the respondent submits that it implemented both a phased return and a long term reduction in hours which is necessarily an adjustment; and did so with the claimant's agreement as is set out in the letter. There is no medical or other evidence that there was any need to adjust the build up from 10 to 22 hours over a longer period and therefore no evidence that the PCP placed her at any disadvantage. In our judgment this is correct. There is not before us, any evidence that any longer phased return was required and this claim must also fail.

Direct Discrimination/Harassment

62. The law (insofar as it is relevant to this case) is :-

13 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

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.*

.....

(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.*

63. It is common ground that any allegation can only be either direct discrimination or harassment since a detriment cannot also be an act of harassment (S212(1) Equality Act 2010). The allegations all relate to comments made by Ms Hepden.
64. 29th May 2015 comment "Need to choose" – . The whole quote is "*PEPS2 – Rene is torn between doing this and a masters. Fran feels that it will be hard for her emotionally/time use etc to do both and needs to choose.*" This is alleged to be either direct discrimination or harassment in relation to the CPTSD. The claimant contends that Ms Hepden's reference to needing to choose is because of and/or related to her CPTSD. But for it, Ms Hepden would have had and expressed no concerns about her doing both PEPS2 and a masters. Ms Hepden disputes this. Her evidence is that her concern had nothing to do with the CPTSD, of which she was not aware in any event, but was moreover not based on any personal attribute or characteristic of the claimant. It was a general concern which would have applied to any member of staff holding a demanding and emotionally challenging full-time job, whether also doing both the PEPS2 and a masters was realistically feasible.
65. Moreover the respondent points to an email the claimant sent to Sian Smith, whom she had contacted at Ms Hepden's suggestion, in which she seeks advice precisely as to whether it was feasible "*Fran and I were wondering if it is possible to do the two together or if I need to select one or the other?*" .
66. The respondent submits that it is clear from both the supervision notes and the email that Ms Hepden's concern was shared by the claimant, indeed she expressly states "*Fran and I were wondering....*" which necessarily implies that she shared Ms Hepden's doubts ; and that it cannot be less favourable or unwanted treatment for a manager to question whether a particular workload is feasible when the claimant herself shared that concern and was asking for advice as to precisely the same point.
67. Thus, for both reasons they contend that the claim must fail. We accept both the submission as to less favourable treatment/unwanted conduct and Ms Hepden's evidence and we therefore accept both submissions and it follows that this claim must be dismissed.

68. 25th November 2015 comments –

- a) Not understanding her role;
- b) Finds dealing with professionals hard at times and managing a work life balance”;
- c) There are gaps in her knowledge about procedures;
- d) The claimant struggles to find positives about her skills;
- e) The claimant can neglect herself when busy.”

69. These are comments set in a performance review of 9th November 2015. Ms Hepden’s evidence is that these are simply not her comments at all. They are, as is clear from the context, the record of the claimant’s comments, as they appear in the individual’s comments section; and that her comments, which are in the next manager’s comments section, are ones about which the claimant has no complaint. It is hard to see how Ms Hepden could have mis-recorded these comments and having heard her evidence we have no doubt that she did not invent them. We are driven to the conclusion that she is correct and that this is an accurate record of the claimant’s own comments.

70. The respondent firstly submits that it cannot be less favourable treatment and/or unwanted conduct for a team leader accurately to record the claimant’s own comments in the record of a supervision; and secondly that to do so is not because of or for a reason related to the claimant’s disability but simply because that was what the claimant had said.

71. Again, we accept that this analysis must be correct and that this claim must also be dismissed.

72. 14th June 2017 “C was fragile and under EDMR treatment”

73. This was said in the context of the investigation of the claimant’s grievance; and it in fact reflects a comment in the 9th November 2015 supervision in which Ms Hepden in the managers comments section states “ *FH recognised that when Rene formed the team she was very fragile and workload needed to be reduced however now things need to move forward as Rene is more stable and no longer feeling unwell. FH will now reflect this in her level of responsibility and her caseload complexity and amount.*”

74. As is set out above part of the grievance related to the comments made in the supervision by Ms Hepden. Of necessity Ms Hepden was bound to be asked about them and to place them in context. We accept that this genuinely represented her view both at the time of the original entry into the supervision notes in November 2015, and during the grievance investigation. It was intended, at both stages to be an explanation of why the claimant needed support when she joined Ms Hepden’s team and to be supportive. We accept this evidence.

75. In terms of direct discrimination it is very hard to see how a line manager expressing a genuine view could be less favourable treatment, and equally hard to see how the

expression of that view could be “because of” the disability itself. It is self evidently unwanted conduct in that the claimant complains of the comment, and we accept that it is related to the disability in that it was the disability which underlay the condition described.

76. However the respondent submits that it is not reasonable to conclude that the comment had the proscribed effect taking into account not simply the perception of the claimant, but the other circumstances of the case, and whether it is reasonable for the conduct to have that effect (s26(4)). They submit that on any reading the comment was intended to be supportive. It was not critical of the claimant but was simply a factual account of Ms Hepden’s own recollection of the events when the claimant joined the team in 2015. In those circumstances it is not reasonable to conclude that it created any of the proscribed effects as set out in s26 (b) (i) or (ii). In our judgment this is correct and this claim must be dismissed.

Time Limits

77. It follows that the only claim that we have upheld in principle is that in relation to the failure to make reasonable adjustments between 6th February 2017 and 25th May 2017. The claimant contends that the adjustments should have been made 6th March 2017 which in our view is a reasonable time to allow for them and is the point we accept by which they should reasonably have been made (See *Matusowicz v Kingston upon Hull City Council* [2009] IRLR 288). The ACAS EC certificate is dated 29th August 2017 which would mean that any act after 30th May 2017 would be in time, but any act before that out of time. Accordingly an adjustment which should have been made by 6th March 2017 is on the face of it out of time.
78. That being the case we have to consider whether it is just and equitable to extend time and in doing so we have to consider the well-known *British Coal v Keeble* factors which are a) the length of and reason for delay; b) the effect on the cogency of the evidence; c) co-operation by the respondent with requests for information; d) the promptness with which the claimant acted once she knew of the facts giving rise to the claim; and steps taken to obtain legal advice. Of these the two factors which are of particular significance are the reasons for the delay and the effect on the cogency of the evidence, and in particular the extent to which that prejudices the respondent in dealing with the claim evidentially (See *Southwark L.B.C v Afolabi* [2003] ICR 800) . This reflects the fundamental question which is to identify the balance of prejudice in extending or not extending time.
79. In respect of the first issue the respondent contends that there is no good reason for the delay. On the claimant’s own evidence she had been in contact with ACAS as early as November 2016, and had in addition made her own researches online by that stage. There is documentary evidence that she had received some legal advice by that stage but in cross examination the claimant was not able to recall this. Although not sent until February 2017 this was about the time when the claimant produced the first draft of her grievance. It follows the respondent submits that as at February to March 2017 the claimant must have been aware of her rights and that

there is no good reason for the delay. Moreover, the claimant has not advanced any evidence that she believed she was entitled to await the outcome of the grievance, or if she did believe that on what basis. It follows, submits the respondent, that there is simply no evidence before the tribunal which would allow it to conclude that there was a good reason for the delay.

80. In our judgement that analysis is correct, but set against that is the fact that we cannot identify any way in which the delay has affected the cogency of the evidence at all. Indeed, save for some vagueness as to the precise dates at which particular adjustments were made there is no fundamental dispute as to the evidence at all. It follows that other than the fact of having to meet the claim we cannot identify any prejudice to the respondent if time is extended.
81. Weighing those factors in the balance we have concluded that it is just and equitable to extend time for the presentation of this claim.

Constructive Dismissal

82. The claimant relies upon a sequence of events as individually or cumulatively amounting to a breach of the implied term of mutual trust and confidence: “ *The employer shall not without reasonable and 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.*”
83. The claimant’s case as set out in the List of Issues is that the cause of her resignation was “continued and cyclical discriminatory treatment” and has set out a specific list (which as set out above is to be read in conjunction with earlier iterations of her claim).
84. Last Straw - One of the factual issues is the question of what was the last straw which caused her to terminate her employment. The claimant resigned on 30th June 2017 giving three months’ notice. Thus, on a straightforward analysis the last straw must by definition have occurred prior to the 30th June. In addition, all the events specifically relied on in the agreed List of Issues pre-date the 30th June 2017.
85. However, she had given three months’ notice to expire on 30th September 2017 in part at least to await the outcome of the grievance investigation. It may be therefore that the resignation was conditional upon the outcome of the grievance and did not represent a definitive and settled intention to terminate her employment, and that the last straw, somewhat unusually post-dates the resignation. This approach to the last straw is how the respondent understood the claimant’s case and as it has been addressed in its written submissions. In summary it invites the tribunal to conclude that the grievance process was perfectly properly carried out, and reached perfectly rational and permissible conclusions, and that in consequence it is not capable of constituting the last straw and that the claimant’s case is bound to fail (See *Kaur v Leeds Teaching Hospitals NHS Trust* 2019 ICR 1 per Underhill LJ at para 75). In our

- judgment if the respondent is correct in its analysis, (and in fairness it accords at least in part to the agreed List of Issues which sets a time frame of 6th February 2017 to 15th September 2017, the last event in the period being the grievance outcome) then in our judgement the respondent is correct and the claim is bound to fail.
86. However, in evidence the claimant stated that she had reached the settled intention to resign by 30th June and that nothing occurred in the notice period to cause her to change her mind. If this is correct, (and it is notable that the last event specifically set out in the agreed List of Issues is the alleged failure provide a new contract after 1st June 2017) then in our judgment the last straw must necessarily predate the 30th June 2017.
87. The leading authority on the application of the “last straw” doctrine is Omilaju v Waltham Forest LBC [2005] ICR 481. At para 14.5 of the Judgment Lord Dyson states “*A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents (he goes on to set out with approval a passage from Harvey), and at paragraph 16 states ““Although the final straw may be relatively insignificant it must not be utterly trivial.”*”
88. The last event set out in the List of Issues is the claimant’s return to full time hours on 1st June 2017 without being provided with a new contract. In the Timeline of Constructive Dismissal the last event is sending an email enquiring about the progress of the grievance and in the Statement of Claims document itself refers to entries in the claimant’s chronology, with the last two entries being those relating to the contract and the email referred to above. Those two events are also those specifically referred to in the claimant’s witness statement (para 88/89).
89. In respect of the first the respondent submits that it is both not factually correct, and is entirely innocuous within the meaning of Omilaju. Firstly, the claimant was employed on a generic social worker contract the terms of which had not changed irrespective of being assigned from time to time to different individual teams. Secondly as is set out above upon her return to work and transfer the 0-25 team on 6th February 2017, the terms upon which she would do so were set out explicitly in writing; and that by a letter dated 15th June 2017, prior to her resignation, it was confirmed in writing that “*..with effect from 1st June 2017 your working hours changed from 22 to 37 hours per week on a permanent basis....Your salary and annual leave will also adjust accordingly with effect from the above date. All other terms and conditions of employment will remain unchanged.*” Thus, the respondent submits that prior to her resignation the claimant had received written confirmation specifically addressing the contractual changes effected by the move from part time to full time work. The complaint is therefore factually incorrect; and a situation in which an employer has entirely accurately set out in writing the consequences of the move from part time to full time work must necessarily be an entirely innocuous act. In our judgment this must be correct, and for both reasons this is not capable of being a last straw entitling the claimant to resign.
90. In respect of the email the claimant refers to it as an event in the chronology but has not placed any specific evidential significance on it, and has not given any evidence

whether in her witness statement or orally that in fact the last straw by the end of June was the continuing failure to have produced a grievance outcome. The email itself reads “*Hope you are well, I am sure things are progressing but was wondering how things were going with the grievance?*”, which appears on its face simply to be a request for information.

91. However, allegation 4i) in the List of Issues is the “*failure to address the grievance in a timely manner or at all.*” Since the claimant resigned before the grievance outcome the only live allegation (if the 30th June is the point at which an irrevocable decision to resign had been made) appears to be that of failing to deal with the grievance in a timely manner. That is necessarily capable of being a final straw in our view, if correct. The sequence of events is that the grievance having been lodged on 24th February 2017, Juliette Britton was appointed to investigate on 1st March 2017. She met the claimant on 22nd March 2017. Two of the issues, relating to a reference for Bristol City Council and arranging a meeting with Sonia Millar were dealt with very quickly. The notes of the meeting were sent to the claimant on 5th April 2017 and the claimant’s notes and comments incorporated in a final version by 5th May 2017. It was agreed that the grievance was too complex to be dealt with informally and would proceed to a formal grievance. As Ms Hepden had been named in the grievance a meeting needed to be arranged with her and took place on 14th June 2017, the earliest date upon which Ms Hepden her representative and Ms Britton were available. Ms Britton completed the first draft of her report on 15th July 2017 which she sent to her line manager Fiona Parfit for peer review. This occurred on 27th July after which Ms Britton went on two weeks annual leave. During this time the report was sent to the claimant and Sonia Millar. On 17th August a meeting took place between the claimant and Sonia Millar. The claimant sent her response on 10th September 2017. The final report was sent on 14th September and the grievance outcome on 15^h September 2017. Ms Britton accepts that the grievance took longer than she would have liked but contends that in the circumstances the delays set out above were unavoidable and that the process was conducted in a reasonable time in all the circumstances.
92. We accept Ms Britton’s evidence and have concluded that in the circumstances that the grievance investigation was concluded in a reasonable time. Specifically, in our judgment there was no unreasonable delay in arranging the meeting with the claimant, no unreasonable delay in agreeing the notes of the meeting and no unreasonable delay in arranging the meeting with Ms Hepden which was the last event prior to the resignation.
93. That raises the difficult issue of whether the delay although not our judgment unreasonable is still capable of being a last straw. The last straw need not constitute unreasonable or blameworthy conduct (Omilaju) although in most cases it will do. The last straw must contribute, however slightly to the breach of the implied term of mutual trust and confidence, but an entirely innocuous act is insufficient. Thus, the question becomes when can reasonable conduct on the part of the employer not be entirely innocuous. In our judgement a reasonable time in respect of a grievance process must necessarily be innocuous even if the employee genuinely perceives it

- as destructive of mutual trust and confidence. Moreover, in this case there is no specific evidence before us that the claimant did regard it as the last straw.
94. For both reasons in our judgment the delay between 24th February 2017 and 30th June 2017 cannot amount to a last straw.
95. Having analysed all three possible final straws as set out above for the reasons given, in our judgment none is capable of constituting a final straw, and the claimant's claim for constructive dismissal must fail on that point alone.
96. However, in case we are wrong about that we have gone on to consider and set out relatively briefly our conclusions as to the other matters relied upon by the claimant.
97. Return to work 6.2.17 – No access to parking or reasonable adjustments / Failure to make reasonable adjustments to parking from 6.2.17 to April 2017.
98. Although set out separately both the first two points are in our judgment essentially the same complaint. As set out above there was a delay between 6th February 2017, and the 20th February 2017 in activating her car park pass. However, the claimant had a blue badge and was able to use the visitor's disabled parking space and there is no evidence that she was inconvenienced in fact at any point during this period.
99. Failure to make equipment adjustments 6.2.17 - 15.9.17 – As is set out above there was in our judgment a failure to make reasonable adjustments from 6/2/17 to some point prior to between 21st March 2017 and 25th May 2017. As is set out above in our judgement having made the adjustments and having agreed to move the claimant it was incumbent on the respondent to ensure that the adjustments were in place. In effect by transferring the claimant and not making the adjustments the respondent was removing existing adjustments. This is in our judgement capable at least of contributing to a breach of the implied term.
100. 6.2.17 – No new contract or terms given or discussed, disorganised caseload. As is set out above in our judgement the first of these is simply factually incorrect. All of the relevant contractual terms were set out in writing following the meeting of 1st February 2017. In respect of the disorganised caseload, as is set out above, the respondent accepts that the 0-25 team had been a team in crisis and had undergone a significant re-organisation of which the claimant was a part. It would not be surprising if as a result there was some disorganisation. However, there is no direct evidence as to this and no evidence that it fell to a level which an experienced social worker could reasonably be expected to cope assuming, as was the case with the claimant, that she was fit to return to work.
101. 7.2.17 Bad/wrong DSE assessment re: chairs considered appropriate by H and S manager when they were not. Whilst in our judgment this is an opinion genuinely held by the claimant there is no objective evidence to support it, and in any event the ergonomic ball had been provided and was transferred albeit with some delay.

102. Complaints about Cs workstation on 8.3.17 and 10.3.17. These are in our judgment simply part of the factual matrix in respect of the delay referred to above.
103. The first supervision meeting after return to work was late on 21st March 2017. Inadequate supervision – Next supervision meeting on 25th June 2017. Although set out separately these are in effect part of the same complaint that between February and June 2017 the claimant should have had four supervision meetings with her line manager but in fact only the two referred to were held. In our judgement it is difficult to see how this could constitute a breach of the implied term. There is no evidence that there was any consequence flowing from the failure to hold these meetings; there were for example no performance concerns which need to be addressed, and the evidence of the respondent's witnesses was that there was constant inter-action between managers and the social workers, but that if the claimant believed specific supervision meetings were necessary more frequently it was open to her to request one with her line manager.
104. Nicholas Lowe becomes Service Manager of the claimant's current team. There is in our judgment no reasonable basis for this complaint. The claimant's case is that on two occasions some years earlier she had been interviewed by Mr Lowe for promotion but had not been successful. In our judgement this cannot form any basis for any reasonable objection to Mr Lowe becoming the service manager and that for him to be appointed cannot individually or cumulatively form part of any breach of the implied term.
105. First draft of grievance report 5.4.17 requires correction of numerous mistakes. Again this is difficult to understand as breach of the implied term. In order to ensure that the claimant was happy that the notes of the meeting of 22nd March accurately reflected what had been said Ms Britton sent a draft to the claimant, and she did seek to make a number of corrections. If anything, involving the claimant in the process might be thought to enhance rather than damage the mutual relationship of trust and confidence. We certainly cannot identify anything which individually or cumulatively could contribute to a breach of the implied term.
106. In fact the grievance report was sent, as is set out above, after the claimant's resignation and if the complaint is actually about the report not the interview notes it cannot have contributed to the resignation in any event.
107. C is placed 5 metres away from a former colleague. The facts of this are that due to a reorganisation a team in which the former colleague worked was moved to the same floor as the claimant. The claimant alleges that a previous interaction between them when they had been part of the same team some years earlier had triggered an episode of CPTSD. It is not alleged that anyone involved in making the decision as to where teams were to be located would or could have known this, nor that the claimant would object to working in the same building or on the same floor. In our judgment this cannot objectively be conducted, calculated or likely to destroy or seriously damage mutual trust and confidence.

108. 18.4.17 – Three people are transferred to Cs team on secondment. As is set out above the claimant complained, (although it is not specifically a claim before us) of not being permitted to join the 0-25 team on secondment but to the subject of a transfer. She complains that in April 2017 there were three secondments to the team. Ms Miller's evidence which we accept is that precisely because of the re-organisation of the team it was possible to second people in April 2017 which had not been possible earlier. In any event objectively it is difficult to see how seconding others subsequently could be breach of the implied term of the claimant's contract.
109. All of the remaining points have been addressed above.
110. It follows that of the matters about which the claimant complains as being individually or cumulatively breaches of the implied term of mutual trust and confidence we are only able to identify one, the failure promptly to provide the equipment after February 2017 as being capable of contributing individually or cumulatively to breach of the implied term, but that as we have, for the reasons set out above, been unable to identify a last straw that the claimant's claim must be dismissed.

Unlawful Deduction from Wages

111. The claimant alleges that she is owed £73.80 in unpaid expenses and that the payroll information she has been provided with does not allow her to understand whether this has been paid, and if so when and how. The respondent submits that as far as it is aware all sums owed have been paid to the claimant and that they have provided all the information in their possession. In addition, they submit that as a claim for expenses it is irrecoverable as a claim for unlawful deduction from wages.
112. In our judgement on the information before us it is impossible to draw any factual conclusions and that as the burden lies on the claimant tis part of the claim would fail evidentially but that in any event the respondent is right as to it being irrecoverable by this means.

Remedy

113. It follows that the case will be listed for a Telephone Preliminary hearing to give directions as to remedy. However, for the assistance of the parties, given that we have upheld one of the complaints it appears, subject to any submissions either party would wish to make, that remedy would consist only of an award for injury to feelings.

EMPLOYMENT JUDGE CADNEY

Dated: 11 February 2020

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