Neutral Citation Number: [2022] EAT 46

Case No: EA-2020-000404-BA

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 12 July 2022

Before :

HIS HONOUR JUDGE MARTYN BARKLEM
MR M WORTHINGTON
MR H SINGH

- -

Between :

MS ENIOLA ONIGBANJO	**Appellant**
- and -	
LONDON BOROUGH OF CROYDON	**Respondent**

- -
- -

Mr B Uduje (instructed under the auspices of Advocate) for the **Appellant**
Mr S Crawford (instructed by Five Paper Chambers) for the **Respondent**

Hearing date: 14 December 2021

- -

JUDGMENT

SUMMARY

VICTIMISATION, MATERNITY RIGHTS, UNFAIR DISMISSAL

The claimant was a trainee Social Worker who went on Maternity Leave before she could complete the full first-year training and assessment. She suffered from fibromyalgia, which was recognised as a disability. She had brought earlier proceedings in the ET which were successful in part. Prior to her return to work she sought access to training courses but was erroneously sent an out-of-date list. However, she was subsequently invited to contact the training department direct. The ET held that no maternity discrimination arose, on the facts, and the EAT held that this was a conclusion the ET was entitled to reach.

The ET did find that the cancellation of an appointment for the fitting of a chair required as part of reasonable adjustments to assist with her disability was an act of victimisation. However, it held that the refusal by the same manager to allow the claimant access to the workplace and IT facilities was not. The EAT held that the ET had not adequately explained the distinction between the two matters and remitted them for redetermination.

Whilst on leave issues had arisen concerning allegedly fraudulent housing benefit claims some of which involved the respondent as a landlord. Issues also arose regarding incomplete and inaccurate information on the DBS form which she had been required to complete before taking up employment. She was suspended and eventually dismissed following an investigation. Her claims of discrimination in relation to the process were rejected by the ET, and the EAT rejected the assertion that the ET had erred in law. Given the gravity of the allegations, and the sensitivity of the claimant's duties, suspension was inevitable and the ET's conclusions regarding the fairness of the investigation and disciplinary process were ones which it was entitled to make.

HIS HONOUR JUDGE MARTYN BARKLEM:

1. A draft of this judgment was submitted in March 2022. Due to a number of administrative issues it has taken from then for this final judgment to be handed down, for which we apologise.

2. In this judgment we shall refer to the parties as they were below. This is an appeal against the decision of an ET sitting at London South (EJ Sage sitting with Ms Forecast and Mr Adkins) following a hearing which took place over a number of days in October 2019. Written reasons were sent to the parties on 26th March 2020. They are lengthy running to 159 paragraphs in 41 pages. The claimant succeeded in two aspects of her victimisation claim but the remainder of her claims for unfair dismissal, maternity / pregnancy discrimination and breach of contract were dismissed.

3. Grounds 1 to 5 of the Grounds of Appeal were permitted to proceed to a Full Hearing by HHJ Tayler following a Preliminary Hearing. Ground 6 to 9 were by that stage no longer pursued. Before us the grounds of appeal were dealt with as three distinct issues, Grounds 1 and 2 being dealt with separately, and grounds 3 to 5 dealt with compendiously.

4. The claimant represented herself before the ET. Before us she is represented by Mr Uduje and the Respondent by Mr Crawford, both of counsel. Mr Crawford appeared below, although was wrongly named as "Mr Campbell" at the title page of the written reasons. We are grateful to both for their submissions.

5. The ET was considering claims brought in two separate Forms ET1. The first was presented on 19th October 2017 claiming maternity and disability discrimination. A second claim form presented on 15th February 2018 made claims of unfair dismissal and victimisation. The

victimisation was said to have arisen from an earlier successful ET claim of disability and maternity discrimination. The liability hearing in that earlier case had taken place in July 2017 and the remedy hearing on 8th September 2017. Mr Uduje had represented the claimant at the remedy hearing. None of the panel which heard the earlier case was a member of the ET whose decision we are considering. We have been provided with copies of the earlier ET's written reasons from both liability and remedy hearings.

6. The ET had before it a comprehensive agreed list of issues which had been drawn up in such a way as to set out in brief the respective arguments of the parties in relation to each issue. Each party clarified at the outset that the list was correct. However, an issue arose prior to closing submissions when it emerged that two matters – one of disability discrimination, the other an alleged breach of contract - had not been set out in the agreed issues. The ET reminded itself of the dictum in **Saha v Capita** PLC UKEAT/0080/18 to the effect that tribunals should not stick slavishly to a list of issues and permitted the issues to be considered.

7. Briefly stated, the background to the case is as follows. The claimant joined the respondent in October 2015 as a newly qualified Social Worker. She suffered from fibromyalgia, and it was accepted at all times material to this claim that she was suffering from a disability requiring adjustments in the form of specialised equipment. In late January /early February 2016 she informed the respondent that she was pregnant. She went on maternity leave towards the end of August 2016. She succeeded in part on her earlier claim of disability and pregnancy related discrimination and a failure to make reasonable adjustments, the liability hearing taking place while she was still on maternity leave.

8. From a time prior to the claimant commencing maternity leave investigations had been underway in relation to allegedly fraudulent claims which she had made in relation to Housing Benefit prior to the start of her employment. An email dated 30th March 2016 is referred to in

the reasons. This predated the grievance raised on 16th April 2016, which is the protected act relied upon in relation to the victimisation claim linked to dismissal.

9. A further concern arose in relation to a DBS form which the claimant had been obliged to complete. Prior addresses at which she had resided not being mentioned on the form. Whilst on maternity leave the claimant was notified about this and given the option, which she accepted, of delaying the investigatory meeting until the end of her maternity leave or on one of her KIT (Keeping in Touch) days.

10. Before she could return to work the claimant was suspended and following an investigation was written to in September 2017 setting out allegations of fraud in relation to housing tenancy fraud, council tax fraud and a failure to provide accurate and comprehensive details in her DBS form in May 2015. Following a disciplinary hearing in January 2018 the claimant was dismissed for gross misconduct and having breached the respondent's disciplinary procedure and code of conduct.

11. The claimant appealed on grounds that the disciplinary process had been discriminatory and an act of victimisation, that the decision to dismiss was unsupported by the evidence and that the sanction of dismissal too severe.

12. The first Ground of Appeal relates to the failure of the respondent to provide details to her whilst on maternity leave of training days which might be available to her on KIT days, towards the end of her maternity leave. Because of that maternity leave the claimant had been unable to complete the mandatory Assessed and Supported Year in Employment (AYSE) within the conventional one year. The claim in this regard was of discrimination under s18 Eq A – she had been treated unfavourably whilst on maternity leave. The ET held that there was no such discrimination.

13. The second Ground of Appeal relates to allegations of victimisation. Prior to her return to work, the claimant had a return to work interview following which her access to her place of work and to IT services was restricted. It is submitted on her behalf that, having found against the respondent in relation to the cancellation of an appointment in relation to an office chair by Ms Langton (as to which see para 17 below) the ET substituted reasons which had in fact been made by someone else at a later stage.

14. The third to fifth Grounds of Appeal deal with the claimant's suspension (ground 3), the subsequent disciplinary investigation leading to her summary dismissal (ground 4) and an assertion that the ET failed to consider the claimant's case that the protected acts influenced the progression of the investigation and the outcome of the disciplinary hearing (ground 5)

15. It should be noted that the ET upheld victimisation claims in relation to two matters. Each is relevant to the matters under consideration in relation to the appeal.

16. The first concerned a without-prejudice meeting which the claimant held with the head of HR (Mr Singh) accompanied by her union representative, on 19th August 2016. There was discussion as to her recently lodged ET claim (the earlier claim) with the suggestion made, the present ET accepted, that the respondent was looking to terminate her employment to avoid a disciplinary case. The ET concluded that there was no suggestion made that dismissal was a foregone conclusion but as the claimant was unaware of concerns about the DBS issue this was a detriment as a result of the protected act, namely lodging the earlier claim.

17. The second detriment found arose from the decision by Ms Langton, a person appointed as the claimant's line manager while the claimant was on maternity leave, to cancel an appointment for a chair fitting. As mentioned above, an Access to Work report had recommended the provision of equipment for the claimant as reasonable adjustments to

accommodate her disability. One aspect of the earlier claim, which was upheld, was that the respondent had failed to ensure that the recommended equipment was obtained, or even ordered. The chair fitting was to enable the office chair (which had been delivered) to be set up for her needs.

18. On this issue, the ET held as follows.

> **"69. Ms Langton told the Tribunal that as the Claimant had refused to give consent to OH to access her medical records, there was no point in arranging the chair fitting as she believed wrongly (as she conceded in her statement at paragraph 48-9) that the issue of consent was relevant to what she described as the whole process which included "OH referral and the chair fitting as these were part of the return to Work Action Plan to ensure that reasonable adjustments were in place". In hindsight she accepted that the refusal to give consent to medical records did not prevent her from undergoing an assessment by OH. Ms Langton conceded that she decided to cancel the chair fitting appointment and made no arrangements for the Claimant's assignment to a work station on her intended return to work date, she did not inform the Claimant that she had done this. The Tribunal did not find Ms Langton's evidence credible on this point. It was noted that she was supported by HR as she was a new manger and her alleged misunderstanding of the role of OH in advising the employer could not in any way justify the Respondent's failure to put in place physical adjustments to the work place to facilitate the Claimant's return to work on the 21 August.**
>
> **70 Ms Langton's unilateral decision to cancel the appointment for the chair fitting and failure to inform the Claimant of her decision was a detriment to the Claimant. The Tribunal considered the reason for this detriment and conclude in the light of our finding in relation to the credibility of this witness referred to in the above paragraph, that the reason was because the Claimant had done a protected act. The Tribunal also noted that the previous successful ET claim had made recommendations about reasonable adjustments to accommodate the Claimant's disability (page 33 of the bundle) and the chair had been purchased on that basis."**

19. We turn now to the grounds of appeal, starting with Ground 1. The relevant findings of the ET are at paras 62 to 64 and 139

20.

> **"62 The Claimant was due to return to work after maternity leave on the 21 august 2017 and a return to work meeting was arranged. The Tribunal saw a number of emails from the Claimant firstly on 24 July 2017 (page 300) asking for a return to work meeting and for an OH referral and risk**

assessment to be done and attached a request for flexible working, this was forwarded the same day to her new line manager. There was also a further email to HR asking to attend some training sessions before she resumed work, she asked for a list of available training courses she could book herself on (page 322). This was the first communication that Ms Langton had with the Claimant as she had only just taken over line management responsibilities her. Before the meeting the Claimant emailed her manager on the 7 August (page 346) to inform her that her laptop was not working so she did not have access to email or intranet. The Claimant also asked for an appeal in respect of her grievance to be arranged.

63 Ms Langton's evidence was that because she was new to the role, on receipt of the Claimant's request for training courses, she asked internally for a list of relevant courses which she forwarded on, but did not check the contents; she was not therefore aware that the relevant training dates had passed. The Claimant contacted Ms Langton and asked if she could contact the training department direct on the 9 august 2017 (page 342) and the Tribunal saw in the bundle that the Claimant made direct contact with the training team that day. There was no evidence that the Claimant asked her line manager for any further assistance with this matter or that she raised any concerns about training on her return on 10 August.

64 There was no evidence that the Claimant made any requests about training. Looking at the issue above (paragraph 16) although the Claimant was not informed about training days, this was because the Claimant was on maternity leave and although she had offered to use KIT days it was for her to inform the Respondent of when she wished to undertake this training. MS Langton's agreement that she could contact the training department direct suggested that if the Claimant had made the request earlier, there was no impediment to her arranging this herself. The facts suggested in the Claimant's email dated the 24 July 2017 (page 322) where she stated that "Finally, I would like to attend some training sessions before I resume work", did not indicate that she felt she had missed out on training due to being absent on maternity leave. This head of claim could only refer to the period from 24 July when she indicated she was ready to attend training sessions to the 21 August 2017 (the date of suspension). There was no evidence to suggest that her colleagues, who had not taken maternity leave, had been invited to attend training. There was also no evidence to suggest that the Claimant would not have been allowed to attend relevant training, or that she would not have had the same opportunities as those not returning from maternity leave, had she requested them. The head of the claim above at paragraph 16 is not well founded on the facts.

…

139 Dealing first with the claims of pregnancy and maternity discrimination we have found as a fact above at paragraph 63-4 that the failure to inform the Claimant of relevant training courses was not an act of discrimination because of pregnancy or maternity. Ms Langton sent the Claimant a list of courses which was out of date but then the Claimant took the initiative to contact the training team herself. There was no evidence to suggest that the Claimant was treated less favourably than other employees who had not taken maternity leave in the brief period that she was available to attend courses. The burden of proof does not shift to the Respondent."

21. Mr Uduje argues, first, that the ET failed to consider the first limb of the claimant's complaint, namely that she was not informed of relevant courses as and when they became available. Had they done so, he submits, they would have been bound to conclude that the shifting burden of proof applied (s 136 **EqA**) and no satisfactory explanation had been provided.

22. A further limb of the argument is that s39(2) of the **EqA** applies, putting the respondent under a duty to inform the claimant of all training days during her absence. That sub-section requires an employer not to discriminate against an employee in the claimant's position in the way it affords the employee access to opportunities for promotion, transfer or training.

23. He complains that the ET refers to "less favourable" treatment afforded to the claimant when the true test in respect of pregnancy / maternity discrimination does not require a comparator. He points to the use of the word "invited" in relation to other employees, as distinct to the claimant's complaint that she had not been informed.

24. Mr Crawford submit that the ET's findings are clear from the judgment – the reason Ms Langton did not send the details was because the claimant did not seek them. The requirement is for "unfavourable" treatment which necessarily imports that it is less favourable than would otherwise be afforded to someone else.

25. In our judgment the word "invited" in para 64 is intended to convey a finding by the ET that colleagues not on maternity leave would not been sent details of training courses. It is implicit in the claimant's case that training courses could be booked by members of staff as a matter of choice – there was never any suggestion that they were "directed" to attend. The ET's findings were that Ms Langton was unaware of a general desire on the part of the claimant to receive such information, and of an error on her part in sending, without checking, a list which she had asked for but which contained out of date information. The claimant was permitted to

contact the training department herself, and made contact with them on the day that permission was granted. The finding, therefore, at para 139 that there was no evidence to suggest that the claimant was treated "less favourably" is, in our judgment, a statement that there was nothing unfavourable. She was, in short, being treated in the same way as employees who were not on maternity leave.

26. Mr Uduje's argument that the duty fell on the respondent as a whole, rather than just Ms Langton fails for the same reason. The law does not require those in the claimant's position to be treated *more* favourably than other employees.

Ground 2

27. This ground concerns restrictions placed on access to the claimant's place of work and to IT services. In the list of issues the claim was put as an act of discrimination. Mr Uduje submits that (contrary to the respondent's submissions) it ought to have been regarded by the ET as victimisation issue. In the event the ET did treat it as such at para 76 of the Reasons, as will be seen. Having read the relevant section of the ET1 we think it was right to do so. The relevant passages of the ET's Reasons are set out below:

28. …

> **"71. A further issue for the Tribunal is in relation to whether Ms Langton would not allow the Claimant to take her laptop to IT.The Claimant's note recorded at page 352that "at the end of the meeting Pamela suggested that I should leave my work laptop with her and she can get it to the IT team because she invited me for this meeting, and I am not allowed on the premises without being invited". The Claimant added "I did not leave my laptop and agreed to contact the IT department for an appointment…"**
> **The evidence of Ms Langton is preferred that she offered to take her laptop to IT because it would be a simple matter and the Claimant refused this offer. Ms Langton's evidence on balance reflected that she refused to allow the Claimant to take her laptop to IT herself and gave health and safety as the reason for this and also said she could not accompany the Claimant to IT because her team needed to know where she was in case of an emergency. There was evidence that suggested that the Claimant was denied unaccompanied access to IT as indeed was the case for the rest of the building and the Tribunal conclude on the balance of probabilities that the**

reason for this was not related to her pregnancy or maternity as set out above in the agreed issue at paragraph 17.

72. The Claimant's email of the 10 August (page 351-2) again stated that she did not have IT access. It was the evidence of Ms Langton to the Tribunal in cross examination that she decided not to reinstate the Claimant's access to the system. The Tribunal saw on page 358 Ms Langton's email dated the 11 August 2017 where she stated "*she cannot be trusted for an honest view about any situation*" and linked her comments about the Claimant's 'behaviour' to the decision not to reinstate her IT access.

73. After the meeting the Claimant emailed Ms Langton (page 351) to express her concerns as follows "I was taken aback by your statement at the end of the meeting, when you offered me to leave my laptop with you because I am not allowed anywhere in the building without being invited due to insurance and liability as you said". Ms Langton's evidence on this point was that if she was tripped or fell "no one in the building would be aware" (paragraph 39). However, it was noted by the Tribunal that as the Claimant had used her badge to gain access to the building they would therefore be aware of her presence.

74. the Tribunal saw the risk assessment form in the bundle at page 324- 333 and it was noted that they discussed and identified the problems the Claimant would experience with long distance travel. Although the Claimant alleged in paragraph 4.2 in her statement that Ms Langton had told her that it would not be fair on her team if she returned, that was not something that was included in the Claimant's own contemporaneous note of the meeting or her subsequent email of the 10 August 2017. The Claimant also did not contest the veracity of the risk assessment form which recorded that the Claimant could return to work in week three on flexible hours.

75. Ms Tomilson then emailed Mr Lewis the Director of Early Help and Children's Social Care on the 11 august 2017 after speaking to Ms Langton about the return to work meeting. At the start of this email she stated that she had sent Mr Lewis a separate email about the Claimant however this did not appear to be in his bundle. Ms Tomilson was asked in her cross examination whether this undisclosed email called for suspension and she replied, "I don't know, it may well have". In this email (page 357) she confirmed that the Claimant would not agree to OH having access to her medical records and therefore they could only make a judgment on what the Claimant told them. The email went on to state "for a number of reasons, we would struggle to trust [the Claimant's] assertions". At the date this email was written Ms Tomilson was aware of the previous ET and of the ongoing fraud investigations against the Claimant. It was noted that she had attended the meeting with Mr Hogan on the 2 June 2016 and was aware that progress had been made and had been updated in general terms. The documentary evidence and the evidence of Ms Tomilson suggested that the decision to suspend was taken by Mr Lewis (who did not give evidence to the Tribunal), we find on balance that Ms Tomilson had a significant input into the

> **decision to suspend on the 21 August 2017 and it was to be put in place immediately on her return to work.**
>
> **76. Ms Tomilson confirmed in cross examination that she held a genuine concern about the Claimant's honesty as a social worker and they took this step to protect both the Respondent and the Claimant and to protect vulnerable service users. The evidence before Ms Tomilson also suggested that the Claimant may have been involved in a Limited Company with a connection to social work and she sought to prevent the Claimant from accessing children's files for unapproved purposes not related to the Respondent's provision of services. On balance the Tribunal conclude that suspension was a reasonable response to the justifiable concerns held by the Respondent and the role the Claimant held and taking into account that there was no alternative roles where the same trust and risk issues would not apply. The Tribunal further conclude on all the evidence that the reason why the Claimant's access to the building was restricted was not due to maternity or pregnancy as we have concluded above, or as an act of victimisation but due to genuinely held concerns about her honesty and integrity and the intention to suspend pending further investigations."**

29. Mr Uduje notes that the ET ought to have put weight on the earlier finding, mentioned above, that Ms Langton had subjected the claimant to a detriment only a few days earlier because of a protected act. This relates to the cancellation of the chair fitting appointment. The ET also rejected Ms Langton's explanation in relation to restricting the claimant's access to her place of work and IT, choosing to accept an explanation that was given by a different person, namely Ms Tomlinson.

30. We consider that there is considerable force in these submissions. Having found that Mrs Langton had acted in the way that she had in relation to the chair, and given that the claimant had been denied access to the building it was not enough, we find, to say that the reason for not being allowed access to the building was "not related to the pregnancy or maternity" when there was clearly an issue of victimisation live before the ET as it acknowledged at para 76.

31. The same applies, in our judgment, to the decision by Ms Langton not to re-instate the claimant's access to the IT system. The issues cited have a similar theme to them as the issue regarding the cancellation of the chair fitting appointment. We consider that the ET has failed to explain how it reconciled its findings in relation to Ms Langton regarding the chair

appointment with her actions in relation to building and IT access, up to the point of the suspension. That is only a matter of days, but in our judgment no adequate explanation for its findings are contained in the judgment. We disagree with Mr Uduje that it is possible for us to resolve this issue ourselves – it will have to be remitted. For that reason we have been careful to go no further than necessary in highlighting issues which require an explanation. Nothing we have said should be regarded as pre-judging the issue.

32. We turn finally to the composite grounds dealing with suspension, disciplinary investigation and dismissal.

33. The Grounds allege, first, that the ET erred in failing to consider whether the decision to suspend and its timing was to some extent influenced by the fact that the claimant had carried out protected acts. They point to an absence of consideration by the ET of what are said to be inconsistencies in Ms Tomlinson's evidence as to the reason she did not suspend in June 2016. The reason given, namely there was no final report of the Fraud Team was also the case in August. The assertion that there was a need to suspend on August 2017 due to the need for an investigation is at odds, it is said, with the fact that that investigation had been ongoing for some time. Finally, that the ET's conclusion that the claimant had not been suspended earlier because she had been on maternity leave was not something which the respondent had asserted

34. As to the disciplinary investigation and subsequent summary dismissal (Ground 4) it is said that ET failed to consider certain evidence when concluding that the principal reason for commencing the disciplinary investigation was the evidence which came to light when the claimant put in her right to buy application. It points out that that application post dated the first protected act. It is also asserted that the ET applied a wrong legal test, namely that the protected act need be the only reason for the detrimental treatment. Finally, that the ET failed

to consider the claimant's alternative case, namely whether the protected acts influenced the progression of the investigation.

35. Mr Uduje argues that the ET failed to have in mind that the protected acts need only be a material factor in the treatment of the claimant regarding suspension, the investigation and dismissal. He sets out a number of factors which, he says, ought to have led the ET to draw the inference that the suspension, investigation and dismissal was, in a significant way, influenced by the protected acts.

36. At the risk of making this judgment overly lengthy, we do consider it necessary to set out the extraordinary backgrounds facts as they relate to the claimant, as found by the ET.

37. The first set of findings relate to a report made to police of domestic violence, and of benefit claims made at more than one address at the same time:

38.

> **"30. The Claimant was assigned a Local Authority tenancy in 2008 at Eastney Road Croydon, by the time she had two children. She had been on the waiting list since 2006. We were taken to a number of police reports in 2012at pages 649-655. The incident appears to have started on 11 March 2012 where the Claimant informed the police that she had a numbers of text messages and calls from the suspect (a female cousin of the Claimant) which were rude and threatening in nature. The incident report on page 644 also recorded that "the victim has links to violent street gangs. The first report the Claimant made to the police was by internet and it was recorded that the incident was not a hate crime (domestic incident or carer abuse- page 623). The next police report was on pages 648-9 the being dated the 29 March 2012 and it was reported that the Claimant confirmed that "she is happy at this stage that there is little or no evidence to prove harassment against the suspect". The next police report was dated the 6 April 2012 which reflected that the police had spoken to the suspect who denied making any contact with the Claimant for a number of months and "she no longer knew where [the Claimant] lived and did not even have possession of the [Claimant's] mobile or phone number". The suspect stated that she had no intention of contacting the Claimant again and "the evidence of potential texts to the victim have been deleted…". The report went on to state "I have spoken to [the Claimant]and informed her of the conversation and she does not want to make a statement relating to this incident and just wants to be left alone" (PC Holmes). There was a further report dated the same day made by DS Windsor again confirming that the Claimant did not want to**

progress matters further and was "not willing to provide an evidential statement" (page 650). The Claimant was cross examined on this point and although she asserted that she "*told them everything I could and the rest was telephone calls*" from this evidence we conclude that she did not provide a written statement to the police.

31. The next incident the Claimant reported to the Police was on the 22 May 2012 (page 650) where she reported 'continuing harassment' in respect of an unknown male who allegedly followed her only a couple of days after the earlier harassment case had been closed. The claimant reported that this had been happening 3-4 times a week and her car had been broken into. The Tribunal were then taken to page 652 where a further incident was reported to the police on the 22 May 2012 where she reported further stalking which she believed was related to her cousin and in this report she states that "*she is currently trying to get rehomed and is attending the Family Justice Centre tomorrow*". The following day the Respondent Council contacted the police (Angela Bradford) stating that the Claimant had asked to be rehomed stating that she did not feel safe where she lived and feared for her life (page 653). The police had an action plan to contact the Housing department and the Claimant with the view that "the victim's life is not in danger based upon the evidence and the nature of the allegations to date. The victim has previously not provided police with a statement". Then on the 27 May 2012 (653) the Claimant reported to the police that the unknown male had "somehow gained access to her communal entrance and knocked at her door..". The Claimant gave a description of the male and she said she believed that he may be her cousin's boyfriend but again did not make a statement.DS Galloway suggested that they make a reassurance visit as "she feels quite scared at the moment despite the fact the male has not approached her or made any threats".

32. Then on 29 May 2012 (page 654) PC Holmes contacted the Claimant and challenged her as to why she had not reported the fact that a male had been following her 3-4 times a week. It did not record what the Claimant said in reply but said that she stated that "she could not live where she was housed…". PC Holmes said he would speak to the Housing Officer. On the 30 May 2012 (page 655) PC Holmes spoke with Croydon Council and reported to them that the police did not feel that the Claimant's life was in danger and would not support a house move on that basis. It was confirmed that PC Holmes spoke with Ms Wellington but also left contact details for the Claimant's Housing Officer Mr Fantie to contact them, if necessary. This report was marked as complete, indicating no further action. On the 4 June DS Windsor summarised that "*the victim's additional allegation is historical and appears linked to attempts to move home with the Council. Due to time elapsed there is no evidential opportunity…….the risk to the victim is assessed as standard and there is no new or substantive reason for believing her life is in danger in any way*".

33. The Claimant was taken to these reports in cross examination and she stated that she could not recall being asked for a statement because she was hysterical and scared at the time. She also denied that the police told her that the test for being rehoused was that she considered her life to be in

danger and she told the Tribunal that the first the first time she was aware of this test was in 2015 when it came up in Court. The Tribunal on the balance of probabilities concluded that the police reports where an accurate representation of their exchanges with the Claimant. Even if the Claimant had been in deep distress in any one day, it was noted that the police followed up with the Claimant and her position on giving a statement did not change. It was also noted that the Claimant would not provide a statement in relation to the complaints about her cousin. The Claimant accepted that by the 29 May 2012 she had moved to Hunters Road in Kingston (on 27 May 2012 page 695 see tenancy agreement) moving out of Eastney Road.

34. The Tribunal were taken to page 705 in the bundle which was the Claimant's letter to the housing department dated the 29 May 2012 (two days after she had signed a new tenancy). In the letter she stated that she had moved address "due to harassment" and confirmed that she was "privately renting an (sic) property in another borough while the case is being investigated by the police". She asked that her housing benefit continue for Eastney Road. She gave the contact details for PC Holmes and gave Hunters Road as her new address. The Tribunal noted that the Claimant failed to provide a date for when her new tenancy began and she inferred in this letter that the police investigation was ongoing when she had been informed that the investigations had closed. This was inaccurate.

35. The Tribunal noted that the Claimant described the conduct that led to her moving as harassment not violence. However in the interview under caution conducted by the Fraud Department of the Respondent, dated the 28 March 2017 she told Ms Buley (page 746) that "while it was ongoing I told Croydon Council, and used the exact same word, domestic violence simply because that is what I was told it was". She also told Ms Buley that "because it is a family member It would be classed as domestic violence". The Tribunal noted that the evidence given by the Claimant to the Respondent on this matter was inconsistent because she stated that it was a family member but she told the police it was an unknown male and there was no actual or threat of violence, only that she felt scared. When the police evidence was put to her in the interview, she told Ms Buley that the police were lying (page 748). The Claimant was taken to the evidence given to the appeals manager where she stated in her opening statement to the appeal that "It never once bothered me, until this guy turned up at my door. So automatically that was my concern on that day…", the evidence given by the Claimant appeared to contradict what she had previously told the police. In cross examination she told the Tribunal that she was "always fearful of threats my cousin made". The Claimant's evidence appeared to be contradictory on this point. The Claimant told the appeal (page 1427) hearing that she denied hiding the evidence about this issue and stated that she had "started to learn about law".

36. The Respondent was the Claimant's Local Authority Landlord and had sought repossession of the property following an investigation where it was discovered that the Claimant was not living at this address, which was a breach of her tenancy agreement. The Tribunal saw that an investigation

was ongoing into the Claimant's entitlement to claim Housing benefit and Council Tax benefit as it had been discovered that she was residing at two properties and claim benefit at both addresses; this investigation had been ongoing from 30 April 2014. The Council's repossession application was heard in the Croydon County Court on the 29 May 2015 and the matter was stayed with liberty to restore the matter by 4pm on 29 May 2016, if not the matter be struck out (page 1119). The Claimant applied for the Right to Buy her council property (92 Eastney Road) on the 29 May 2016, the day the matter was struck out in the County Court. The right to buy application was approved on 2 august 2016 but then subsequently denied."

39. The next set of findings relate to the completion of a DBS form at the outset of her employment:

40. …

"37. Prior to commencing employment, the Claimant attended a meting at the Respondent's premises on the 31 July 2015 with a person from HR (Ms Osborne) to complete her DBS form, this was seen in the bundle at pages 1695-8. The enhanced DBS application was a requirement of her employment and this was a process that a Claimant would have been aware of as she had completed the form a number of times before. The Claimant confirmed that she signed the form but stated but stated that she had signed a blank form because on her evidence Ms Osborne was running late and the Claimant's car was on a meter. She said that Ms Osborne completed the form from documents that the Claimant left with her, she confirmed however that she did not provide Ms Osborne with "from" and "to" dates for any previous name or addresses. The Tribunal heard form the Respondent that the last page of the form was meant to be completed by HR (for office use) and the Tribunal saw that there was a redacted signature showing that the form was countersigned on the 4 August 2015.

38. At the time the Claimant commenced employment, the address she provided on the DBS form was 92 Eastney Road in the London Borough of Croydon and although this was redacted in the DBS form this was not disputed. The Claimant held a Local Authority Tenancy at this address (see above) in her name and this was the property that the Claimant had elected to purchase under the right to buy scheme.

39 The Tribunal saw in the bundle a UK Deed Poll change of name document dated the 17 August 2015, dated less than 3 weeks after she completed her DBS form. In this document she formally changed her name to Miss Eniola Gabriella Onigbanjo". The document showed her address as 92 Eastney Road, Croydon, the document was witnessed by Keith Burn giving an address in Whytleleafe in Surrey (page 815). She had previously changed her name by Deed Poll in 2008 (see page 813) from Enitan Ononuga to "Enitan Eniola Onigbanjo". The Claimant did not provide her previous names on the DBS form that she completed and did not inform the Respondent of her subsequent change of name at the time she commenced employment."

41. The claimant was suspended and a disciplinary process was instituted. The person charged with the investigation did not know the claimant. As part of the inquiry she interviewed two of the fraud investigators, Ms Buley and Ms Campbell neither of whom was aware of the protected acts. The ET records those interviews at paras 84 to 86

42. …

> **"84. The interview with Ms Buley wason the 30 august 2017 (the notes were on page 529-30). Ms Buley went into the history of the case and confirmed that the Claimant had previously been investigated for tenancy fraud by Ms Campbell and it was found that she was no longer living in the property. She explained that her involvement began after the Housing department became aware that the Claimant was an employee of the Council, after she attended the department to escalate her concern about the property in Eastney Road. Ms Buley had discovered that the Claimant was a registered Secretary of a Limited Company and the Council Property was recorded as the registered address. Although the Claimant had denied this to her, Ms Buley had uncovered bank statements in the Claimant's name showing her as Company Secretary. Ms Buley also put the Claimant that she had a Police National Computer record number which you only received if you had been arrested, again although this was denied by the claimant who told her that this was a police error, again this was checked and the police confirmed that the Claimant had received a caution for criminal damage in 2007. Ms Buley explained that there were current investigations by the DWP in respect of possible Housing Benefit fraud and by the Croydon Council on respect to tenancy fraud. Ms Buley expected the DWP case to be progressing through the CPS system sometime in the new year. The notes reflected that there was a suspicion of money laundering due to large sums of money moving through the Claimant's bank account over a 4 year period. The interview notes recorded that Ms Buley had been told by the Claimant that she had been fleeing domestic violence on two occasions and on the second occasion had 'fled' to Kingston and had reported this matter to the police. Ms Buley confirmed that in her opinion on the balance of probabilities there was sufficient evidence to suggest that housing benefit and tenancy fraud had taken place.**
>
> **85. The Tribunal were then taken to the interview notes with Ms Campbell on pages 532-5, this took place on the 30 August 2017. She stated that the Claimant had made five applications to buy the Eastney Road Property, all had been denied because checks had identified that she had been living at Hunters Road Chessington. The investigation had found that the Claimant had been claiming Housing benefit and Council tax (student exemption) on Eastney Road and she was also claiming benefits in Kingston Borough council. The DWP took over the investigation of the benefit fraud but more recently Croydon had been given permission to jointly investigate the benefit statement provided during the repossession hearing, as it had transpired that the evidence the Claimant gave in court 9where repossession was denied to Croydon Council) was that Eastney Road was her sole**

> **property as she had claimed that she had returned there permanently in January 2014 but had then left again because she was feeling domestic violence. The Claimant had told Ms Campbell that Eastney Road was her sole residence but liaison with Kingston had led to a discovery that the Claimant had resided in two properties in Kingston and had claimed Housing benefit on both. She had not disclosed to Kingston that her partner was listed as the landlord of one of the properties which would have affected her entitlement to benefits from Kingston.**
>
> **86. Ms Campbell told Ms McPartland that there had been dual raids on Eastney Road and Kings Court (which the Tribunal noted should be a reference to Court Crescent) in Kingston on the 28 June 2017, Ms Campbell accompanied the police that day and had found the Claimant's brother living there. He initially claimed that the Claimant and her children still lived there but after questioning admitted that she had not lived at the property for some time. The Claimant was found at the property at Kingston with her partner, baby and other children. Ms Campbell told Ms McPartland that the keys to Eastney Road were handed back on the 3 July 2017. Ms Campbell stated that "*if the local authority proceeded to the civil court it would be on the balance of probability, and the amount of evidence that had team had gathered [sic] (4 lever arch files of evidence linking her to other addresses), would strongly suggest that [the Claimant] had been lying and had behaved in a fraudulent manner in making claims for benefit on her tenancy agreements*". The Tribunal noted from the agreed chronology that the Claimant was arrested that day and interviewed under caution**

43. The ET went on to record the claimant's interview at para 88 and 89

44. …

> **"88. The Claimant attended an interview with Ms McPartland on the 15 September 2017 with her union representative Ms Robertson and, as a reasonable adjustment, was permitted to record the meeting. At the meeting the Claimant informed Ms McPartland that she had pursued a Tribunal claim against the Respondent. The Claimant confirmed that she had held a tenancy at the same time from two addresses; Eastney Road Croydon and 77 Hunters Road Kingston. She explained this was due to her domestic situation in 2012 which she had explained to her Croydon Tenancy Officer who had advised her to find somewhere else to live, she also stated that he had said this was 'fine' because she was a student. The Claimant also said that she had telephoned the Housing Benefit Team in Croydon to inform them that she was a student and had started University in 2012. The Claimant asserted that she had informed the Council of her move to Hunters Road and the date she moved permanently back to Eastney Road address. She confirmed that she had claimed Housing Benefit and Council Tax Benefit on the two addresses at the same time. She also stated that she did not know that student exemption could only be claimed on one property at a time and claimed that she was not aware of the rules surrounding Council tax. It was the Claimant's view that as she had been initially interviewed about these matters in 2015 and as there had been a Court case concluded with no further action, that this matter was concluded. The Claimant denied defrauding the Council or acting dishonestly.**

> **89. Ms McPartland clarified that her investigation was only to determine whether the relationship between the Claimant and the Council, as her employer had broken down, and that the fraud investigation into criminal allegations was a separate matter being handled by the Anti-Fraud Team. Ms McPartland confirmed that the fraud allegations would however be examined as part of her investigation particularly as the Claimant was working as a social worker for the Council."**

45. The ET held, at para 141, that the Claimant's assertion that the fraud investigation was "raked up" as an act of victimisation was not well founded. The allegations were serious and the investigation which followed was detailed and complex. The investigation by the fraud team had been underway before the Claimant raised her grievance and there was no evidence of a link between them. It went on to hold, at para 142 that an employer expected a high degree of honesty and integrity from a social worker working with vulnerable people. It was duty bound, it held, to look into these matters when genuine concerns as to the claimant's conduct had been identified and the DBS form suspected of not giving full disclosure. There was, the ET concluded "…no credible evidence to suggest that this was connected in any way to the protected acts".

46. At para 148 the ET summarised again its findings as to the reason for the investigation saying, in relation to matters coming to light only after the claimant had put in her right to buy application "we are content that this was the principal reason for commencing the investigation and it was not because of the protected act".

47. Mr Uduje submits that the reference to a "principal" reason suggests that the ET applied the wrong test. In our judgment a fair reading of the decision as a whole is that the ET rejected the suggestion that the protected act played any part in the decision to conduct a disciplinary investigation.

48. As to the outcome of the disciplinary procedure, the ET held, at para 152, that the disciplinary and appeals processes were reasonable and the conclusions reached were consistent with the facts before them and within the band of reasonable responses.

49. It rejected the claimant's suggestion that the fraud charges did not amount to gross misconduct. In relation to the DBS issue it found, at para 156, that the claimant's conduct in relation to the DBS form was, in isolation, gross misconduct which could result in summary dismissal.

50. It seems to us that the ET made findings of fact which cannot be impeached. Having found that the inception of the disciplinary process was independent of the protected acts and/or the grievance its conclusions as to the reasonableness of the respondent's processes and their outcome are unassailable. The points made by Mr Uduje are simply an attempt to relitigate the points on which the claimant lost below. It is not for the EAT to reconsider evidence which was before the ET

51. There remains the question of the suspension. The ET held, at page 78, that it was reasonable given the allegations of fraud to suspend the claimant without notice. The formal decision to suspend had been made in advance. The suspension itself (as distinct from underlying disciplinary investigation) was not identified as an issue, in the ET's reasons, and having read the ET1 that would seem to be right. However, given the gravity of the allegations made against someone whose work involved contact with vulnerable children we are in no doubt that any course other than suspension, once the claimant was ready to come back to work, would be unthinkable. The idea that the ET ought to have weighed the prospect that the protected acts might have had some role to play in such an overwhelming case for suspension we regarded as fanciful.

52. Other than as regards Ground 2 the appeal is dismissed. The matters which are the su bject of Ground 2 are remitted to the same ET to be redetermined. Given the inter-relationship of the various issues which arose we think it unrealistic to expect a new tribunal to be able to determine these issues I isolation. It is for the ET to determine the procedure to be followed.