



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs Sarah Saunders

v

SSCP Spring Bidco Limited

Heard at: Norwich

On: 23, 24, 25 and 26 September 2024

In Chambers Deliberations: 27 September 2024

Before: Employment Judge Postle

Member: Mr A Fryer (one Member with the consent of the parties)

Appearances

For the Claimant: Mr Jones, Counsel

For the Respondent: Mr Price, Counsel

RESERVED JUDGMENT

1. The Claimant's claims under the Equality Act 2010 for the protected characteristic of disability in respect of:
 - 1.1. Section 15, discrimination arising from disability; and
 - 1.2. Section 20, a failure to make reasonable adjustments;are not well founded.
2. The Claimant's claim she was constructively dismissed is not well founded.

REASONS

1. The Claimant brings claims under the Equality Act 2010 for the protected characteristic of disability, in particular: a claim under s.15 discrimination arising from disability; and claims under s.20 for a failure to make reasonable adjustments.

2. The Claimant relies upon the following disabilities, namely: ADHD, Dyslexia, Depression, Adenomyosis and symptoms of Menopause.
3. The Respondents accept the Claimant was disabled by reason of Adenomyosis, Menopause, ADHD, Dyslexia and Depression during the material time; namely from November 2021 until 9 February 2023. It is further accepted by the Respondents, they knew or ought to have known that the Claimant was disabled by reason of her ADHD and Dyslexia. However, it is not conceded by the Respondents that they should have known that the Claimant was disabled by reason of Adenomyosis or Menopause prior to October / November 2022 and by reason of depression until the Occupational Health Report dated 18 November 2022.
4. The specific issues the Tribunal is to determine are set out in an agreed List at pages 79 – 83 of the Bundle. In this Tribunal we heard evidence from: the Claimant, Miss Whiteman and Miss Woodbridge; all former or existing employees of the Respondent and all giving their evidence through prepared Witness Statements.
5. For the Respondents we heard evidence from: Mr Masterson, Miss McAtear, Mrs Whipp and Mr Marshall; all giving their evidence through prepared Witness Statements.
6. The Tribunal also had the benefit of a Bundle of documents consisting of 742 pages.
7. Within the Bundle there were a number of transcripts (pages 475 – 617), these were apparently transcripts of covert recordings made by the Claimant during her employment and the Tribunal were requested to read these transcripts, in particular:-
 - 7.1. The meeting on 11 November 2022, pages 475 – 497;
 - 7.2. The meeting on 3 January 2023, (initially a meeting between the Claimant, Mr Marshall and Miss Whipp and then at 1614 becomes a meeting only between the Claimant and Mr Marshall), pages 597 – 617; and
 - 7.3. The meeting on 24 January 2023, pages 533 – 538.
8. There were other documents we were requested to read from the Respondent's Position Statement and from the respective parties' Witness Statements.

The Law

9. The respective parties' Counsel have helpfully agreed the relevant legal principles.

10. These are as follows:-

Constructive Dismissal

11. Section 95(1)(c) states:

95(1)(c) there is a dismissal where the employee terminates the contract under which he or she is employed (with or without notice) in circumstances in which he or she is entitled to terminate it without notice by reason of the employer's conduct.

This form of dismissal is commonly referred to as constructive dismissal.

12. In the leading case in this area, Western Excavating (ECC) Ltd. v Sharp [1978] ICR 221, the Court of Appeal ruled that an employer's conduct to give rise to a constructive dismissal must involve a repudiatory breach of contract. Lord Denning MR put it,

"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so then he terminates the contract by reason of the employer's conduct and he is constructively dismissed."

13. Therefore in order to claim constructive dismissal, the employee must establish that:-

13.1. there was a fundamental breach of contract on the part of the employer;

13.2. the employer's breach caused the employee to resign; and

13.3. the employee did not delay too long before resigning thus affirming the contract and losing the right to claim constructive dismissal.

14. In this case the Claimant relies on the alleged breach of the implied term of trust and confidence, in particular that the Respondents acted without reasonable and proper cause conducted themselves in the manner calculated and likely to destroy or seriously damage the relationship of confidence and trust which should exist between employer and employee. Malik v Bank of Credit and Commerce International SA [1997] IRLR 462.

15. It is only serious conduct that will breach the implied term. The Employment Appeal Tribunal said in Marshall Specialist Vehicles Ltd. v Osborne [2003] IRLR 627:

“To establish such a breach what has to be identified is conduct by the employer which is so serious as to amount to a repudiatory breach; that is, the context of the mutual trust and confidence term, to go to the root of the trust and confidence between employer and employee and destroy it or be calculated to be likely to destroy it...”

16. The conduct should be,

“So intolerable that it amounts to a repudiation of the contract.”
17. British Aircraft Corporation Limited v Austin [1978] IRLR 332.
18. The standard is not one of reasonableness; there is no implied duty to act “reasonably”. In particular an employee cannot claim constructive dismissal because they believe their employer to have acted unreasonably (Bournemouth University Higher Education Corporation v Buckland [2010] ICR 908).
19. Furthermore, in constructive dismissal claims it is not whether an employer acted within the band of a reasonable response.
20. Western Excavating reminds us that it is necessary that the contract has not been affirmed at the time of resignation. Affirmation can be through an act further performing the contract unless there is protestation of rights.
21. If there has been an affirmation there needs to be a subsequent last straw which contributed something to the breach of trust and confidence in order to revive earlier breaches. Furthermore, if the post affirmation act is “entirely innocuous” it is not necessary to examine pre affirmation breaches as confirmed by Omilaju v Waltham Forest London Borough Council [2005] 1ALLER 75.

Failure to Make Reasonable Adjustments

22. The Equality Act 2010 imposes a duty to make reasonable adjustments on a person, §.21 and 22 and the Code of Practice on Employment 2011.
23. The duty comprises of three requirements:
 - 23.1. The 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 is reasonable to have to take to avoid the disadvantage;
 - 23.2. Where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparisons with persons who are not disabled, to take such steps as is reasonable to have to take to avoid the disadvantage; and
 - 23.3. The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial

disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as is reasonable to have to take to provide the auxiliary aid.

Schedule 8 - Part 3

24. There are limitations on the duty and an employee.

25. Schedule 8 – paragraph 21(b):

“For disabled workers already in employment and an employer only has a duty to make an adjustment if they know or could reasonably be expected to know that a worker has a disability and is, or is likely to be placed at a substantial disadvantage. The employer must have a duty to do all they can reasonably be expected to do to find out whether this is the case. What is reasonable would depend on the circumstances. This is not an objective assessment. When making enquiries about disability employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.

Employers therefore need to ensure that where information about disabled people may come through different channels, there is a means suitably confidential to the disabled person’s consent in bringing that information together to make it easier for the employer to fulfil their duties under the Act.”

26. In the case of Aecom Limited v Mallon [2023] EAT 104,

“There is no separate duty of pro-activity beyond the legal principles we have already identified. The Code of Practice makes clear (especially at paragraphs 16.13 and 16.14) in the context of employment the duty to make reasonable adjustments only arises once there is a specific disabled person who to the employer’s knowledge requires an adjustment.”

27. In Secretary of State for Work and Pensions v Alam [2010] ICR 665, the Employment Appeal Tribunal cited the Ridout case with approval, emphasised the importance of considering both the questions of what the employer actually knew, what they reasonably ought to have known, making it clear the importance of the employer being aware (actually or constructively) of the particular disadvantage or just of the disability generally.

Discrimination Arising from Disability – Section 15 EqA 2010

28. The access to treatment of a disabled person amounts to discrimination where:

- An employer treats the disabled person unfavourably;

- The treatment is because of something arising in consequence of the disabled person's disability; and
- The employer cannot show that this treatment is a proportionate means of achieving a legitimate aim.

29. Section 15(2):

“Unless the employer does not know and could not reasonably have been expected to know that the person has a disability.”

30. In the case of Section 15 there is no need to compare a disabled person's treatment with that of another person. It is only necessary to demonstrate that the unfavourable treatment is because of something arising in consequence of the disability.

31. Therefore the Tribunal must:

31.1. First identify whether there is unfavourable treatment and by whom;

31.2. What caused the treatment or what was the reason for it;

31.3. Motives are irrelevant. The focus of the enquiry is on the reason or cause of the treatment and the Respondent's motive in acting as he or she did is simply irrelevant;

31.4. The Tribunal must then determine whether the reason or cause, if more than one, is “something arising in consequence” of the Claimant's disability;

31.5. The more links there are between the disability and the reason for the treatment, the harder it is likely to be established that the requisite connection is a matter of fact; and

31.6. At this stage of the causation test it involves an objective question and does not depend on the thought process of the alleged discriminator.

Findings of Fact

32. The Claimant was employed at the Acorn Park School by a company known as SSCP Spring Bidco Limited from 24 August 2020. The Respondent is the largest combined Children Services Group in the UK. It provides a wide range of services to children with complex educational needs and care services. In respect of the educational services, the Respondent provides specialist schools and residential homes for children and young people with behavioural, emotional, social or learning needs, or a combination of them.

33. Acorn Park School is a specialist school for Autistic young people aged 5 – 19 years who exhibit complex emotional behavioural and / or social

needs. The service users are vulnerable and they have particularly challenging behaviours.

34. The Claimant's employment with the Respondent commenced on 24 August 2020 in which the Claimant's role was that of Special Education Needs Co-Ordinator (SENCO) Lead with elements of Deputy Head Support. The Claimant worked in this role until 9 February 2023 when she resigned with immediate effect.
35. It would appear the Claimant first raised health concerns linked to the Menopause informally via WhatsApp to her Line Manager the Head Teacher Mrs Whipp, around September 2021. Mrs Whipp advised the Claimant via various WhatsApp conversations (which are in the Bundle) about the Respondent's Menopause Policy and at that stage there were no concerns regarding the Claimant's work being impacted and the Claimant was not requesting any support from the Respondents.
36. It appears likely that sometime in 2021 (the date is unclear) the Claimant asked Mrs Whipp about a referral to Occupational Health regarding an issue she had with her knees or shoulder, noted on the Medical Records in March 2021, it appears this may have been a knee condition (page 678). At that stage, Mrs Whipp suggested to the Claimant it might be sensible to explore the matter with her GP which it appears the Claimant followed that advice. As the Claimant does not appear to have chased the matter up in the immediate time frame, suggesting at that stage she required a referral to Occupational Health. The Claimant did make a request in October 2022 for a referral to Occupational Health. Again Mrs Whipp suggested the Claimant consider speaking to her GP first, which is not unreasonable advice and it might be something that the Claimant's own GP could properly address. That appears to be in accordance with the Respondent's Menopause Policy (page 118). At that stage, when the Claimant came back to Mrs Whipp and confirmed she required a referral, that was arranged within a two week period (pages 190 – 222). Clearly the request for a referral was carried out at that time when the matter was pursued by the Claimant.
37. There then was a meeting on 8 November 2022 with the Senior Leadership Team and the Head Mrs Whipp, in which they appear to have been responding to Covid Regulations and the movement of students / furniture to accommodate the Regulations. Mrs Whipp as the Head Teacher wanted the matter addressed and was no doubt firm and robust particularly when it appeared that the Claimant was not listening. She appears to have said something along the lines of,

"Sarah stop, this needs to happen",

no more and no less.
38. For reasons best known to the Claimant, she then left the meeting and became emotional. It is clear the following day Mrs Whipp spoke to the Claimant about the events of the previous day, no doubt unhappy that the

Claimant had left the meeting as part of the Senior Leadership Team. There was no verbal warning, formal or otherwise, in the sense of formal disciplinary action to have occurred.

39. In March 2022, the Claimant was interested in promoting her Deputy Head role into an alternative role for herself. Mr Marshall had called a meeting on 16 March 2022 to discuss the potential alternative role which the Claimant was suggesting. The Claimant had created a job description which was put before the meeting. On reviewing the job description, it is clear the Claimant had moved the goal posts, so to speak, from her current Deputy Head role into a number of responsibilities under the remit of the Head Teacher role (pages 140 – 144).
40. There then appears to have been another meeting the following day, at which Mrs Whipp said to the Claimant she had concerns about the Claimant's job description job creeping into the Head Teacher's role. It appears Mr Marshall had indicated the job description he described as a mission for job creeping. What is clear, the contemporaneous email from the Claimant to Mr Marshall and Mrs Whipp of 22 March 2022 (page 147), she clearly uses the words "job creeping". It is also clear the Claimant was told at this time she would not be receiving a pay increase linked to her job, they were dealt with annually at Christmas and in fact she did receive a pay increase in the Christmas review.
41. There quite clearly were issues between the Claimant and the Head Teacher. The Claimant had the discussion, as one would expect, with Mr Marshall whom it appears was supportive and listened to the Claimant's concerns and discussed them in his management role of Mrs Whipp. What is clear is that if his intervention did not improve the situation between the Claimant and Mrs Whipp, there were a number of channels she could pursue, such as raising a formal Grievance under the Whistle Blowing Policy, but the Claimant assured Mr Marshall this was not a route she wished to take. Not surprisingly, Mr Marshall took the view that matters were resolving themselves between the Claimant and Mrs Whipp.
42. What is also clear is Mrs Whipp, as the Head Teacher, is to be expected to manage robustly and ensure that her Deputy followed her lead and implemented her instructions, whilst listening to any concerns those Deputies might have. Ultimately, the decision and the buck stopped with the Head Teacher.
43. Although it was accepted the Claimant generally had good written communication, on 27 September 2022 the Claimant sent an email to staff including the Head Teacher which contained a large number of spelling and grammatical errors (pages 185 – 186). It appears that the Claimant had copied and pasted text written by a third party which contained a number of grammatical errors, made little sense and was not the sort of communication that one would expect from a Deputy Head. The email from the Head of 28 September 2022 to the Claimant simply read,

“This is a useful document but please do check this type of thing carefully before sending. Not only are there spelling and grammar mistakes, but the reference to Support Staff keeps slipping to she rather than them.

I have already had two teachers point this out to me before I had a chance to read it myself. You know that staff like nothing more than to point out our errors.

Thanks, Pip.”

44. This was not an unreasonable response.
45. There followed on 11 November 2022 a meeting between the Claimant and Mrs Whipp in which they were addressing a number of concerns about the Claimant’s performance, at which Mrs Whipp did describe the email (above) as appalling. The Claimant had appropriate software which would correct spelling errors and had in the past a back up of admin to assist with writing emails. At this stage there were also confidential concerns being raised by members of the Claimant’s Team about the Claimant’s behaviour towards them. The staff had complained about the Claimant’s style, her management being inconsistent and,

“...never knew which Mrs Saunders they were going to get.”
46. Apparently staff were becoming reticent about approaching the Claimant, particularly there was an issue of the Claimant’s approachability. That was addressed with the Claimant in a meeting on 4 October 2022. It was clearly not a formal process and although aware of the Claimant’s difficulties and her Menopause symptoms, Mrs Whipp had balanced the Claimant’s Team’s needs whilst maintaining confidentiality of the Claimant’s problems.
47. Throughout April and October 2022, there was no diminution in the Claimant’s role. Indeed, several staff members who had attended Admission Meeting were removed from that role in order to reduce the number of staff into smaller groups and screening admissions.
48. Regarding the meetings with the ECHP Co-Ordinator, Karis Brown, apparently the Claimant was in the habit of not sharing with the Head the contents of those meetings. Therefore in discussions between Mrs Whipp and Mr Marshall, the Claimant would step back from this role. This was merely a strategic decision, no more and no less.
49. Furthermore, the Claimant was not removed from liaising with the County ECHP Co-Ordinator, reviews or presenting to Governors between October 2022 to January 2023. The Head Teacher took these meetings on when the Claimant stopped attending and other staff in turn reported to Governors. This was apparently a normal practice and the Claimant was not removed.

50. In relation to the admission of pupils, that was in fact not a responsibility of the Claimant. The Claimant had not been singled out, in fact all Deputy Heads who had previously held this role ceased to attend the meetings.
51. It is clear in 2022 the Claimant was experiencing difficulties, whether it be her Adenomyosis or Menopause, Mrs Whipp was made aware of a number of discreet issues relating to the Claimant's performance. Clearly, once raised by several members of staff, whether in the Claimant's Team or not, they required investigation. There were, for example, errors in the salary for recruits, errors in documenting Performance Improvement Plans, a financial error in maternity pay and generally there appeared to be a lack of harmony and low morale with staff for which the Claimant was responsible for. Added to that was the Claimant's unpredictability and unapproachableness perceived by the Claimant's subordinates.
52. In relation to the error with the maternity pay, the Claimant was informed no further action would be taken.
53. At the same time the Respondents recognised, certainly from October 2022, that the Claimant was becoming increasingly unwell and with the above issues there was potentially a need for a Performance Improvement Plan. Not surprisingly, or unreasonably, the Claimant was warned that this was a potential step that could be taken. At the time it was not actioned.

Occupational Health and Working from Home

54. The Claimant's condition of Adenomyosis was to be treated by a hysterectomy operation in November 2022, for which the Claimant would need to take a period of sick leave. In a meeting between the Claimant and Mrs Whipp on 4 October 2022, there was a discussion about the Claimant's planned operation and the Claimant requested a referral to Occupational Health. It seems to be the case Mrs Whipp thought that the referral to Occupational Health before the operation was premature and that a referral would take place once the operation had been undertaken. Mrs Whipp therefore suggests the Claimant might wish to speak with her GP about any adjustments she might need prior to the operation. This was particularly so as the GP would be familiar with her condition, her needs and her state of health.
55. It is accepted that the Claimant suffered painful and debilitating symptoms. Indeed, the Claimant's GP advised she should work two days a week prior to the run up to her operation, (page 192). The Claimant wanted to work these from home. It is clear the symptoms the Claimant was experiencing were very severe and on occasions extremely debilitating, to such an extent that the Claimant had to lie down for a period at time. The decision was therefore taken by the school that in those circumstances it was preferable for the Claimant's Health and Safety and for the School's perspective of running the School, if the Claimant was placed on fully paid sick leave. Clearly that decision was a discretionary decision on the part of the School that clearly was intended to assist the Claimant as the School was concerned the Claimant should not be working at a time when

she was suffering debilitating symptoms which were both painful and required bed rest.

56. What is clear is prior to the Claimant returning to work, the referral to Occupational Health was made in November 2022 and the Report was provided to the School with recommendations, dated 18 November 2022 (pages 223 – 225). The recommendations included a Work Place Risk Assessment which was carried out and a number of other recommendations at 2(b) and a phased return to work. As part of the Claimant's return to work it required no teaching duties at all and in order for her to be near the students she was responsible for, her office was moved to the Potter Building. This was unfortunate that her belongings were packed up whilst she was off sick and moved to this new building, but the sentiments for doing this seemed to be genuine in order to place her in a better position and a phased return as recommended was also carried out. The Claimant's job description was not in any way changed, nor was the Claimant's role.
57. For the first time in the Occupational Health Report in November 2022 that there is a reference to the Claimant informing them that she suffered with depression and had done for some time. The Report went on to acknowledge the Claimant's Dyslexia and confirmed a recent diagnosis of ADHD.
58. Around this time the School requested the Claimant to complete a Stress Risk Assessment to mitigate the risks that her condition caused and that Risk Assessment was duly completed and placed on the Claimant's file.
59. In the meantime the Claimant had raised a Grievance on 14 December 2022 (pages 237 – 240) which was in respect of the Claimant's perception as to how she had been treated by the School and in particular the Head of School over the last year listing a number of matters she wished to be investigated.
60. Originally the investigation was to be carried out by Mr Marshall. However, after discussions with the Claimant, it was decided that it would be best to be carried out by someone independent and that task was given to Hannah Fletcher who the Claimant did not know, likewise nor did Mr Marshall, although he knew of the individual he did not know her personally. The Grievance Investigation was said to be slightly unusual in that the Head Teacher and Mr Marshall were not interviewed, but it was clear Hannah Fletcher interviewed the Claimant at some length and based her Report on that meeting. The Grievance was in part upheld in respect of the alleged delay in making a referral to Occupational Health in October / November 2022. In all other respects the Claimant's Grievance was not upheld. That was communicated to her by Hannah Fletcher in a detailed letter of 3 February 2023 in which she had clearly been provided with extensive documentation in which to consider the Claimant's Grievance (pages 372 – 376), the date being 3 February 2023.

61. The Claimant then on 10 February 2023 resigned by letter (page 378), the reasons being advanced:
- 61.1. Refusing to investigate complaints promptly and reasonably;
 - 61.2. unacceptable verbal abuse;
 - 61.3. reprimanding in a degrading, intimidating and humiliating manner;
 - 61.4. undermining a Manager by reprimanding them in front of their subordinates;
 - 61.5. breaches of internal Disciplinary Procedure;
 - 61.6. failure to give adequate support to enable the Claimant to carry out her duties;
 - 61.7. failure to properly investigate allegations of harassment or take complaints of harassment seriously;
 - 61.8. persistent failure to make reasonable adjustments as required by Disability Discrimination Legislation; and
 - 61.9. unfounded allegations of poor performance and unfair and unreasonable treatment during a period of ill health.
62. The Claimant subsequently appealed the Grievance Outcome after her resignation and that was in fact dealt with by a detailed letter of 2 March 2023 (pages 373 – 384), having been conducted by a Regional Director.

Conclusions

63. It has to be said that some of the Claimant's allegations are vague, for example the failure to take action in relation to the Claimant raising complaints about bullying and harassment without further detail. Another example, unacceptable verbal abuse and refusing to investigate complaints raised by the Claimant in relation to Mrs Whipp promptly and reasonably, but without any real detail. It also has to be said that the Claimant, when giving her evidence, expanded on her claim to the point where she contradicted her own Witness Statement and on a number of occasions failed to answer the question put to her.

Constructive Dismissal

Referrals to Occupational Health

64. There was some vague reference in 2021 about a referral to Occupational Health in relation to the problem the Claimant was suffering from in respect of her knees or shoulders. What happened was, at the time Mrs Whipp suggested that she might want to explore the matter with her GP who might be more familiar with those issues. Seemingly the Claimant did and that request was not repeated in the months following. If it had been

such an issue, it is surprising given the fact that the Claimant is clearly not a shrinking violet, that she did not raise the matter thereafter. There was then the situation in October 2022 when the Claimant in a meeting with Mrs Whipp, was talking about a referral to Occupational Health. Not unreasonably Mrs Whipp suggested that the Claimant explore the situation with her GP first, again he would be more familiar with the symptoms the Claimant was suffering, particularly prior to her operation for the hysterectomy. When the Claimant repeated sometime thereafter the request for a referral to Occupational Health, this was arranged within a period of two weeks (pages 190 – 222).

65. It should be noted at this stage that an Occupational Referral in itself and an assessment is not an adjustment to one's work, but is used as an assessment of the Claimant's ability to do their job and what requirements the employer will need to take in order to deal with any impact the employee's condition has on their ability to perform their task. Therefore, clearly a failure to request an Occupational Health Assessment is not in itself a breach of the Equality Act 2010, or a breach of the implied term of trust and confidence..

The meeting of 8 November 2021

66. This was at a time when Covid was still circulating the UK, the School had to comply with Covid Regulations and in order to do so this required the movement of students classrooms and furniture. In a meeting the Head Teacher, Mrs Whipp, was seeking to instruct her staff that this had to happen. When it appeared that the Claimant was being either difficult or obstructive, not surprisingly the Head Teacher Mrs Whipp, no doubt raised her voice and said something along the lines,

“Sarah stop, this needs to happen”

67. At that point it would appear, for reasons best known to the Claimant, she became emotional and left the room. The following day, Mrs Whipp spoke to the Claimant about the events of the preceding day but no warning, verbal, written or otherwise in the sense of formal disciplinary action, occurred. Therefore that cannot be a breach and in any event, if it was such a big issue in the Claimant's mind it is surprising she sat back for the next 14 months before she resigned.

March 2022 – the issue of the allegation of “job creep job creeping”

68. In March 2022, a meeting was held between Mr Marshall, the Claimant and Mrs Whipp apparently to mediate the strained working relationship at that time and to discuss a proposed change in the Claimant's job description. The Claimant's evidence appears to be the alleged “job creep” remark that has now altered and contradicts her own Witness Statement. An example of the Claimant's Witness Statement not matching her evidence under cross examination. What seems to have been the case is that Mrs Whipp used the phrase “job creeping” to describe what appeared to be an overlap in the Claimant's new proposed job description

into the Head Teacher's role. Mr Marshall was adamant the phrase "mission creep" into "job creeping" was used, again the sentiment being that the Claimant's proposed job description would result in encroaching upon the Head Teacher's role. All of which is correct. Indeed, the reference to "job creeping" was the Claimant's recollection at the time in her email (pages 147 – 148).

69. It was also correct at the time, there would be no pay increase linked to the Claimant's job. Pay increases were dealt with annually at Christmas and indeed, the Claimant received a pay increase seven months later. During this meeting the Claimant indicating she was looking at other jobs and whether it was said or not, namely the Claimant could leave if she did not like her current job does not constitute action that breaches the Claimant's employment.

70. All of the above does not amount to a fundamental breach of the implied term of trust and confidence and again, the Claimant remains employed some eleven months after these events.

Failure to take action in relation to the Claimant raising complaints about being bullied and harassed at work

71. In particular, this seems to be allegations against Mrs Whipp.

72. What is clear is that both the Claimant and Mrs Whipp had been friends and were in the habit of engaging in friendly WhatsApp chat. Clearly at work the Claimant is the Deputy Head, Mrs Whipp is the Head Teacher. There were no doubt differences of opinion between the two, they are both really strong characters. Neither of them can be described as shrinking violets. At times it is clear Mr Marshall, Head of Service, had to intervene and mediate in that relationship. The Claimant clearly was told by Mr Marshall if she was dissatisfied with his intervention between the two of them, then there were options available to her through the Whistle Blowing and Grievance procedure and these were formal procedures. The Claimant did not wish to pursue those avenues. Mr Marshall clearly did take the Claimant's concerns seriously, as he did with Mrs Whipp's concerns about the Claimant and intervened where appropriate.

73. However, the Tribunal repeats, if the situation was so bad at that time the Claimant was clearly told she could go through the formal route and raise a Grievance. There was therefore no failure by the Respondent to investigate complaints when the Claimant raised them. Indeed, when she did raise a Grievance they were investigated by Hannah Fletcher.

The issue of the grammatically incorrect email in September 2022

74. It is important to remind ourselves that the Claimant held the position of Deputy Head, that is an extremely important position and one would expect the Deputy Head to conduct themselves appropriately, in particular ensuring that when they send out emails they are, as far as is possible, of the upmost quality. Unfortunately, the Claimant sent out an email in

September 2022 which clearly contained spelling and grammatical errors which was entirely inappropriate (pages 182 – 184). The Claimant could have used the spellcheck which is on the Respondent's software and the Claimant did have some administrative support to assist with her Dyslexia. So when the email was sent out it is not surprising given the quality of that email that Mrs Whipp, in a meeting on 11 November 2022 which was to address several matters regarding concerns about the Claimant's performance, did describe it as an appalling email. The standard of the Deputy Heads in their communication must be extremely high.

75. However, it does not get anywhere near being a fundamental breach likely to damage or destroy the relationship.

Subjected to a demotion / removal of responsibilities

76. It is clear during the Claimant's employment, no responsibilities were removed, nor was the Claimant in any way demoted. The Claimant seems to advance having been invited to Admission Meetings and this was removed from her responsibility. What actually happened is that the Head Teacher streamlined the process and the attendance of all Deputy Heads were restricted. This was not a sole responsibility of the Claimant for admission of pupils, nor was she singled out, I repeat all Deputy Heads who had previously carried out this function ceased to attend the meetings. There is simply no breach here.

Poor performance, unfounded allegation

77. What actually happened in the period when the Claimant was suffering ill health, there were a number of confidential issues raised by staff about the Claimant's performance and attitude towards them. There had been errors in salary, errors in documenting Performance Improvement Plans, errors in maternity pay and generally there appeared to be low morale in the Claimant's Team. In particular that the Claimant had become unpredictable and unapproachable. When these matters were raised the Respondents had a duty to investigate them. Clearly having investigated, when they found the Claimant was not responsible for example for an error with maternity pay, the Claimant was advised of this and no further action was taken.
78. What is clear is that the Claimant from October 2022 was becoming increasingly unwell prior to her operation, the standard of her work had clearly dropped and therefore the Respondents might well have to invoke a Performance Improvement Plan. In those circumstances it was right that the Claimant was warned that this was a potential moving forward. During this period the Respondent assisted the Claimant in suggesting rather than trying to work when she was not fully fit, they would exercise their discretion and if she went on sick leave they would pay her full pay and that the sick leave would not be recorded on her personal file.

79. During the period she was on sick leave, not surprisingly, Mr Marshall was assigned some of the Claimant's responsibilities which were to continue in part during her phased return.
80. Clearly the Claimant was not demoted in January 2023 and there is no evidence to support this. What the Respondents did do is implement proposed adjustments contained in the Occupational Health Report and on a number of occasions, met with the Claimant to engage with her in January about her health and her return to work. Furthermore, the Claimant was not required to undertake a teaching role on her return and transcript overtly recorded by the Claimant on 3 January 2023 does not support this allegation.
81. The fact her office was transferred to the Potter Centre seems a sensible organisational change as that Centre fell under the direct control of the Claimant and indeed had done so since September 2022. Furthermore, the change of office and a person's place of work cannot amount to a fundamental breach. This part of the claim simply has no substance in it.

The suggestion of working outside normal hours in September 2022

82. It is common ground that the Claimant had been asked in the summer of 2022 to do some extra hours. The particular reason was in relation to recruitment. The Claimant's own evidence was the work was necessary during the summer prior to the Autumn term commencing. Furthermore, the Claimant's contract of employment permits the Respondent to require the Claimant to work such additional hours above her normal 40 hours if it was necessary to meet the requirements of the job. It is quite clear that the Claimant often chose to work in excess of her contracted hours and this was a decision she took. There is no evidence to suggest that Mrs Whipp, or indeed anybody else, put pressure on the Claimant to work excessive hours.

Failure to deal with the Claimant's Grievances

83. This is simply not the case. The Claimant's Grievance (page 237) was made by her in a letter of 14 December 2022. Originally that Grievance was to be heard by Mr Marshall in early January 2023, but it was agreed between the Claimant and Mr Marshall that probably he was not the best person to hear that Grievance, being too close to both Mrs Whipp and the Claimant. It was therefore agreed that someone independent, who both the Claimant and Mr Marshall were not particularly familiar with, namely Hannah Fletcher would carry this out. She interviewed the Claimant and clearly considered very extensive documentation. It might be strange that she did not interview Mr Marshall and Mrs Whipp, but clearly she was looking at extensive email correspondence and other documents that covered the area of the Claimant's Grievance. The majority of the Claimant's Grievance was not upheld, the point about the delay in the November 2022 referral to Occupational Health was upheld, but the outcome of that Grievance came to the Claimant in a timely manner, namely by 3 February 2023.

84. Clearly, it cannot be said taking singly or cumulatively, that the Claimant's complaints amount to a fundamental breach said to seriously damage or destroy the relationship of mutual trust and confidence between the Claimant and the Respondents.
85. Furthermore, there is an argument that many of the matters complained of occurred many months before the Claimant resigned. It could arguably be said then that the Claimant in any event affirmed any alleged breach, if there was one by delaying her resignation.
86. Quite simply, the Claimant's claim for constructive dismissal is not well founded.

Discrimination Arising from Disability – s.15 EqA 2010

87. The Claimant relies upon two alleged something arising from her disability, they are:
- 87.1. Issues with her spelling and grammar (arising from the Claimant's Dyslexia); and
- 87.2. Issues with interactions with other colleagues (arising from the Claimant's ADHD).
88. It is correct that the second of these is in conflict with the Claimant's own case, that being that there were no issues between her and her colleagues and that any such allegations were totally unfounded.
89. The Respondent rightly concedes that someone with Dyslexia may experience difficulty with spelling and grammar.
90. The unfavourable treatment relied upon firstly is the failure to instigate Occupational Health referrals. Quite clearly the Respondents did not fail to make a referral to Occupational Health. It had been mentioned vaguely in 2021, but it had never been pursued by the Claimant or chased up by emails immediately thereafter. When the matter came up in October 2022, a referral was made. That allegation simply does not pass base.
91. As to causation, again there is simply no basis to suggest that the Respondents failed to instigate an Occupational Health Referral because of issues with the Claimant's spelling and grammar. The fact that Mrs Whipp suggested the Claimant explore matters with her GP, was clearly to avoid wasting Occupational Health's time. It may not have assisted the employee, not because of the Claimant's issues with spelling and grammar, but because of issues with the Claimant's interaction with colleagues.
92. This part of the claim fails.

The failure to allow the Claimant to work from home

93. This is quite simple, the Respondents did not want the Claimant to work from home in circumstances where she was not well enough. Quite clearly she was not well enough in October and November 2022. That cannot be unfavourable treatment, it was reasonable, sensible and proper management in circumstances where the Claimant had become increasingly unwell and the Respondents were affording her the benefit of full pay whilst off sick which was discretionary and that the absence would not be on her personnel file recorded as sickness.
94. Quite clearly the proposal the Claimant did not work from home if she was too unwell to work has nothing to do with the something arising from the Claimant's disability. Any difficulty the Claimant had with her spelling or grammar and interaction with colleagues, quite clearly was unrelated to this and the reason for the treatment was to protect the Claimant's health and so avoiding the Claimant having to work when she was quite simply not fit to work.

Failure to provide the Claimant with general support

95. Again, this claim simply fails. There is ample evidence of attempts made to resolve the strained relationship between the Claimant and Mrs Whipp, there was mediation and the completion of a risk assessment following Occupational Health recommendations. Furthermore, something arising from relates solely to the Claimant's Dyslexia and ADHD. The Respondents quite clearly did not subject the Claimant to any lack of support or assistance because of issues with the Claimant's spelling or grammar or because of the issues with the Claimant's relationship with colleagues.

Failing to deal with Grievances adequately

96. Again, repeating what has been said before, originally to be conducted by Mr Marshall it was agreed he would stand aside and Mrs Fletcher was commissioned to carry out the investigation into the Claimant's Grievance. The Claimant submitted numerous documentary evidence to support her allegations and from that there was a detailed Outcome which was provided promptly on 3 February 2023. It is correct the majority of the Claimant's complaints were not upheld, but that does not mean a Grievance was not dealt with appropriately, adequately or reasonably. Nothing seems to have been advanced to suggest that Mrs Fletcher was in some way influenced by either Mrs Whipp or Mr Marshall, nor was in some way biased.

Subjecting the Claimant to unfair and unreasonable reprimand

97. What is clear, the email in September 2022 (page 184) had not been properly thought about and contained numerous grammatical and spelling errors. Mrs Whipp raised the matter with the Claimant (pages 182 – 184). It was done entirely appropriately given the Claimant's position within the

School, particularly the high standard that is required of all staff but particularly Deputy Heads, the position to which the Claimant held.

98. There is absolutely no evidence that the following day Mrs Whipp threatened the Claimant with some form of disciplinary action, whether by verbal or written warning. It simply did not happen.

The failure to make reasonable adjustments

99. It is correct the Tribunal's focus must be on:
- 99.1. Did the Respondents have the alleged PCP?
- 99.2. If so, did that PCP apply to the Claimant and others who are not disabled?
- 99.3. If the application of the PCP put the Claimant at a substantial disadvantage; and
- 99.4. If it did, did the Respondent make the adjustments that were reasonable to make to remove that disadvantage?
100. Furthermore, the Tribunal must determine whether the employer knew or ought reasonably to have known of a relevant disability to determine whether the employer knew or ought to have known that a particular PCP put the employee at a substantial disadvantage.

PCP 1 – Not arranging an Occupational Health Assessment

101. What is clear is the Respondents did not have any practice of not arranging Occupational Health Assessments. This is plainly absurd on the fact as the Respondents arranged two Occupational Health Assessments. The fact that prior to arranging them Mrs Whipp had suggested to explore with one's General Practitioner, is quite reasonable as they would be more familiar with the Claimant's conditions. That is not a practice of not arranging Occupational Health Assessments.
102. If the Claimant was arguing that she requested an Occupational Health Assessment in 2021 and that was refused, that is clearly out of time and nothing has been advanced before this Tribunal to suggest one should exercise its discretion to extend time.
103. Notwithstanding the issue, it seems odd if she did suggest it in 2021 that she did not chase this up in the months thereafter complaining that a specific request had not been adhered to.

Actual Occupational Health Referral

104. In dealing with the actual Occupational Health referral, there is no evidence that there is some form of practice of not making Occupational Health referrals which would put the Claimant at a disadvantage. The purpose of an Occupational Health referral is that they will be made when

an employee's health is such that an assessment benefits the employer in understanding what an employee could or could not do, more particularly what they can do with appropriate adjustments.

105. Indeed it is correct that there is nothing to suggest that prior October 2022 that her ability to undertake her job role was being compromised by her disability such that a referral to Occupational Health might be required. Indeed, the Claimant's own evidence was that she was capable of working full time, apart from days when her illness was particularly bad and she would benefit from being able to work from home. Indeed, the Respondents allowed this in any event.
106. This claim, the failure to make reasonable adjustments simply is not well founded.

PCP 2 – Not allowing the Claimant to work from home

107. There was no practice within the Respondent's organisation which prevented the Claimant or indeed anyone else from working from home. On the Claimant's own evidence, the Claimant did work from home when she felt it was necessary. This was also in accordance with the Respondent's own practice which allowed Deputy Head employees to work from home. When the Claimant's health was deteriorating in October / November 2022, the Respondents effectively said to the Claimant they did not want her working if she was too ill to do so. It is perfectly reasonable for a Respondent to say to an employee and indeed the Claimant, that if you are not well enough to work whether at home or in work, you should not work. The Respondent's position was in the lead up to her operation she should go on sick leave, they would pay her discretionary full pay and it would not be recorded as sick leave. There is nothing in the evidence to suggest that the Claimant's facility to work from home was removed by the Respondents. All the Respondents did was say to the Claimant, if you are not well enough to work you should not be working from home either. This is plainly a reasonable stance to take by any reasonable employer concerned about the Health and Safety of their staff.
108. Indeed, on 15 November 2022, the Claimant requested to take sickness absence leave. This was agreed without affecting her record. Clearly, in those circumstances she was not disadvantaged by the Respondent and indeed she was given preferential treatment compared to other employees who may have been too ill to work even from home.

Provision of Auxiliary Aid

109. It appears that the Claimant reluctantly conceded that it was now not her allegation that the Respondents had not provided sufficient auxiliary aids. There was software to assist with emails and letters in the form of proof reading, there was assistance from administrative staff and on occasion Mrs Whipp had offered to proof read.

Knowledge of the disadvantages in relation to disability

110. It is quite clear despite the Claimant's argument that in her onboarding form she had disclosed depression, that the Respondent was not aware of it. They first became aware of depression when it was disclosed in the Occupational Health Report of November 2022. Furthermore, the Claimant's own medical records during the relevant time, November 2022 to February 2023 make no reference to depression.
111. Even if the Respondents were aware from the outset, looking at the Claimant's claim, nothing seems to turn on the Claimant having depression or experiencing symptoms arising from the condition as there are no alleged disadvantages arising from the PCPs because of the Claimant's depression.
112. Insofar as Adenomyosis and going through the Menopause, quite clearly the Respondents could not have known that these impairments were adversely affecting the Claimant's ability to undertake day to day activities prior to around September / October 2022. It was only from that time that there was deterioration in the Claimant's health and the medical assessment identifying those conditions impacting the Claimant's work.
113. Clearly not immediately referring the Claimant to Occupational Health did not put the Claimant at a disadvantage compared to someone who was not disabled.
114. In the totality therefore, all the claims fail.

Employment Judge Postle

Date: 5 November 2024

Sent to the parties on: 15/11/2024

For the Tribunal Office.

Public access to Employment Tribunal decisions

Judgments and Reasons for the Judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal Hearing has been recorded you may request a transcript of the recording, for which a charge is likely to be payable in most but not all circumstances. If a transcript is produced it will not include any oral Judgment or reasons given at the Hearing. The transcript will not be checked, approved or verified by a Judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: <https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>