EMPLOYMENT TRIBUNALS

Claimant: **Ms J Bulbrook**

Respondent: **Willows Childcare Limited**

Heard at: **Nottingham**

Heard On: **19 October 2017** **4 December 2017**

Before: **Employment Judge P Britton (sitting alone)**

Representation

Claimant: **Mr A Rozycki of Counsel Respondent:** **Mr R Dempsey, Solicitor**

JUDGMENT

1. Upon reconsideration pursuant to Rule 73 of the Employment Tribunals Rules of Procedure 2013 I review the decision to reject the claim when originally presented and I determine that it shall be treated as having been properly presented: Thus meaning that the date of presentation was 11 May 2017.

2. The claims were presented in time.

3. There will now be listed a telephone case management discussion to give final directions for the mainstream hearing which is listed at Lincoln on 26, 28 and 29 March 2018.

REASONS

Background and Issues

First issue

1. This is a claim whereby the Respondent argues that this claim should be struck out as having been presented out of time. The first issue to determine is when the claim was actually properly presented. I drew the parties attention to the judgment of the Honourable Mr Justice Kerr in **Chard v Trowbridge Office Cleaning Services Limited** UK EAT/0254/16/DM. The reason I so did becomes

clear when I rehearse briefly as I now do the scenario in relation to the presentation of the claim.

2. The claim (ET1), which is one of constructive unfair dismissal, discrimination pursuant to the provisions of the Equality Act 2010 and breach of contract, (based on the premise of notice pay) was presented to the Tribunal by the Respondent's solicitor Lyons Davidson on 11 May 2017. The period of the employment was set out as having been between 5 June 2012 and 9 December 2016. With the claim was sent in the requisite ACAS early conciliation certificate. This set out a period of conciliation with Willows Childcare Limited, The Willows Day Nursery. The ACAS period of early conciliation was 1 March 2017 to 11 April 2017. Thus this would mean as follows.

3. The three month period for presentation of the claim post the effective date of termination, and which would apply in relation to all 3 heads of claim, would run out on 8 March 2017. But ACAS early conciliation having been commenced prior thereto on 1 March and completed on 11 April had the effect of extending time to 11 May 2017[1]. Thus as the claim was presented on that day it was just in time. However the Respondent in the claim (ET1) was stated to be the Willows Day Nursery. Accordingly the claim was put by the tribunal's secretariat before a judge pursuant Rule 12 of the Employment tribunals (Constitution & Rules of Procedure) regs 2013 ("the Rules") and on the basis that there was a substantive defect. It was ordered to be rejected by Employment Judge Heap on 15 May. The notice of rejection was issued under Rule 12(1) (f) and on the basis that "the name of the prospective Respondent on the early conciliation certificate is not the same as the name of the Respondent on the ET1 claim form". The decision was issued using a standard template letter used by the clerks. However not addressed was Rule 12(2) (A) thus:

> *"The claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in subparagraph (e) or (f) of paragraph 1 unless the Judge considers that the Claimant made a minor error in relation to a name or address and it would not be in the interests of justice to reject the claim."*

4. Now that of course engages in terms of whether the decision to reject the claim under 12(1) (f) on the basis that the name of the Respondent on the claim form is not the same as the name of the prospective Respondent on the early conciliation certificate, nevertheless was an error which was minor and that it would not be in the interests of justice to reject the claim. In other words that element of the exercise was not addressed in terms of the letter that went out and is no criticism of Employment Judge Heap if this Judge simply points out, which wholly engages the case of **Chard** that there doesn't seem to have been a clear addressing of this fundamental point in her understandably very short direction to the clerks to reject the claim:

> *"reject please, names are different."*

[1] See s203B of the Employment Rights Act 1996. There is a similar provision in the Equality Act 2010.

5. On 26 May the Claimant's solicitors wrote in applying for reconsideration essentially on the basis that this was a minor error and it would be in the interests of justice to so allow reconsideration so that the claim would have been presented when it first happened. But Lyons Davidson confused the matter by putting in an amended ET1 which now substituted Willows Day Nursery for Willows Childcare Limited. Thus understandably perhaps the clerks put it through at the next stage of reconsideration to this Judge essentially on the basis that the new claim should be accepted. And indeed this Judge fell into error, albeit he was dealing with many duty referrals at the time[2], in not addressing the reconsideration point. Thus the claim was now accepted as having been presented on 26 May which of course on any stretch would mean that it was out of time. There was then a case management hearing before
Employment Judge Hutchinson on 1 August 2017 by telephone and he listed the out of time Preliminary Hearing with which I am dealing, but the issue of reconsideration doesn't appear to have been on the agenda before him or if it was is not referred to.

6. However in my preparation for today it became clear to me as follows, namely that the application for reconsideration had never been properly adjudicated upon. Thus surely the first point that I would need to deal with was precisely that and which would engage my applying Rule 73. Thus I made plain to the advocates before me that I was proposing to reconsider the decision to reject of my own initiative and I informed them why: essentially as I have now put it. I noted that Willows Day Nursery is the trading of Willows Childcare Limited and indeed is prominent on the Ofsted report and that Mrs Pitts who gave evidence before me is along with her husband the Directors of Willows Childcare Limited. Furthermore there was a significant period of ACAS early conciliation; and I learnt how during it Mrs Pitts had sent Lyons Davidson, acting as they were for the Claimant, inter alia the contract of employment to which I shall return in due course. And thus I referred both advocates to the case of **Chard** which to me was of seminal importance and in dealing very much with this type of issue. I do note that the ACAS early conciliation in this matter had always been stated to be in relation to Willows Childcare Limited but in the second line The Willows Day Nursery and then the address. Thus following the dicta of Mr Justice Kerr it was my view that this was a minor error and that it would not be in the interests of justice to thus have rejected the claim and that if I had therefore actually considered the reconsideration application which unfortunately didn't happen, then I would have granted that reconsideration and reinstated the claim as at 11 May and then in effect allowed the amendment apropos the pleading that came in on 26 May. Having heard my preliminary opinion suffice it to say that the Respondent did not seek to stand in my way. Therefore it follows that I reconsider the rejection; I overturn it and I treat the claim as having been presented on 11 May 2017 and in that sense therefore the out of time issue in that respect goes.

Second Issue

7. However that therefore leads me on to dealing with the out of time issues as they otherwise are. I have before me the skeleton arguments submitted by both sides on 4 December: particularly now relevant are the following issues which I will address in the following order:-

[2] As had EJ Heap.

a) What was the notice period the Claimant originally gave?

b) Whether there was an agreement between the Claimant and the Respondent to waive or shorten that notice period.

c) The significance if at all of the Claimant's contractual notice period.

c) If there was waiver of the notice period whether it thus brought forward the EDT, and if so are the claims out of time

d) In the event the Claimant is found to have been out of time, whether the claim of unfair dismissal should be rejected it having been reasonably practical to have brought it within time and as to the discrimination claim, based upon disability, whether it is just and equitable to extend time.

8. Obviously points c) and d) do not need to be engaged if I find that there was no waiver and thus the EDT remains the expiry of the notice period, unless I find that there was a shorter contractual notice and thus the Respondent could treat the employment as ended at its expiry and which brings forward the EDT so as to make the claims out of time.

9. What I am first of all going to do is to set out the facts as they would be on the material events and then I will address matters as to the law.

Findings of Fact

10. In reaching these findings I have heard under oath the Claimant; her husband Ashley Bulbrook; and thence for the Respondent Victoria Pitts (VP). In all cases evidence in chief was by a written witness statement including a supplemental by VP: those statements are before me in an indexed witness statement bundle. I have also had regard to a bundle of documents, jointly agreed as I understand it, and I will refer to that when I need to do so by the prefix Bp followed by the page number.

11. The Claimant had been employed by the Respondent as a "key person/Senco" which essentially would mean that she worked with the children in the nursery school from 5 June 2012 until she resigned on 14 October 2016. The Claimant had by then been through considerable physical and mental trauma. Whilst pregnant with her first child, having tried for a long time to conceive, in February 2016 the pregnancy had to be aborted because she was diagnosed with ovarian cancer. Surgery undertaken meant that she would never again be able to conceive or give birth. She then underwent chemotherapy which was due to end in August 2016. The Claimant had been signed off sick from at least April 2016 and remained off sick because of her treatment at the time of the next chapter of material events.

12. This brings me to events circa 6 October 2016. She had prior thereto hoped to return to work; but it is obvious from the evidence that I heard from her that one of the problems was her reduced immunity to such as infection which I am well aware of can be a side effect of chemotherapy. And thus at the heart of this case

is although she had hoped to return to work, and indeed was looking forward to it, nevertheless on 6 October her consultant oncologist, and to whom I think it is obvious the Claimant must defer by way of advice on her health, made plain that the Claimant was not fit to return to work. The sick note is at Bp 70. The essential reason was that she was still suffering side effects from her chemotherapy. The Claimant was therefore signed off as unfit to work to 17 January 2017.

13. And in this respect I can take it short. I do not find, despite the contentions of the Respondent and the evidence of VP that the ensuing texts between her and the Claimant on 10 October (Bp71a-g) show pastoral concern for the Claimant. They are at the heart of why the Claimant resigned and highly relevant as to whether the Claimant would be prepared to retract it. Those texts were before me in the bundle as an addition at the resumed hearing on 4 December. At the first hearing in October I was only able to see them on the Claimant's mobile. It was obvious to me that they were highly relevant, hence there now being in the bundle. Suffice it to say that I consider that the texts of VP are oppressive and insensitive. The Claimant in her texts was obviously concerned at the effect of the sick note on her being able to return to work, but made plain that she must abide by it and she would have to wait as to what might happen until she had seen the oncologist who was going to assess the latest blood tests as I understand it on 8 November and "*so fingers crossed xx*".

14. But the reaction is as I say oppressive and insensitive. The flavour can be gained from the first reaction of VP in the texts interchange between 17:06 and 17:52. Thus having received the sick note:

> *"What does that mean then? As far as I am concerned she has issued you with sicknote without seeing you which is affecting you in my business. I am pretty sure she is not allowed to do that. Union guidelines. She can't do that. If I agree to all that we have talked about eg phased return, limited hours, she should not have done this. You can also rule to overrule it as well on a phased return…"*

And despite the Claimant seeking to reiterate:

> *"…I go on the 8th. I will stress to her I want to go back to work. If she is happy with everything then yes I will be back but if not then potentially it will be January. There isn't anything else I can do."*

And the answer inter alia at 18:02 is:

> *"There is. I've read the union guidance. I'm also not happy with the sicknote given without seeing you stating effects from carrying out chemotherapy. We have always been told its about your bloods…"*

15. Of course she is missing the point that the health of the bloods is a fundamental issue with chemotherapy and of course such as the impact on the immune system: and which is highly relevant in terms of the risk of an early return to the respondent school and in which obviously there will always be a risk of catching such as a cold or a bug.

16. Thus we have the answer of the Claimant at 20:43: inter alia referring to the sick note:

> *"… God forbid I go against it and get struck down with an illness. I won't have a leg to stand on, I am going to have a nice long soak in the bath now as this whole situation is stressing me out."*

17. And the answer to that is a long text. VP is clearly unhappy and inter alia states:

> *"Those hours over the next 2 months will be given to someone on a temporary contract until 7 January… I have put you first all the way through this but now I am going to plan for the business first. You clearly are concerned you are going too ill from being in the nursery so it is advisable that if that is how you feel that you will need to abide by the sicknote and not come in at all…"*

18. From all the evidence I have heard that was a hurtful thing to say because the Claimant was very happy working in the nursery. She had built up inter alia a good relationship with the staff and the parents, and albeit she knew she couldn't work with the children because of the risk of infection, she had from time to time dropped in and which was clearly of considerable importance to her particularly in the context of what she had gone through and that she still had not got the all clear in terms of being cancer free.

19. The Claimant resigned (Bp71) on 12 October 2016. Having said she was terminating her employment:

> *"…Therefore I am serving my 8 weeks' notice commencing Friday 14 October 2016, ending on Friday 9 December 2016…"*

20. Now there is no doubt that when VP got that recorded delivery letter she was angry as the tone speaks for itself. Thus there is her e-mail at 12:46 on 13 October (Bp 72): inter alia paragraph 2 and onwards:

> *"I would have expected better from you to be honest. I bent over backwards to do everything right by you, not employing anyone else. BUT I can't not do this for the next 8 weeks. I have followed YOUR lead in YOUR text every time. You state you have to do what the doctor says and therefore I have to abide by that –I don't see what you think I am doing wrong. WE have children coming into the nursery and it has been down to you when you return. Parents have been told this. Your colleagues are absolutely shocked and to say disappointed in an understatement.*
>
> *… I can't run the business in the next 8 weeks not knowing what is happening…*
>
> *…WE NEED to know when you are coming back to work – what has made you change your mind. Don't you think a bit more explanation than this is fair…*

…I would expect a bit more than a recorded delivery note (reference to the resignation letter). How could you do this in such an unfair way."

Stopping there it can be seen that at this stage she is not saying that she is abridging the notice period: and this will come back to the contractual point.

21. The crucial point is that there is no doubt that VP then came round to the Bulbrook's house, clearly in a hurry as she still had her slippers on. So what took place in the discussion that then ensued? What if anything was agreed to? There is a straightforward conflict. The Claimant is clear that an upset VP's opening salvo so to speak was:

"What the hell are you playing at?"

22. There was then a further discussion about the oncologist's sick note. The Claimant was pointing out that she couldn't go against the oncologist for the reasons I have already given; but she was hoping that once the oncologist saw her at the appointment in early November and with the blood count tests available, that she might be able to return to work earlier. The Claimant made plain that the texts had been deeply upsetting. Before me, and as per her ET1 she saw it as bullying and unacceptable given what she had been through and the continuing uncertainty. She described it in her evidence before me as being "a break down" and that she did not need the stress: Hence why she was resigning.

23. Going back to the meeting, there was a discussion between the two of them. VP was endeavouring to say that the Claimant had over reacted and indeed misinterpreted her texts. The Claimant was adamant that she hadn't done so and they spoke for themselves. All that matters is that the Claimant tells me that she did not retract her resignation VP having wanted her to do so. She gave further reasons about that which I do not need to rehearse at this stage as it will be a matter for the full Tribunal at the hearing, as to the worsening situation that there had been in terms of VP even before these texts and inter alia in relation to a holiday that the Claimant had needed as part of her recovery and the scepticism in relation thereto of VP.

24. It has been put in cross examination to the Claimant and indeed is a plank of the Respondent's case, that this meeting was not about her retracting her resignation but instead waiving the notice period. It is contended that the Claimant was happy to waive the notice she had given because the prid pro quo was that she wouldn't have to repay any training costs and that a restrictive covenant prohibiting working for a competitor in place in terms of the contract of employment would not be enforced.

25. Well the Claimant was quite clear before me. Nothing of the sort was discussed. Furthermore there was no agreement to retract the notice period and thus for the employment to end there and then. Her evidence was confirmed by that of her husband. The Respondent's position is that he should not be believed: he is supporting his wife out of mal fides because he had a breakdown in his own working relationship with the Pitts as at 11 February 2017 in relation to their criticisms of his work on their website. I will return to that.

26. Conversely VP was clear that the Claimant did agree to waive her notice period and in that context that she had opened the discussion so to speak by observing to the Claimant that there didn't seem any point in the Claimant coming back to work for 8 weeks as she couldn't work and "her statutory sick pay had run out". She puts in other words a pastoral take on all of this and that what she was doing was out of compassion for the Claimant. Furthermore at paragraph 18 of her supplemental witness statement and by way of rebuttal of the Claimant's statement that "she could not cope with handing in sicknotes "due to the way I reacted to her" VP made the hard on assertion that this was "a complete fabrication". In other words this central point about the sicknote and why the Claimant was saying she had resigned. But the Claimant was clear before me, corroborated by her husband, that she made plain that she had not misinterpreted the texts and that she could not go on like this handing in sicknotes "and getting grief whilst having to have time off". And at the heart of this point is that the Claimant and her husband are clear that although VP was trying to get her to retract her resignation, and as far as they could see from her stance and body language before them because she knew she had gone too far, they are clear that she did not retract it and because "

> *"I had had a year of hell and I didn't want anymore, putting me under all this when oncologist has signed me off as not fit".*

27. So I have two stark conflicts. That brings me back to Mr Bulbrook. I found him an honest and straightforward witness. I believe him when he says his recollection is uninfluenced by any fall out over his work for the Respondent. Thus it is the weight of the evidence. The text messages as I have already made plain speak for themselves. And therefore I do not accept the evidence of VP to the effect that she was acting in a sympathetic and caring way. What it means therefore put bluntly is that I simply don't believe Mrs Pitts on the waiver of notice issue. And what reinforces my finding is a undated letter of the Respondent directors (i.e. Mr and Mrs. Pitts) which was posted on the 24 October 2016 Bp 73 to which was attached a P45 and which gives a leaving date of 22 October 2016. As to this letter it does not say that there has been a waiver by agreement of the notice period that the Claimant had given. The first paragraph reads as follows:

> *"With regards to your letter of resignation from employment at the Willows Day Nursery we are happy to accept your resignation. The 8 week period does not need to be served due to continuing long term sickness until January 2017. However any contractual obligations on termination of employment as set out within the staff handbook and an individual contract are to be abided by."*

28. And thus set out was that the Claimant's employment would effectively end on 21 October; hence the P45. The last paragraph dealt with returning company property.

29. The first point to make is that, as is obvious from the first paragraph, this letter flies in the face of there having been any waiver by the Respondent of inter alia the restrictive covenant clause as a quid pro quo for the abridgement of the notice period by the Claimant. The restriction is at paragraph 17 of the "**Written**

Statement of Particulars (Staff Employment Contract)[3] which VP for the Respondent and the Claimant signed on the 16 August 2016. Why refer to the contractual obligations if they had been waived?

30. Thus whatever way I look at it I am wholly unpersuaded by the Respondent that the Claimant waived her notice period. [4]

Conclusion on waiver

31. The notice of resignation was not waived.

Significance of the contractual notice period.

32. What the Respondent says is that even if there was no waiver, then paragraph 7[5] of the contract means that the maximum notice that the Claimant could contractually have given was 6 weeks. Therefore the notice of 12 October which would be effective of course when in the hands of the Respondent, thus 13 October, would have expired on 24 November. Thus the 3 month limitation period would have run out on 23 February 2017. Thus as the ACAS early conciliation period comes after it, it cannot come to the rescue in extending time and thus the claim is out of time.

33. On this point I initially had thought that the wording of the relevant clause would have provided for 7 weeks which would still make the claim out of time. However as the argument extended before me, Mr Rozycki pointed out that the clause in that sense does not so say and therefore I have to start by looking at the wording itself:

> *"You must give **at least**[5] six weeks' notice in writing of any intention to terminate your employment. This will need to be from weekend to weekend and employees are not able to finish midweek, for continuity for the children. For every year, served after 4 years' permanent contract, an additional week's notice is required. You are entitled to 6 weeks' written notice of termination of employment for the first 4 years of continuous employment with Willows Childcare Limited; thereafter you are entitled to one week's additional notice per completed year of service subject to a maximum of 12 weeks."*

34. On reflection I am with Mr Dempsey in his submissions that the Claimant was wrong in thinking that she had to give a minimum of 7 weeks. I accept the wording of the clause means that seven weeks notice only becomes contractually required upon the completion of the fifth year of employment. However there is the precursor to that in terms of "You must give at least". The Claimant in terms of the modus operandi of VP thought that therefore she should give her 8 weeks because

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[3] My emphasis. Hereinafter referred to as the contract.

[4] In my extempore reasons I first referred to the extract at top Para page 5 of 9 in the Westlaw report Lees v Arthur Greaves (Lees) Ltd 1974 ICR 501 CA per Lord Denning MR citing with approval Sir John Donaldson, President, in Mc Alwane v Boughton Estates Ltd (1973) ICR 470,473. It was deployed for the Claimant: on reflection given my other findings it adds nothing. Similarly I referred to the maxim Contra Proferentem but again on reflection it adds nothing given my findings of fact and who I believe. [5] The same wording appears at the start of paragraph 17.

[5] My emphasis.

from her experience she knew that VP tended to require that from employees who wished to leave and she provided details. And when she wrote her resignation letter she didn't have her contract of employment in order to remind herself of the notice period. Indeed although she might have signed for it on 16 August 2016 at BP 69a I am not satisfied that she was actually given it. What reinforces my view is that VP during the ACAS early conciliation period sent as requested a copy to the Claimant's solicitor.

35. Subsequently after she had resigned and having not seen her own contract the Claimant got sight of another employee's contract: Heather Cross. This does have an 8 weeks' notice clause (Bp94). Thus paragraph 7:

> "You must give ***at least** 8 weeks' notice in writing of any intention to terminate your employment."

But Mrs Pitts said that there is a distinction there because Heather Cross was a key person as the chef. But then I have also got at Bp 91 reference by the Respondent to the termination of the employment of an apprentice Zoe as at 6 June 2015. This also refers to the notice period as having been 8 weeks, albeit VP then seeking to say that this is because she had an apprentice contract. But then it is somewhat muddled because the next sentence reads:

> "There is not a section within the staff handbook that applies to apprentices and the staff handbook is a guide to Willows only."

36. So have I got a picture emerging that the norm so to speak was 8 weeks? In any event what do I make of the words "at least"? The Claimant gave evidence about various people who appear to have been required to work an extended period of notice: inter alia Michelle Woolsey. In passing I note that approximately 10 employees in left during the period of her employment which somewhat flies in the face of VP's assertion that she had a low turnover of staff. This is a very small business. Now Mrs Pitts has countered in relation to this evidence giving reasons why in each case they left and disputing that she required them to work out their notice period in full whatever it was. But the trouble there is that I have no documentary evidence in relation to any of them at all apart from the letter to Zoe by which she wasn't required to work out her full notice period. That letter does not signify that this was by agreement; the wording would suggest that this was a unilateral decision by VP.

37 As to the use of the words "at least" this was something that VP put in the contracts, the principle reason being that she could hold employees to a longer period than say 6 weeks if otherwise it was going to be disruptive in terms of meaning there was a gap in coverage during a school term. Also if there was delay in terms of any replacement because of CRB checks. So there was a business reason so to speak behind the utilisation of the words "at least". So what I therefore have is a wording which is clear. The employee is required to give **at least** 6 weeks' notice during the period between the end of the fourth year of employment and the completion of the fifth when it would become at least 7 weeks. And therefore obviously absent dialogue it is for the employee resigning to assess in

terms of their knowledge of the modus operandi of the employer as to what would be the notice period thus "at least" required". Therefore the Respondent cannot argue that she is only required to give 6 weeks as Mr Dempsey valiantly tried to do because that is not what paragraph 7 says and not what VP could require..

38. Finally I am with Mr Rozycki. VP, who I have no doubt whatsoever from all the evidence runs her business closely and is very much hands on, never said in reply to the resignation letter that the Claimant wasn't obliged to give 8 weeks. Thus the reply from the directors to the Claimant on 24 October 2016 (Bp73) reads at Para 1 sentence 2:

> *"The 8 week notice period does not need to be served due to continuing long term sickness until January 2017…"*

It does not say you are not required to give 8 weeks' notice "only 6".

39. Thus I come down in favour of the Claimant's submission encapsulated as if an employee can give "at least.." then unless employer says no just the 6 weeks, then the employee is so entitled to give, as in this case 8 weeks "unless of course it's waived". And of course I've ruled against waiver. Thus it follows that I have concluded that the Claimant gave a contractual notice period in giving 8 weeks' notice. Thus as there was no waiver we are back to where I started from and therefore the claim becomes in time and that is of course because applying 8 weeks from 13 October we are back to an effective date of termination of 9 December and thus we are back to the claim having been presented in time.

Conclusion on the period of notice

40. The Claimant was contractually entitled to give eight weeks notice. Thus as it was not waived or abridged the employment terminated on 9 December 2016; thus allowing for the ACAS EC period the Claimant was presented in time.

Points 3 and 4

1rikeout

41. The Respondent had in its applications to the Tribunal invited the Judge to in any event find that the claims should be struck out as having no reasonable prospect of success or a deposit ordered them having only little reasonable prospect of success. I trust it is self-evident that any such application on the factual scenario in this case is misconceived.

42. However the Claimant will have to look at whether or not there is any financial value in the breach of contract claim given that during the notice period as I understand it she would have not been eligible for any pay from the Respondent because she was unfit to work and had exhausted statutory sick pay.

Observations

43. I shall not be presiding at the main hearing because of the observations I have made during this hearing; but the parties might like to reflect on the following:-

43.1 As to the claim for unfair dismissal apart from basic award and loss of statutory rights, what financially is engaged? The Claimant has only been able to work since for one hour per day in the kitchen of a school nearby because her immune system remains weak. Hence she must not risk coming into contact with children because of the possibility of infection. Thus as the Claimant has only brought a claim in relation to her disability against the Respondent of harassment pursuant to Section 26 EQA 2010 and which had of course cut off immediately before the resignation, then it strikes me that applying the **Polkey** scenario to the constructive unfair dismissal if that is what it was, then the Claimant would have been unlikely to resume employment with the Respondent in the reasonable future.. Thus if my analysis is correct the compensatory element of the unfair dismissal claim is very limited in scope. And of course the harassment pursuant to Section 26 will otherwise be confined to an award of injury to feelings. It may therefore be that this matter could be capable of settlement and perhaps via Judicial Mediation given what I have just observed.

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Employment Judge P Britton

Date: 13 February 2018

REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE