



# THE EMPLOYMENT TRIBUNALS

**Claimant:** LOUISE KELLY

**Respondent:** DEPARTMENT FOR WORK AND PENSIONS

**Heard at:** NEWCASTLE CIVIL AND FAMILY COURTS AND  
TRIBUNALS CENTRE

**On:** 24, 25, 26 AUGUST 2022

**Before:** Employment Judge JONATHAN RODGER  
STEPHEN WYKES  
DOUGLAS MORGAN

***Representation:***

**Claimant:** In Person  
**Respondent:** ANDREW CRAMMOND (Counsel)

## JUDGMENT

1. The Claimant's claim of wrongful dismissal is not well-founded and is dismissed.
2. The Claimant's claim of disability discrimination is not well-founded and is dismissed.

# REASONS

## INTRODUCTION

1. The Claimant Ms Louise Kelly (“Ms Kelly”) was employed as an administrative officer with the Respondent the Department of Work and Pensions (“the DWP”) from 3 March 2003 to 8 February 2021.
2. On that date Ms Kelly was dismissed following a disciplinary investigation. Ms Kelly subsequently appealed but on 19 March 2021 her appeal was refused.
3. Ms Kelly maintains that her dismissal was unfair and amounted to disability discrimination. By this claim, received in the Tribunal on 3 June 2021, Ms Kelly sought compensatory damages for unfair dismissal.
4. We heard the case on 24, 25 and 26 August 2022. Ms Kelly represented herself. She did so with considerable skill and ability. The DWP was represented by Mr Andrew Crammond of Counsel. He too lent considerable assistance to us, in particular when he cross-examined Ms Kelly having regard to her lack of representation.

## BACKGROUND

5. Ms Kelly was a long-standing employee of the DWP. In January 2020, she applied for and obtained a new role in a new department. This was not an easy time for her. In November 2019, Ms Kelly’s mother died and she was struggling with the grief that she naturally suffered. She found the new role challenging because of a want of training. And then in March 2020, the government imposed draconian restrictions on people’s freedom of movement and association which significantly affected Ms Kelly. Throughout this time, Ms Kelly was also going through the menopause and there was an interruption in the supply of

HRT medication which affected her experience of the symptoms. In particular, she suffered from difficulty sleeping, hot flushes, night sweats, joint pain, head aches, digestive problems, fatigue, insecurity and anxiety. The main problems she suffered were sleep deprivation and poor memory and concentration.

6. In the course of her work, Ms Kelly had access to and was required to use a powerful database of information about almost everyone in the country or, at least, everyone with a national insurance number. The database is called "Searchlight". Unsurprisingly, the DWP enforces strict rules about the proper use of this database and monitors employees for compliance.
7. On 17 September 2020, Ms Kelly searched in Searchlight against her own address. On 30 October 2020, Ms Kelly searched in Searchlight against her next-door neighbour's address. Ms Kelly accepts that this was wrong. In respect of the 17 September search, she explained that she was properly searching against a third party's post code but could not get the Searchlight system to work. She used her own post code to see whether she it would work and to test out the system.
8. In respect of the 30 October search, she has always maintained that she has no recollection of this incident although she accepts that she must have done a search against her neighbour's post code as alleged.
9. These searches were identified by the DWP and triggered investigators and disciplinary action. The action in respect of the first search was completed before the second had come to light. In respect of the first search, there was a disciplinary meeting on 12 November 2020 which resulted on 17 November in a final written warning. On 15 December 2020, this was reduced on appeal to a First Written Warning.

10. In respect of the second search, on 10 December 2020, Ms Kelly was invited to an investigation meeting. On the following day, however, Ms Kelly went off sick. The meeting did not take place until 22 December 2020. The investigation continued and on 20 January 2021 there was a disciplinary meeting. The outcome of this, communicated on 5 February 2021, was dismissal for gross misconduct. On 23 February 2021, Ms Kelly appealed. On 10 March 2021 there was an appeal hearing. On 19 March 2021, the DWP declined to uphold Ms Kelly's appeal.
11. In the course of the investigation meeting appertaining to the second search, on 22 December 2020, in the context of Ms Kelly's inability to recall the second search, Ms Kelly's trade union representative Bridget Corcoran stated that she had had a discussion with Ms Kelly about her menopausal symptoms. Ms Corcoran explained that Ms Kelly's course of HRT had finished in June and as a result Ms Kelly was suffering a lack of concentration and fatigue. It was said on behalf of Ms Kelly that the second search was a genuine accident in light of the cessation of her HRT medication in June.
12. The extent of Ms Kelly's symptoms and the DWP's knowledge of them were significant issues during the hearing and form the basis of a case in discrimination.

## **THE ISSUES**

13. The claim is framed in terms of unfair dismissal and disability discrimination, the act of dismissal being the allegedly discriminatory act and Ms Kelly's menopause symptoms alleged to constitute the disability.
14. The issues in the case are set out in an agreed list of issues which we rehearsed with the parties at the outset of the hearing.

### Unfair dismissal

15. What was the reason or principal reason for the dismissal and was it a potentially fair one in accordance with the five potentially fair reasons under section 98 of the Employment Rights Act 1996? The DWP asserts misconduct and there is no real dispute about this. Certainly Ms Kelly does not advance an alternative reason for her dismissal.
16. Did the DWP act reasonably in treating the reason for dismissal as a sufficient reason for dismissing Ms Kelly? The DWP's case is that the fact of the second search—and the first for that matter—was not denied, lowering the investigatory burden. Nonetheless, the DWP points to a full investigation which explored all possible aspects of mitigation.
17. Was the decision to dismiss the Claimant within the band of reasonable responses that a reasonable employer in the circumstances might have adopted? The gist of Ms Kelly's case is that dismissal was excessive or unwarranted especially given her alleged disability and other mitigation. The DWP for its part maintains that the offence was serious, was a second offence, was admitted and there was no exculpatory explanation at all, such that really it had little choice but to dismiss.
18. Did the DWP undertake a reasonable and fair procedure? The question for us is whether the DWP's policy as to dismissal was too prescriptive. It was suggested that there is also a question about whether Ms Kelly ought to have been provided with a leaflet about employee support opportunities at an earlier stage but it transpired that while she had not been given this document before the first investigation hearing, she had been given it before the second. We do not consider this to be a serious issue.

### **Disability discrimination**

19. The question for us is whether at all material times Ms Kelly was disabled within the meaning of section 6 of the Equality Act 2010 by reason of her menopause symptoms. This issue can be broken down as follows:
- (1) did Ms Kelly suffer from a mental and/or physical impairment (she alleges she suffered stress, anxiety, lack of concentration, joint pain and fatigue)?
  - (2) if so, did the same have substantial and adverse effects on her ability to carry out normal day-to-day activities?
  - (3) if so, were the same likely to be long term (in that they had lasted 12 months or were likely to last 12 months or more)?
20. The unfavourable treatment in this case is the dismissal. It is not in dispute that that occurred. The question for us, however, is whether the dismissal was something arising in consequence of Ms Kelly's disability (assuming she proves disability). There are two elements to this. First, we need to identify what was the something because of which Ms Kelly was dismissed. Second, we need to ask whether this something arose in consequence of the disability.
21. The next issue concerns the state of the DWP's knowledge. We have to ask whether at all material times the DWP knew or ought to have known of the disability.
22. If Ms Kelly comes this far, we finally have to ask whether the DWP can justify its treatment of Ms Kelly, in particular whether the dismissal went to the achievement of a legitimate aim or aims and was a proportionate means of achieving such aim or aims.

23. We indicated at the outset that questions of remedy would be dealt with on another occasion.

## **EVIDENCE**

24. We heard oral evidence from Ms Kelly herself.
25. On behalf of the DWP, we heard oral evidence from Sian Denny, who was Ms Kelly's line manager and who conducted the disciplinary process in respect of the first search and carried out the investigation in respect of the second. We heard from Jane French, who conducted the Ms Kelly's first appeal and who reduced the sanction from a final written warning to a first written warning. We heard from John McPherson, who conducted the second disciplinary meeting and was the person who made the decision to dismiss Ms Kelly. Finally we heard from Wendy Lawrence, who conducted Ms Kelly's second appeal, her appeal against the dismissal.
26. At the outset we would note that this is not a case in which there is any substantial dispute of fact. In particular, it is not disputed by Ms Kelly that she carried out the prohibited searches which each lead to a disciplinary process. Where there is a factual dispute is in the area of Ms Kelly's alleged disability and, in particular, the extent of the DWP's knowledge of it.
27. We felt that all of the witnesses were doing their best to help us come to a just decision. None of the witnesses was trying to mislead us. Where evidence was challenged or where there were differences between the witnesses, we referred to the contemporaneous documents. In most cases, these were sufficient to resolve any difference of recollection or impression or belief between the witnesses. In these instances, which happily were few, we have explained our reasoning where we make our findings of fact. We were

particularly impressed by the DWP's Mr McPherson. We felt he gave his evidence thoughtfully, candidly and even-handedly.

28. We also had a bundle of contemporaneous documents which included the documents arising from the various investigatory and disciplinary meetings, Ms Kelly's medical and occupational health records, the DWP's policy documents and emails between Ms Kelly and various third parties.

### **FINDINGS OF FACT**

29. Most of our findings of fact are non-contentious.
30. As we have stated, Ms Kelly began working for the DWP in 2003.
31. In late-2019, Ms Kelly's mother died. She was badly affected by grief. We do not consider that surprising and we accept her account.
32. In early-2020, Ms Kelly applied for and obtained a different role in the DWP. This involved different processes to those she was used to and her training was perhaps not as consistent as she hoped.
33. Ms Kelly was well-regarded by her colleagues. It seemed to us that she was regarded by them more than she realised and more than she regarded herself.
34. In the course of her new role, Ms Kelly had access to a database called Searchlight which contains personal and private information about a large proportion of the population. The misuse of this database was absolutely prohibited. By misuse, we mean using the database for any purpose other than a proper work purpose, looking up any information other than information which is required for a particular task. Mr McPherson explained and we accept that "rule number one" was that the database must not be misused. Staff are absolutely not permitted

to look up themselves or anyone else other than the person they are required to look up. He gave the example of looking up a footballer or a celebrity. He explained how staff might be coerced or induced into obtaining such information. Mr McPherson said it was made plain that multiple wrong accesses could lead to dismissal. By multiple, he meant more than one. This was not disputed.

35. This is entirely consistent with the DWP's policy documents. Its document entitled "How to: Deal with security incidents and breaches of information security" states clearly:

Employees must not access or browse their own information, or those of friends, family or celebrities on the Department's corporate systems... The Department runs regular and effective scans to detect unauthorised access and the results are acted upon.

Unauthorised access and browsing of personal/customer records is a breach of Departmental policy and is treated as no less than serious or gross misconduct. Managers should take disciplinary action against employees who access records and information without a legitimate business reason and appropriate authorisation for doing so.

36. At the same time as Ms Kelly moved into her new role, the government brought in draconian restrictions on freedom of movement and association which adversely affected Ms Kelly's workplace like many others. A substantial number of Ms Kelly's colleagues were sent away to work from home. Ms Kelly was not. It was clear to us that like many people she was anxious and fearful, which is unsurprising given the content of the government's messages to the public and the mainstream media's often hysterical reporting at this time. She told us

about her “Covid table”, a piece of old furniture that she worked on to pass the time and to soothe her anxieties.

37. In June 2020, Ms Kelly ceased taking HRT because the five year course of medication she had been on came to an end. She did not go to the doctor about it because she was concerned about the public health situation. There was some dispute about this because Ms Kelly did contact her doctor about other matters but it seems to us undeniable that Ms Kelly’s HRT came to an end and she did not renew it.
38. Further, we accept her evidence that she was suffering the symptoms of menopause. She described in detail, coherently and compellingly, feeling stress, anxiety, lack of concentration, fatigue, hot flushes and joint pain. She also referred to episodes of brain fog. We have no difficulty in finding she suffered these symptoms, especially after the cessation of her HRT in June 2020. These symptoms, especially the hot flushes, caused her to wear lightweight clothing and to have a fan on her desk although in mid-2020 the fan was taken away for a public health reasons.
39. On 17 September 2020, Ms Kelly searched against her own address in the Searchlight database. This is not dispute. Ms Kelly explained that she had been searching a third party’s post code but the system had not worked as she expected it to. Accordingly she tried out her own post code to see whether it worked properly.
40. This was detected by those who monitor the Searchlight system. On about 25 October 2020 a report entitled “Internal Abuse Team - Awareness” was sent to Ms Denny. It stated:

On 17.09.2020 entered their own address and postcode into the Searchlight (SEF-M) system. There are no legitimate business

reasons for this action. However, in this instance they have terminated their search on realising it was their own account and no further access have been made at this stage.

#### Action Required

I am contacting you as the members staffs Line Manager to ask that you make them aware that this is not permitted and that in this instance no further action will be taken.

41. On 30 October 2020, Ms Kelly searched the database against her neighbour's address. Ms Kelly has always stated that she had no recollection of doing so but does not deny that she did. Notwithstanding she accepts she made the search, she has not advanced any explanation.
42. This too was detected by those who monitor the system, but not before the first matter had been dealt with. On 5 November, Ms Denny invited Ms Kelly to an investigation/disciplinary meeting. The letter makes clear the allegation against Ms Kelly:

It has been alleged that you entered your own address and postcode into the Searchlight (SEF-M) system on the 17th September 2020. There is not a legitimate business reason for this and action and is classed as serious misconduct.

43. The meeting took place on 12 November 2020. We have a note of the meeting which Ms Kelly accepts is accurate. In the course of the meeting, Ms Kelly accepted she had recently completed her annual security training. She accepted that she had put her own details into Searcgkight. She accepted that she knew she should not have done so. She explained that she was trying to make the system work, it having failed to for as she expected when she used her "customer's"

details. Ms Kelly did not dissemble or seek to make excuses for herself. Nor did Ms Kelly advert to her health when giving her explanation.

44. It is clear from the documents that the matter was considered in a structured way by Ms Denny using a decision maker's template that we have seen. She took account of mitigating factors including Ms Kelly's anxiety about the public health situation, the minimal amount of data accessed and the act being totally out of character. Ms Denny decided that Ms Kelly had committed an act of misconduct and the appropriate action was a final written warning. That decision was communicated to Ms Kelly by letter dated 17 November 2020.
45. Ms Kelly appealed on 27 November 2020. The gist of her appeal is that this was a one off lapse of judgment at a stressful time; although not stated, the suggestion is the outcome was excessive.
46. An appeal meeting took place on 9 December 2020. Ms Kelly did not bring her health to bear although she laid stress on the mitigating factors identified by Ms Denny. The appeal was upheld. The sanction was reduced to a first written warning. Having regard to the DWP's policy document entitled "How to: Deal with security incidents and breaches of information security", we consider this was clearly the right outcome. On 15 December 2020, the outcome was notified to Ms Kelly.
47. In the meantime, on 27 November 2020, the DWP's Internal Abuse Team picked up the second search. On 10 December 2020, Ms Denny invited Ms Kelly to an investigation meeting. The letter makes clear what the meeting would be concerned with.

48. On 11 December, Ms Kelly went on sickness leave. At some stage in December 2020, Ms Denny referred Ms Kelly to the DWP's occupational health department.
49. On 22 December 2020, the investigation meeting took place remotely. Ms Kelly was accompanied by her trade union representative Bridget Corcoran. We have seen the minutes of the meeting, the accuracy of which is not challenged. Ms Kelly stated that she could not remember making the search which was the subject of the investigation. It was at this stage that Ms Corcoran on behalf of Ms Kelly raised the issue of Ms Kelly's health. She suggested that Ms Kelly had ceased taking HRT medication in June and that as a result Ms Kelly was suffering a lack of concentration and fatigue. She invited Ms Denny to conclude that the search was a "genuine accident in light of her cessation of HRT medication in June". Ms Kelly went on to explain that she had not made anyone aware of her symptoms and that she stoically "just comes in and tries her best" and did not discuss private health matters at work. She said that it was only on 10 December 2020, when she was invited to the meeting concerning the second search, that any connection between her menopausal symptoms and the searches had manifested itself to her.
50. On 24 December 2020, Ms Kelly had a telephone consultation with the occupational health department of the DWP. Under the heading "Background", it is stated:

I understand Louise completed her training for her new role but following the onset of covid her duties have changed a number of times to meet business needs. As a result, she has moved to different roles a number of times with different processes and systems. Once learnt she was often moved again to another role. This continuous change caused her insecurities, anxiety and a

lack of confidence. She tells me she had a little feedback or guidance and worried she was doing the job correctly.

Louise went sick after been called to her manager's office regarding a second error which she can't recall and being informed the two errors together put her job at risk. This caused her distress and continued absence.

51. Under the heading "Current Issues", it is stated:

I understand Louise continues to engage in the investigators process at work although her anxiety and distress regarding her future employment continues.... She is able to undertake normal daily activities but is limited by covid restrictions. She is normally in good health but tells me she has menopausal symptoms and believes her concentration and retention is affected.

52. On 11 January 2021, Ms Kelly was invited to a disciplinary meeting which took place on 20 January 2021. The DWP's Mr McPherson conducted the meeting. Ms Kelly was accompanied by her trade union representative Mr Christopher Lenton. We have seen a detailed minute of the meeting which Ms Kelly approved as accurate on 26 January 2021. Again, Ms Kelly repeated that she had no recollection of the second search and did not advance any explanation as to why she might have carried it out. It was in the course of this meeting that Mr Lenton, on behalf of Ms Kelly, suggested that the menopause was recognised as a disability. Ms Kelly stated that she had suffered from tiredness, poor memory and poor concentration. She accepted that "she had never mentioned any of this this to her [Team Leader] or anyone in the past" and that she had put it down to "anxiety over Covid".

53. It is clear to us that Mr McPherson considered the case carefully. He took advice from the HR function within the DWP. He used a decision maker's template to assist him. He appears to have considered all material factors. Dealing with the issue of menopause raised by Mr Lenton, he noted this:

The degree/impact of menopausal symptoms Louise experienced did not in my opinion affect the actions she undertook. By this her actions were not a mistake, or because of poor concentration or forgetfulness. She took a predetermined/premeditated action when entering her neighbours address and postcode into the Departments Searchlight (CIS) IT system.

54. In conclusion, Mr McPherson noted the following:

Louise has been unable to provide any specific information about why she accessed her neighbour's record other than symptoms caused by the menopause – poor concentration, forgetfulness, tiredness. However there was no noticeable effect on her performing her normal job roles during this period. OHS have confirmed that in essence there is no evidence of any significant impairment which would affect her ability to follow instruction and know the difference between right and wrong. So my decision to dismiss is based on both policy guidance and is I understand consistent with similar cases related to multiple access security breaches.

55. On 5 February 2021, Mr McPherson notified Ms Kelly in writing that she was dismissed for gross misconduct with effect from 8 February 2021.

56. On 23 February 2021, Ms Kelly lodged an appeal. An appeal meeting was held on 10 March 2021 by Ms Wendy Lawrence. Again, Ms Kelly was accompanied by her trade union representative. We have seen a detailed note of the meeting and it has not been suggested the note is inaccurate. In the course of the meeting, Ms Kelly acknowledged that “out of pride” she had not informed anyone of her symptoms following cessation of her HRT.
57. On 19 March 2021, Ms Lawrence dismissed Ms Kelly’s appeal.

## **DISCUSSION AND CONCLUSIONS**

### **Unfair dismissal**

58. In closing submissions, Ms Kelly suggested that she was dismissed because she was not coping well: she was stressed, anxious and lacking in confidence following her move to her new role in March 2020 and the lack of adequate training she had received. She also asked us to find that dismissal was unduly harsh given her lengthy good service and health difficulties.
59. By contrast, the DWP submitted that this was a textbook fair dismissal. Ms Kelly had committed two serious security breaches which she could not adequately explain, in the second case, could not explain at all. The matter was properly investigated and considered, albeit there was not much to investigate given Ms Kelly’s admissions.
60. It is clear to us that the Searchlight system is a powerful database which is open to abuse. It contains private financial and health information about almost every adult in the country. Access to it is available to a large number of relatively low level employees. The temptation to give way to prurient curiosity is bound to be strong. The risk of something worse is serious: employees are at risk of being

coerced or bribed to obtain information at the behest of third parties with bad motives.

61. It is obvious to us that it is essential to have a robust policy to counter such temptations and risks and we have found that the DWP quite properly does so. Mr McPherson described it as the number one rule which is impressed upon everyone when they join the department and repeatedly thereafter that information is not to be abused. This was spelled out: employees must not look up themselves, their friends, their family or celebrities. It was also clearly stated in multitudinous policy documents that this was the rule and that dismissal was the likely sanction for all but the slightest breach. In particular, where any security breach was not a one-off, an employee might expect to be dismissed.
62. This might be described as harsh but we do not consider it is. We consider it is a necessary, proportionate and appropriate approach to the safeguarding by the state of the private data of its subjects.
63. There can be no serious debate about the reason why Ms Kelly was dismissed. The reason was her conduct, the fact that twice, in September and then in October 2020, she made inappropriate use of the Searchlight database. We can see no evidence at all to gainsay the DWP's case on this issue. While Ms Kelly obviously was wracked by self-doubt and insecurity, those who managed her at the DWP rated her well. There is no suggestion in the evidence that she was dismissed because she was not coping well.
64. Nor can it be sensibly suggested that the DWP did not believe that Ms Kelly had committed the alleged wrongs or had no reasonable grounds for that belief. They were admitted. Any investigation was properly concerned less with what Ms Kelly had done and more with why she had done it and whether any exculpatory explanation could be put

forward. The investigation was appropriately thorough and Ms Kelly was given even opportunity to explain herself and to put forward mitigation. This she did albeit she was crucially unable to account for the second search. She accepted she had carried out that second search and she accepted she knew it was a serious wrong. It was a serious wrong for the reasons we have adverted to above.

65. We also consider that dismissal was within the band of reasonable responses available to an employer acting reasonably. Again, we refer to our reasoning above and to the clearly stated policies of the DWP which we find are entirely appropriate.

#### **Disability discrimination**

**(1) Was Ms Kelly was disabled within the meaning of section 6 of the Equality Act 2010 by reason of her menopause symptoms?**

**(a) did Ms Kelly suffer from a mental and/or physical impairment?**

**(b) if so, did the same have substantial and adverse effects on her ability to carry out normal day-to-day activities?**

**(c) if so, were the same likely to be long term (in that they had lasted 12 months or were likely to last 12 months or more)?**

66. It seems to us that there is no reason at all why symptoms of menopause should not constitute a disability for the purposes of section 15 of the Equality Act 2010. The menopause is of course an almost universal experience for women but that is not a reason why its effects on some women should not fall within the legislation. While some women feel no or no significant adverse effects, others—according to the literature a large number—find they are impaired by symptoms, physical or mental, and that those symptoms have a substantial and adverse effects on their ability to carry out normal day

to day activities, which effects last or are likely to last more than 12 months.

67. The fact that the impairing symptoms flow from the menopause is not important. As always, the questions are whether a claimant suffered an impairment, whether it had substantial and adverse effects on her ability to carry ormal day to day activities, and whether those effects are long term.
68. What it seems to us is relevant, is that it ought to be apparent to any reasonable employer that women in their workforce in the age range of approximately 45 to 55 *may* be liable to suffer the adverse impacts of menopause and that *may* be relevant to questions of the employer's knowledge. We put it no higher than that, however.
69. Ms Kelly law emphasis on the stress, anxiety, lack of concentration, joint pain and fatigue that she experienced. We accept her evidence that she suffered these symptoms. That evidence was clearly and coherently given, and cannot be said to be inherently unlikely or internally inconsistent.
70. Whether those symptoms had a substantial and adverse effect on Ms Kelly's ability to carry out normal day-to-day activities was, however, a lot less clear to us.
71. We have been told almost nothing about Ms Kelly's life outside her work. She has not given evidence about how her symptoms, which we fully credit, affected her domestically and socially. We know that she like many people endured loneliness and isolation during the period of pandemic restrictions, but those feelings were attributable to her circumstances and the law and not to any physical or mental impairment. Moreover, she well-described the coping strategies she adopted, including working on furniture.

72. It was also clear to us that in the eyes of her managers, Ms Kelly performed at work to at least a satisfactory standard and probably higher. She was well regarded by Sian Denny, for instance. There was no evidence at all of capability or performance issues. It was notable that there was no evidence that Ms Kelly ever took any sickness leave, which militates against the proposition that Ms Kelly had an impairment which had a substantial and adverse effect on her ability to do day-to-day activities. It rather seemed to us that Ms Kelly had a lower estimation of herself and her abilities than was warranted, and certainly held herself in lower esteem than did the DWP.
73. It is correct that after 11 December 2020 Ms Kelly went on sickness absence but that appeared to us from the timing and from the occupational health reports properly compiled by the DWP to be attributable not to her undoubted menopause symptoms but to the stress and anxiety she was naturally and unavoidably subjected to by the disciplinary process then underway.
74. In addition, there was a complete absence of medical evidence that Ms Kelly suffered debilitating symptoms. She did not rely on any letter from her GP, let alone a formal medical report. Nor did her medical records disclose evidence that would support her case on this issue. Indeed, there is no evidence that she consulted her doctor about these symptoms during the relevant period.
75. For these reasons and on this analysis, we are not satisfied that Ms Kelly was disabled within the meaning of section 6 of the Equality Act 2010. Whatever impairments Ms Kelly may have suffered, they did not in our view have substantial and adverse effects on her ability to carry out normal day-to-day activities. It is not necessary for us to consider whether or not any such effects were likely to be long term.

**(2) Was Ms Kelly treated unfavourably, namely, in that she was dismissed?**

76. The short and simple answer to this question is: yes. We are satisfied that dismissal is capable of amounting to unfavourable treatment.

**(3) Was Ms Kelly's dismissal because of something arising in consequence of her disability?**

**(a) What was the something because of which Ms Kelly was dismissed?**

**(b) Was the something arising in consequence of Ms Kelly's disability?**

77. We have already stated our conclusion that Ms Kelly was not disabled for the purposes of the Act and so it is neither necessary nor logically possible for us fully to consider the issues under this head.

78. Nonetheless, we think it important to record that we are satisfied that Ms Kelly was dismissed as a result of wrongfully accessing the Searchlight database and fully in accordance with the DWP's policies.

79. Questions of knowledge and legitimate aims do not on the facts as we have found them arise.

**DISPOSAL**

80. For the reasons we have set out above, we conclude that neither Ms Kelly's unfair dismissal claim nor her disability discrimination claim is well-founded and accordingly we dismiss each claim.

.....  
**EMPLOYMENT JUDGE  
RODGER**

**20 October 2022 .....**

**Judgment sent to the parties  
on:**

**21 October 2022**

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