EMPLOYMENT TRIBUNALS

Claimant: **Miss Bethany Howell**

Respondent: **Ms Mariam El-Sobky**

Heard at: **East London Hearing Centre**

On: **31 October 2022**

Before: **Employment Judge C Lewis**

Representation
Claimant: In person
Respondent: In person (Response not entered)

RESERVED JUDGMENT

The judgment of the Tribunal is that

1. **The claim for unfair dismissal is dismissed for lack of two year's qualifying service.**

2. **The claim for unlawful deduction from wages contrary to section 13 of the Employment Rights Act 1996 succeeds. The amount owed to the Claimant by the Respondent and payable forthwith is the sum of £497.71 gross.**

3. **The claims of disability discrimination succeed. Remedy is to be determined at a separate remedy hearing.**

REASONS

The claims

1. By a claim form presented on 16 February 2022 following a period of early conciliation from 21 December 2021 and 17 January 2022 the Claimant

brought claims for unfair dismissal, disability discrimination and arrears of pay. The Claimant was employed by Ms El-Sobky as variously a virtual legal assistant, personal assistant and office manager between 26 March 2021 and 8 December 2021. The Claimant accepts that she does not have 2 years' qualifying service to bring a claim for unfair dismissal. The unfair dismissal claim falls to be dismissed for lack of jurisdiction.

2. The Respondent's application for an extension of time to enter a response was refused for the reasons given. The hearing proceeded as a final hearing to determine the claims. Unfortunately, there was insufficient time to deliver judgment and go on to determine any remedy. At the end of the hearing case management orders were made for preparation for a possible remedy hearing.

3. As a consequence of failing to enter a Response in time the Respondent was only entitled to take part in the hearing to the extent permitted by the Employment Judge. Ms El-Sobky was allowed to put questions to witnesses and make submissions. Unfortunately, despite it having been clearly explained to Ms El-Sobky that as her Response had not been accepted she was not automatically entitled to be served with the document bundle and statements, she continued to berate the Claimant for failing to provide her with copies of those in advance of the hearing. Ms El-Sobky was forwarded copies of the disputed invoice and copies of the witness statements and WhatsApp exchange and give an opportunity to read those over an adjournment.

The issues

Preliminary issue - jurisdiction

4. Ms El-Sobky disputed that the Claimant was an employee. She disputed there was any obligation to do any work. However, she conceded that the Claimant was a worker when she carried out any work and that the Claimant was required personally to do any work once she accepted a task.

5. I am satisfied that Ms El-Sobky was right to make those concessions and that the Claimant was a worker when she carried out work for Ms El-Sobky and that she falls within section 83(2) of the Equality Act 2010. The Tribunal therefore has jurisdiction to hear the claims under the Equality Act 2010 (EqA) and s13 of the Employment Rights Act 1996.

6. The Claimant also made reference in her claim to outstanding loan repayments on a loan that she had made to Ms El-Sobky, it was accepted that this is outside the Tribunal's jurisdiction and the Claimant is taking steps to recover the outstanding loan in the county court.

Wages claim

7. The amount claimed as an unlawful deduction from wages (s13 ERA 1996) is the sum of £497.71 for the period 1 November to 7 December 2021.

Disability discrimination

8. The Claimant describes herself as suffering from fibromyalgia (chronic pain), OTSD, depression, and anxiety.

9. The disability discrimination claim is in respect of:

    1. ***Failure to make reasonable adjustments (ss 19 &20 EqA)***
    Insisting the Claimant be available to work at weekends and not just Monday to Friday [ET1 para39]; the reasonable adjustment sought was at least 2 consecutive days off per week to allow the Claimant to rest and recuperate.

    2. Unfavourable treatment as a consequence of something arising from disability (s 15 EqA)
    Telling the Claimant that if she was unable to work 7 days a week the role as personal assistant would be given to someone else.

    3. Harassment/direct discrimination (ss 26/13 Eq Act)
    Making disparaging remarks about the Claimant's mental health between September and December 2021, including comments sent on a work WhatsApp group chat on 8 December 2021 [ET1 paras 40, 41 and 42].

Evidence

10. I heard evidence from the Claimant, Chloe Narcis and Normah Nor Hishammuddin both of whom also worked for Ms El-Sobky and from the Claimant's father Mr C Howell. Ms El-Sobky was allowed to ask questions of each of the witnesses.

11. The Claimant had provided a bundle of evidence including copies of invoices and print outs of WhatsApp messages.

Unpaid wages claim

Findings of fact

12. The Claimant worked for Ms El-Sobky, who is a barrister. At the time the Claimant worked for Ms El-Sobky she operated a legal practice called A Group Legal together with Mr Evans a solicitor, which Ms El-Sobky described as her Chambers, subsequently the practices' name was

changed to Crown Legal.

13. I am satisfied on the evidence before me that on each occasion on which the Claimant carried out work for Ms El-Sobky she did so under a contract personally to do the work and that the contract was with Ms El-Sobky personally and not with Ms El-Sobky's legal practice or Chambers.

14. The agreed hourly rate for work carried out was £19.50 per hour unless the work was required to be done within 24 hours or less of having been assigned, in which case the agreement was that the hourly rate was doubled to £39.00.

15. On 7 December 2021 the Claimant sent an invoice to Ms El-Sobky for the work she had completed on Ms El-Sobky's behalf between 1 November and 7 December 2021. The Claimant recorded the work done for Ms El-Sobky and the time taken on the time recording program, Clockify, which generated an invoice from the details inputted by the Claimant. The invoice identifies 7 hours 40 minutes and 48 seconds as having been billed at double time, specifying the work carried out at that rate.

16. Ms El-Sobky accused the Claimant of having made up the invoice. I accept the Claimant's evidence that she had carried out work at Ms El-Sobky's request, she had sent the results of that work to Ms El-Sobky by email and that the invoice was a true record of her work. The invoice provided that the amount set out was due for payment on 10 December 2021, it remains unpaid.

Conclusion – unlawful deduction from wages claim

17. I am satisfied that the Claimant has suffered an unlawful deduction from her wages contrary to s 13 of the Employment Rights Act 1996. I find that the outstanding amount owed for the work carried out by the Claimant between 1 November 2021 and 7 December 2021 is £497.71.

Disability discrimination

18. Ms Norris and Ms Nor Hishammuddin both gave evidence about their experiences of working for Ms El-Sobky and her working practices. The Claimant's parents also provided witness statements setting out examples of occasions when the Claimant was required to carry out work for Ms El-Sobky at short notice and outside normal working hours. Their evidence was consistent with that of the Claimant. I found the Claimant to be an honest witness and I accept her evidence.

Findings of fact

19. The Claimant has fibromyalgia (chronic pain), OTSD, depression, and anxiety. The conditions are long term and had lasted 12 months by the time the Claimant started working for Ms El-Sobky. I am satisfied that those conditions had a substantial adverse effect on the Claimant's ability to carry out normal day to day activities and would frequently leave her feeling

exhausted and needing to recuperate after exertion, stress or any sustained activities.

Knowledge of disability

20. I find that the Claimant made Ms El-Sobky aware of her PTSD, depression and anxiety in March 2021 before starting to work for her and told Ms El-Sobky about her fibromyalgia in June 2021 and August 2021 when she explained why she was asking not to have to work at weekends.

Discrimination

21. The Claimant started working for Ms El-Sobky on 26 March 2021 as a virtual legal assistant (VLA), this involved responding to Ms El-Sobky's invitations, sent on a WhatsApp group, to undertake specific tasks on an ad hoc basis. The role had no fixed hours and there was no obligation to provide or to accept work. On 18 April 2021 the Claimant was promoted to Head of Admin and then became Ms El-Sobky's personal assistant with an increase in pay to £19.50 per hour. As Ms El-Sobky's personal assistant the Claimant was expected to be available at the drop of a hat and to complete tasks in specific timeframes when given; the work was allocated via a separate WhatsApp group and not the VLA WhatsApp group, the Claimant was expected to complete the work herself and not pass it on or allocate it to a VLA and could not choose the tasks to complete.

22. After becoming Ms El-Sobky's personal assistant the Claimant tried to inform Ms El-Sobky that she was not available to do a particular task, she received a message asking her if she was up to the job and threatening to 'demote' her to being a regular VLA again. The Claimant was told that if she was unable to work 7 days per week then her role would be given to someone else. The Claimant explained to Ms El-Sobky that she suffered from fibromyalgia (chronic pain) and was undergoing further investigations at hospital but was not given any leeway to allow her to work Monday to Friday and have the weekend free to recuperate.

23. I find that the Claimant was told by Ms El-Sobky that if she was not able to work 7 days a week then Ms El Sobky would find someone to replace her as her personal assistant.

24. In August 2021 Ms El-Sobky promoted Ms Nor Hishammuddin to be a personal assistant, adding her to the Core Team WhatsApp group. Ms Nor Hishammuddin was told that she was being appointed because the Claimant was overloaded with tasks and needed assistance but found that in fact Ms El-Sobky would regularly change which of them she used as her main point of contact, swapping between them at whim up until Ms Nor Hishammuddin resigned in November 2021.

25. Ms El Sobky expected both the Claimant and Ms Nor Hishammuddin to be available at all times and would frequently contact them outside working hours, including at the weekend, with the expectation that they would provide a response or giving them tight deadlines for the particular task.

26. Ms El-Sobky substantially reduced the Claimant's hours from November 2021.

Harassment

27. The Claimant was told by a colleague that Ms El-Sobky had made critical remarks about her work in the summer of 2021 when the Claimant had raised concerns about some of Ms El-Sobky's actions, however there was no evidence before me that those remarks were related to the Claimant's disabilities or made any reference to them.

28. Ms Norris gave evidence that unkind things had been said about the Claimant by Ms El-Sobky but the only comment she could recall which was related to her disability was in the WhatsApp messages on 8 December 2021. This was shortly after the Claimant had stopped working for Ms El-Sobky and was no longer a member of the group.

29. The Claimant ceased working for Ms El-Sobky on 7 December 2021 following a dispute about Ms El-Sobky's failure to repay the loan from the Claimant.

30. A printout of the WhatsApp group chat was in evidence before me, the relevant passages are at page 5 of the printout. Ms El-Sobky accepted that she sent the following WhatsApp messages on 8 December 2021

> "she is a very sick young lady", sent at 2:38:54 pm, and
> "best place for her I think is a mental asylum. no access to internet or wifi and restraints lol", sent at 2:39: 29 pm.

Ms El-Sobky accepted that the comments were about the Claimant and that they were offensive. She told the Claimant and the Tribunal that she was upset at the time she sent them.

Relevant law

Relevant Law
Time Limits & Continuing Acts

31. By *s123 Equality Act 2010,* complaints of discrimination in relation to employment may not be brought after the end of

1.1. the period of three months starting with the date of the act to which the complaint relates or

1.2. such other period as the Employment Tribunal thinks just and equitable.

32. By *s123(3) EqA* conduct extending over a period is treated to be done at the end of the period. Failure to do something is to be treated as occurring

when the person in question decided on it.

33. In *Commissioner of Police of the Metropolis v Hendricks [*2003] ICR 530, the Court of Appeal held that, in cases involving numerous allegations of discriminatory acts or omissions, it is not necessary for an applicant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken' in order to establish a continuing act. The Claimant must show that the incidents are linked to each other, and that they are evidence of a 'continuing discriminatory state of affairs'. This will constitute 'an act extending over a period'. The question is whether there is "an act extending over a period," as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed'.' Paragraph [52] of the judgment.

Section 15 - Discrimination arising from disability

34. The correct approach to determining a claim under s.15 was summarised by Simler J in *Pnaiser v NHS England [2016] IRLR 170* at 31. In essence, the Tribunal must decide:

(1) Whether there was unfavourable treatment.

(2) What the reason for that unfavourable treatment was. The focus is on the mind of the employer at this point. If there is more than one reason, it will be sufficient to establish causation that something has a "*significant influence*". In deciding this, the employer's *motives* are not relevant.

(3) Whether that reason was "*something arising in consequence of disability*". This is a looser test compared to "*caused by*", as emphasised by Simler J in *Sheikholeslami v Edinburgh University* [2018] IRLR 1090 at 66.

(4) Whether the reason for the treatment was the "*something arising*" is an objective test and does not depend on the thought process of the employer. Nor is it necessary for the employer to know that the "*something arising*" arises in consequence of the disability, *see City of York v Grosset [2018] ICR 1492* at 38-41.

(5) It does not necessarily matter which order the Tribunal answers these questions in, but they all need to be addressed.

35. The Tribunal must address two separate questions of causation: (i) did the "*something*" arise from C's disability, and (ii) was that "something" the reason for C's unfavourable treatment. See *Basildon v Thurrock NHS Trust v Weerasinghe [2016] ICR 305 a*t 26. The burden is on the Claimant to show the "*something arising*", since it is a fact necessary for the Tribunal to conclude that there has been a contravention of the Equality Act 2010.

Objective justification

36. The proportionality test is essentially a balancing exercise. It was

summarised in the context of indirect discrimination, by reference to the leading EU case of *Bilka-Kaufhaus GmbH v Weber von Hartz* [1986] IRLR 317, by Mummery LJ in *R. (Elias) v Secretary of State for Defence* [2006] 1 WLR 3213 at [151]:

"… the objective of the measure in question must correspond to a real need and the means used must be appropriate with a view to achieving the objective and be necessary to that end. So it is necessary to weigh the need against the seriousness of the detriment to the disadvantaged group."

37. Sedley LJ in *Allonby v Accrington and Rossendale College [2001] ICR 1189* at 29 described the exercise as follows:

"… at the minimum a critical evaluation of whether the college's reasons demonstrated a real need to dismiss the applicant; if there was such a need, consideration of the seriousness of the disparate impact of the dismissal on women including the applicant; and an evaluation of whether the former were sufficient to outweigh the latter."

38. The Supreme Court confirmed in *Homer v Chief Constable West Yorkshire Police [2012] ICR 704 at [22]* that "to be proportionate, a measure has to be both an appropriate means of achieving the legitimate aim and (reasonably) necessary in order to do so."

39. Pill LJ in *Hardy & Hansons Plc v Lax* [2005] ICR 1565 at [32]:

"It must be objectively justifiable (*Barry v Midland Bank plc* [1999] ICR 859) and I accept that the word "necessary" used in *Bilka-Kaufaus* [1987] ICR 110 is to be qualified by the word "reasonably". That qualification does not, however, permit the margin of discretion or range of reasonable responses for which the appellants contend. The presence of the word "reasonably" reflects the presence and applicability of the principle of proportionality. The employer does not have to demonstrate that no other proposal is possible. The employer has to show that the proposal, in this case for a full-time appointment, is justified objectively notwithstanding its discriminatory effect. The principle of proportionality requires the tribunal to take into account the reasonable needs of the business. But it has to make its own judgment, upon a fair and detailed analysis of the working practices and business considerations involved, as to whether the proposal is reasonably necessary."

40. In *Hensman v Ministry of Defence [2014] UKEAT/0067/14/DM,* Singh J referred to the above passage and stressed at [44] that in applying this approach the Tribunal, "*must have regard to the business needs of the employer*."

41. In considering whether there are alternative non-discriminatory means of achieving the legitimate aim, the legitimate aim itself must be the focus; a non-discriminatory alternative will not defeat a defence of justification if it defeats the legitimate aim, see *Chief Constable West Midlands v Blackburn* [2009] IRLR 135 at [25]-[26].

Sections 20-21 - Failure to make reasonable adjustments

42. The correct approach for the Tribunal in determining a reasonable adjustments claim is set out in *Environment Agency v Rowan [2008] ICR 218* at 27 (the reference to sections are to sections of the Disability Discrimination Act 1995 "DDA"):

> "In our opinion an employment tribunal considering a claim that an employer has discriminated against an employee pursuant to section 3A(2) of the Act by failing to comply with the section 4A duty must identify: (a) the provision, criterion or practice applied by or on behalf of an employer, or (b) the physical feature of premises occupied by the employer, (c) the identity of non-disabled comparators (where appropriate) and (d) the nature and extent of the substantial disadvantage suffered by the Claimant. … Unless the employment tribunal has identified the four matters we have set out above it cannot go on to judge if any proposed adjustment is reasonable. It is simply unable to say what adjustments were reasonable to prevent the provision, criterion or practice, or feature, placing the disabled person concerned at a substantial disadvantage."

43. The focus of the Tribunal is on practical outcomes, this was confirmed by Langstaff P in *Royal Bank of Scotland v Ashton* [2011] ICR 632 at 24:

> "… so far as reasonable adjustment is concerned, the focus of the tribunal is, and both advocates before us agree, an objective one. The focus is upon the practical result of the measures which can be taken. It is not – and it is an error – for the focus to be upon the process of reasoning by which a possible adjustment was considered. As the cases indicate, and as a careful reading of the statute would show, it is irrelevant to consider the employer's thought processes or other processes leading to the making or failure to make a reasonable adjustment. It is an adjustment which objectively is reasonable, not one for the making of which, or the failure to make which, the employer had (or did not have) good reason."

Substantial disadvantage

44. The substantial disadvantage applies in respect of the disabled person compared to persons who are not disabled. The EAT has made clear that "*the function of the provision, criterion or practice within section 20(3) is to identify what it is about the employer's operation which causes disadvantage to the employee with the disability*" (see *General Dynamics Information Technology Ltd v Carranza* [2015] ICR 169 at 39). As observed by the EAT in *Sheikholeslami v Edinburgh University* [2018] IRLR 1090 at [48]:

> *"*The purpose of the comparison exercise with people who are not disabled is to test whether the PCP has the effect of producing the relevant disadvantage as between those who are and those who are not disabled, and whether what causes the disadvantage is the PCP."

45. In assessing substantial disadvantage, the Tribunal needs to identify what it is about the particular disability that gives rise to specific substantial

disadvantage. As observed by the EAT in *Chief Constable West Midlands Police v Gardner* [2011] UKEAT/0174/11/DA at 53:

"There may be many cases in which it is obvious what the nature of the substantial disadvantage is, and why someone with the disability in question would inevitably suffer it. … But there are also cases, of which this is one, in which in our view simply to identify a disability as being a general condition – such as "a knee condition" – does not enable any party, and more particularly a court of review, to identify the process of reasoning which leads from that to the identification of a substantial disadvantage, and an adjustment which it is reasonable to have to make to avoid that disadvantage. The conclusion remains unexplained by any description of what it is that the Claimant can and cannot do in consequence of his disability, and there is therefore no information as to the nature of any step or steps which might be taken in order to prevent that particular disadvantage. The words of *Rowan* are clear and correct. They may however insufficiently emphasise the need to show, or to understand, what it is about a disability that gives rise to the substantial disadvantage, and therefore what it is that requires to be remedied by adjustment. Without knowing that, no assessment of what is, or is not, reasonable by way of adjustment can properly be made."

Reasonableness of adjustments

46. In *Smith v Churchill Stairlifts Plc [2006] ICR 524, CA* the Court of Appeal confirmed that the test of reasonableness is an objective one. Paragraphs *6.28 of the EHRC Code of Practice on Employment* sets out some of the factors (previously set out in the DDA) which may be taken into account when assessing what is a reasonable step for an employer to have to take.

s.26 Harassment related to disability

47. In *Richmond Pharmacology v Dhaliwal* [2009] ICR 724, [2009] IRLR 336 EAT, Underhill P (as he then was) presiding, stated that the approach that the Tribunal ought to take in determining a claim of harassment should be broadly the same, regardless of the particular form of discrimination in issue and that, in each context, 'harassment' is defined in a way that focuses on three elements: (a) unwanted conduct; (b) having the purpose or effect of either: (i) violating the Claimant's dignity; or (ii) creating an adverse environment for him/her; (c) on the prohibited grounds. (Confirmed by Underhill LJ in the Court of Appeal in *Pemberton v Inwood* [2018] ICR 1291 at 88 see below).

48. In each case, there is a proviso that means that, even if the conduct has had the proscribed effect, it must also be reasonable that it did so. There is a subjective element '… having regard to … *the perception of that other person* …' ultimately the proviso can deal with cases of unreasonable proneness to take offence. Although 'purpose' is not determinative, it can be a factor: 'the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt' (*Dhaliwal* at 15). Ultimately, this is all 'quintessentially a matter for the

factual assessment of the tribunal'.

Related to

49. Whether conduct is related to a protected characteristic is a question to be judged by the Tribunal by reference to all of the evidence, not simply the perception of a Claimant; the knowledge or perception of the Claimant's protected characteristic by the person making the comment is also relevant (see *Hartley v FCO Services* [2016] UKEAT/0033/15/LA at 23-25).

50. With regard to the conduct of the particular individual or individuals in question, the employment tribunal has to apply an objective test in determining whether it was 'related to' the protected characteristic in issue; the intention of the actors concerned might form part of the relevant circumstances but will not be determinative of the question the tribunal has to answer.

Section 13 – direct discrimination

51. In order to establish a claim based on direct disability discrimination under EqA 2010, s 13, a Claimant must show:

    (a) treatment that is less favourable than that which has or would have been accorded to others without the Claimant's disability;
    (b) that such treatment has been accorded to the Claimant because of his or her disability; and
    (c) that the comparison is such that the relevant circumstances in the one case are the same (or not materially different) than in the other (EqA 2010, s 23).

52. The correct approach to establish causation for unlawful discrimination is to ask whether the protected characteristic was the effective and predominant cause, ie to ask 'why' the disabled person was treated as he or she was. This test is set out in *Nagarajan v London Regional Transport [1999] IRLR 572 (HL); Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, [2001] IRLR 830 and Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11, [2003] IRLR 285,* all of which were confirmed in *Amnesty International v Ahmed [2009] ICR 1450.*

Post termination discrimination

53. Section 108 of the Equality act 2010 makes it unlawful, in respect of former workers to subject an individual to discrimination or harassment 'where the discrimination arises out of and is closely connected to' the relationship that has ended.

Harassment or detriment

54. Section 212 (1) of the Equality Act 2010 provides that "detriment" does not include conduct which amounts to harassment. This interpretation provision prevents double recovery for conduct which would otherwise

amount to a detriment, for example as a result of direct discrimination, where the same conduct is found to amount to harassment.

Conclusions

Issue 1 - Failure to make reasonable adjustments (ss 19 &20 EqA)
Insisting the Claimant be available to work at weekends and not just Monday to Friday [ET1 para39]; the reasonable adjustment sought was at least 2 consecutive days off per week to allow the Claimant to rest and recuperate.

56. I have found that the Claimant was required to be available and to carry out work for Ms El-Sobky seven days a week, including outside working hours and at the weekend. I am satisfied that the Claimant asked not to be given work at the weekend and explained that she needed this time to recuperate as a result of her disability but that Ms El-Sobky continued to require her to carry out work at weekends.

57. I am satisfied that it would have been reasonable for Ms El Sobky to have adjusted the Claimant's workload so as to allow her two clear days break from work. I find that there was a failure to make a reasonable adjustment in this respect contrary to section 21 of the Equality Act 2010.

Issue 2 - Unfavourable treatment as a consequence of something arising from disability (s 15 EqA)
Telling the Claimant that if she was unable to work 7 days a week the role as personal assistant would be given to someone else.

58. I have found that the Claimant was told by Ms El-Sobky that if she was unable to work 7 days a week the role as personal assistant would be given to someone else.

59. I am satisfied that the reason that the Claimant was unable to work 7 days a week was as a result of something arising in consequence of her disability; the effects of the Claimant's fibromyalgia meant that she needed to have two clear days a week to recuperate.

60. I am satisfied that the remark amounts to unfavorable treatment and left the Claimant feeling anxious that her role would be taken away from her. No legitimate aim was put forward before me. Whilst it might be a legitimate aim to have the work completed at a time of Ms El-Sobky's choosing, I find that it would have been reasonable for Ms El-Sobky to have given any work which it was necessary to complete at the weekend to someone else, I do not find it proportionate to threaten the Claimant with her role as personal assistant being taken away from her altogether.

61. The claim under section 15 succeeds.

Issue 3 - Harassment/direct discrimination (ss 26/13 Eq Act)
Making disparaging remarks about the Claimant's mental health between September and December 2021, including comments sent on a work WhatsApp group chat on 8 December 2021 [ET1 paras 40, 41 and 42].

62. The only evidence before me of any remarks related to the Claimant's disabilities are the comments in the WhatsApp texts on 8 December 2021, which the Claimant believes were a reference to her mental health.

63. I am satisfied that the comments made by Ms El-Sobky in the WhatsApp group on 8 December 2021 were related to the Claimant's mental health. The Claimant was told about the comments by her former colleague shortly after they were made and the contents of the WhatsApp chat was shared with her. I am also satisfied that she found the comments to be offensive and that it was reasonable for her to do so.

64. Although the comments were made after the Claimant had resigned I find that they were made in a work WhatsApp group, to the Claimant's former colleagues and that they arose out of and were closely connected to her former working relationship.

65. I find that the Claimant was harassed by Ms El-Sobky contrary to section 26 of the Equality Act 2010

Direct discrimination section 13

66. As a result of s 212(1) of the Equality Act 2010, having found the comments to be harassment under s 26, I do not go on to make a finding as to whether the same comments could also amount to direct discrimination under s 13.

Remedy

67. A remedy hearing is to be listed and the parties will be notified of the date in a separate letter accompanying this judgment.

68. Case management orders for a possible remedy hearing were made at the hearing. Those orders have been sent to the parties separately.

Employment Judge C Lewis

2 February 2023