THE EMPLOYMENT TRIBUNALS

Claimant: **Mr J Corbett**

Respondent: **Applus RTD UK Limited**

Heard at: **Teesside Justice Centre** **On: 23rd, 26th,27th, 28th, February; 14th, 15th May**
Deliberations; 22nd; 23rd May

Before: **Employment Judge Pitt**

Members: **Mr S Hunter**
Ms E Wiles

Representation:

Claimant: **Mr Legard of Counsel**
Respondent: **Mr Miller, Solicitor**

JUDGMENT

1. The claimant was not unfairly dismissed
2. The claimant was not unfairly dismissed for making a protected disclosure
3. The claimant did not suffer discrimination arising from a disability
4. The respondent did not fail to make reasonable adjustments
5. The claimant did not suffer detriments as a result of making protected disclosures
6. The claimant was not subjected to victimisation because of a protected act.
7. The claimant was not wrongfully dismissed

REASONS

1 The claimant, date of birth 12th May 1949 who was 66 at the effective date of termination.He was employed by the respondent or its predecessors form 12th May 2007 until his resignation on 19th June 2016. He had 9 years continuous employment. He was a Non-Destructive Technician latterly employed by the respondent as site

supervisor on Lynemouth Power Station Site. He brings claims for detriments arising from whistleblowing, unfair dismissal, including automatically unfair dismissal. Wrongful dismissal, and disability discrimination.

2 The Tribunal read witness statement and heard evidence from the claimant, Patrick Harrington, a Trade union Representative; Leslie Abrahams, Base Manager for the respondent between January 2010 – March 2011; David Buxton, Non Destructive Technician for respondent; Stuart Gilfillan, Operations Manager for the respondent; Neil Hannah, managing Director; Leonard Collins, Director of Health, Safety and Equality at the respondent; Evelyn Grogan, Head of HR at the respondent. The parties provided the Tribunal with bundles of documents which included numerous emails, notes of a grievance hearing and an appeal hearing. In addition, it included the claimant's medical records and an occupational health report dated 4th May 2017.

3 <u>The Issues</u>

The issues were agreed between the parties as follows:

<u>1) Whistleblowing</u>

a) Have any of the claimant detriments claims been presented out of time? If so was it reasonably practicable for the claimant to present his whistleblowing claims to the Tribunal within the 3 month time limit

b) If not, and in the alternative, did the claimant present his complaints within in such further period as was reasonable

c) If not did the act(s) form part of a series of similar acts or failures, the last of which was in time

2) Detriments

a) Did the claimant makes a protected and qualifying disclosure within the meaning of section 43A-43C Employment Rights Act 1996?

b) The claimant provided a full schedule of alleged disclosures at pages 127 – of the bundle

c) If the claimant did make the disclosures was the subjected to detriments as listed on the above mentioned schedule but in particular

i. Being told by Terry Farman: " if you value your job and all the people from Teesside Base you would keep your mouth shut
ii. The respondent's failure to take any action to address the specific health and safety/accreditation concerns raised by the claimant
iii. The respondent's failure to provide any support to the claimant despite his allegations of bullying and harassment at the hands of Peter Milburn
iv. In January 2016 being informed by Stuart Gilfillian that Lynemouth would be operating under a new regime; that the operation would be run differently and that the claimant was not viable
v. Despite raising the concerns set out at paragraph 9 of the ET1, receiving no support from S Gillfillian whatsoever. SG's standard response was to put the phone down, saying he was too busy but 'would get back to him'. He never did.
vi. Failing to take any action despite the claimant raising regarding working practices and the effect upon his health and safety.
vii. On or around 21stJuly 2016 setting the claimant up to fail a UKAS accreditation inspection by failing to act upon his repeated concerns and giving him insufficient

time within which to prepare causing him to suffer a breakdown and long term sickness absence

viii. Failing and or refusing to arrange a timely occupational health intervention

ix. Following a return to work meeting in January 2017 requiring the claimant to return to a desk based role in the Hartlepool office

x. Failing to undertake any or any adequate investigation into his grievance; failing to address his concerns through the internal grievance process and dismissing both his grievance and appeal thereto.

xi. Neil Hannanh's refusal to meet with the claimant in or around June 2017

3 If the respondent has subjected the claimant to any alleged detriments above did it do so on the grounds that the claimant made a protected disclosure

4 If the claimant was subject to a detriment on the ground of having made a protected disclosure on or after 25th June 2013, and if it is determined that the claimant made the disclosure in bad faith should compensation be reduced to reflect that

2. Automatically Unfair Dismissal

1. Was the claimant dismissed
2. If so, was the reason or principle reason for the dismissal the fact that the claimant made a protected disclosure
3. If so was the claimant's dismissal automatically unfair

3.Constructive Dismissal

1. Has the respondent by the matters complained about committed an actual or anticipatory breach of contract and, if so, was such breach/es fundamental
2. Did the claimant leave in response to the breach/es of contract?
3. Did the claimant leave in response to an accumulation of events which viewed cumulatively amount to a breach of the implied term of trust and confidence (the last straw)?
4. Has the claimant affirmed the contract?

4. Wrongful Dismissal

Has the respondent wrongfully dismissed the claimant?

5.Disability Discrimination

1. Time limits
   i. Have any of the claimant's allegations of discrimination been presented out of time
   ii. If so, do any of the claimant's allegations amount to a continuing act
   iii. If any allegation is out of time, is it just and equitable to extend time?

2. Disability

Was the claimant a disabled person within section 6 Equality Act 2010 at the relevant time?

3. Reasonable Adjustments

i. Did a provision, criterion or practice of the respondent put the claimant at a substantial disadvantage in relation to a relevant matter in comparison to someone not disabled? The claimant relies on the following provision, criterion or practice

i. The requirement that the claimant undertake the role of Site Supervisor
ii. The requirement that the claimant work over 10 hour per day
iii. The requirement that the claimant undertake a raft of specific of specific duties as identified in paragraph 10 ET1
iv. The application of the respondent grievance procedure

ii. Did the respondent fail to take such steps as it was reasonable to have to take to avoid the disadvantage? Those adjustments are at paragraph 21 of the ET 1.

4. Discrimination Arising

i. Do the matters within paragraphs 10 – 16 of the ET1 amount to unfavourable treatment?
ii. If so was such treatment because of something arising in consequence of the claimant's disability
iii. Id so can the respondent show that such treatment was a proportionate means of achieving a legitimate aim
iv. Did the respondent know or could it reasonably have been reasonably expected to know that the claimant was a disabled person?

Victimisation

1. Did the claimant's grievance dated 8th February amount to a protected act for the purposes of section 27 Equality Act 2010?

2. Was the claimant subjected by the respondent to the alleged treatment set out in paragraph 16 of the ET, and if so was. it detrimental and was it because he had done the above alleged protected act.

Facts

4 The respondent is a public company with annual revenues of £1.5 billion. It carries out non-destructive testing in various sectors of industry including power generation and aerospace alongside gas and oil. It employs approximately 450 employees; the respondent also uses subcontractors. The claimant was seconded by the respondent to a site at Allerton Steel in Northallerton in 2007. During his period there the claimant raised a number of concerns to various members of the team and made a number of disclosures. These are set out on pages 127 through to 133 and dealing with those that relate to Allerton Steel these are numbers 1, 2, 3 and 4 as follows:

4.1.2 Late September/October 2007 the claimant asked questions relating to weld numbers and weld information for weld identification, report writing and traceability. He raised the matter with a Mr Stokoe who was the Stockton based manager.

4.1.3 In or around 7 January 2008 Mr Kevin Jeff, the quality control manager at Allerton Steel, advised the claimant he did not need to fill inspection report section for welds he was inspecting the wells at Allerton. The claimant says this practice

breached the principles of UCAS accreditation held by the respondent; and placed the health and safety of the public at risk. He raised this matter to Mr Hipkiss.

4.1.4 In mid-2010 the claimant raised concerns about Allerton's practice of conducting and certifying quality inspection tests which were not certified by an inspector, in breach of UCAS accreditation requirements. In particular in relation a Mr Stuart was completing reports indicating where corrective work was not completed placing the health and safety of the public at risk this was reported to Mr Abrahams the Stockton base manager.

4.1.5 In March to April 2010 an agreement was reached at a meeting between the respondent and Allerton Steel regarding the method to be adopted for inspection reports. The claimant challenged the proposed method on the basis that it would not be traceable and therefore would fall foul of UCAS accreditation requirements, namely traceability and accountability to ensure the health and safety of the public. This was made to Terry Farmin, the regional south manager. Mr Abrahams was also present.

4.1.6 The claimant, again, raised concerns in August 2014 regarding inspection and quality reporting at Allerton Steel and continued to be undertaken in breach of UKAS accreditation requirements. Specifically, Mr Corbett advised Stuart Gilfillen that he would not sign another inspector's report or confirm that work had been done in line with requirements if the work had not been completed as this would be a serious breach of the UCAS principles on health and safety. he raised further issues regarding to health and safety training which he had been raising since February 2012.

4.1.7 In relation to those matters the Tribunal are satisfied that the claimant raised these issues periodically with the respondent throughout his time at Allerton Steel. However, he has not been at Allerton Steel since some time in 2015.

4.2 Whilst at Allerton Steel the claimant put together a document work instructions and work recording for Applus RTD technicians when working at Allerton Steel. the document appears to have been signed by Mr Corbett on 7 November 2014. Following completion of the document Mr Corbett contacted Mr Gilfillen by e-mail on 1 December with regard to welds that appeared to have been not recorded. Mr Gilfillen replied the following day referring to new procedures. The e-mail reads: "The first thing that strikes me from your e-mail is that going by our new procedure then there is no records of these welds having had NDT inspection carried out. In the pictures there are signs that would suggest NDT work was carried out, but nothing recorded in the log book nor markings to signify status. In this alone I do not consider this to be rework but initial NDT. If, however, there are initialled signed reports for this well I would be interested in getting a copy along with those ones you will prepare to compare". Mr Corbett replied the following day: "Hi Stuart, I was expecting a bit better response from the company than this. The way I see this is that we are giving the go ahead to anyone who does not want to do their job properly. If that was my attempt at UT and MPI I wouldn't want to put my name to it either. I am trying to protect the company's integrity but with this sort of negative response I don't know why I bother. It is for this very reason that I oppose to countersigning other technicians' reports. The procedure that you speak of has not been approved or issued to the technicians I feel that I have done all that I can to improve this at Allerton with little support. If we are to continue employing cowboys my only suggestion is, we get rid of the vans and buy

some horses". This email indicative of the claimant's manner when addressing any issue with his employer .There seems to have been no other contact between the two gentlemen in relation to that issue.

4.8 The next significant event is on 14 December 2015 the claimant was subject to a staff appraisal which reads: "In summary a good solid year from John" and goes on "John highlighted procedural problems with inspections at Allerton Steel affecting quality which were brought to a satisfactory conclusion". It was an extremely positive appraisal with the claimant apparently signing it on 14 December 2015. The claimant does not accept that he signed this document. However, this Tribunal are not experts in handwriting and the evidence we have from Mr Gilfillen is that they did it by handwriting, he then input the data to a proforma which was then signed off. However, in whatever guise it appears the claimant has not challenged it before today.

5 The main events of which the claimant complains are following the respondent obtaining a contract at Lynemouth Steel. The work usually carried out by the respondent for that power station dealt with outages at the power station. The power station at that time was coal powered and had three boilers. The boilers would be shut down one at a time in respect of repairs and upgraded as necessary. The claimant had substantial experience on the site. During 2015 the owners of Lynemouth power station decided they were going to convert from a coal powered power station to a biomass station which involved shutting down all three boilers at the same time. (The capital expenditure) There was the usual planned outage at Lynemouth power station prior to the capital expenditure. The Tribunal understand the was a planned outage for three months from March to September 2016 and then the capital expenditure from coal to biomass.

5.1 It is clear from everybody's evidence that part of the reason that the respondent won the contract at Lynemouth power station was because of the experience the claimant had working on the site. The Lynemouth power station is in South Northumberland, the claimant lives in Teesside. Whenever he worked at that site he travelled on a daily basis. He was able to not only claim his mileage but also the hours that he worked for travelling.

5.2 The claimant was formally appointed site manager in January 2016. He was offered an assistant and Chris Hipkiss was appointed to assist him. The Tribunal is satisfied there were a number of meetings to discuss the outage contract in order to prepare for it. The claimant complains that prior to the contractors coming onsite he raised concerns as to the facilities. It is the Tribunal's understanding that it was the client, i.e. Lynemouth power station, responsibility to ensure that the workers were provided with appropriate onsite facilities. This would include access to lavatories, sanitary facilities, water, telephones and the like. It seems that these were not provided and indeed when the contractors came onsite in early February/March there were still some issues around them. The claimant in his evidence made a specific complaint that the issues were so extreme a number of people were absent from work due to unhygienic cabins leading to chest infections. The respondent has no such record of any such medical conditions being reported to them. Indeed, neither the claimant nor his wife who worked on site contracted such a condition and could not point to any one person to whom this applies. The claimant says that not only did he raise the issues with the facilities but also with the hazardous chemicals' storage unit and personal protection

equipment. He complains that Mr Gilfillen would put the phone down advising that these issues would have to wait because he had overspent on his margin. The Tribunal do not accept that this was reaction from Mr Gilfillen. In particular the personal protection equipment was of significance because without it employees would not be able to work. In particular Mr Gilfillen tells us that he sent a number of overalls to the site. It may be that they ran out, the Tribunal is satisfied that the claimant never requested a hazardous chemical storage unit. We are told by a number of witnesses that there was such a unit on the site. It was old and dated and however when Mr Hipkiss, the claimant's junior, raised it and asked for a new one it was replaced immediately. Further during the UKAS inspection referred to below there is no reference to being missing or inadequate.

5.3 As to the issue of the facilities onsite, again these were not necessarily within the respondent's area of responsibility rather that of their client. The Tribunal is satisfied that the respondent brought pressure to bear in order for these issues to be resolved. One particular complaint of the claimant is that of lack of internet access. He says that he was not able to work to carry out his duties because of this. The respondent responded by providing dongles for internet access to be granted. However, the signal, it appears, was blocked by the cabin the employees were working in. this was a matter which took time to resolve.

5.4 The claimant in his schedule at paragraph 5 makes the following specific suggestions of disclosures: PPE had not been ordered prior to the job commencing in January 2016. When it arrived, the sizes were incorrect had no kneepad slots and Mr Gilfillen said there would be an overspend, this would be a further health and safety risk due to the ill-fitting PPE. The Tribunal notes work onsite did not commence until late February/early March.

5.4.2 The second complaint was that the claimant asked for a storage unit to hold hazardous and harmful chemicals., as noted above. The Tribunal is not satisfied that that was asked for.

5.4.3 The third issue he highlighted was health and safety risks to employees as a result HR Department sending contractors to site without certification or client verification. The Tribunal can find no evidence to support that other than the claimant's assertions. He raised issues of overcrowded accommodation, inadequate toilet facilities and provision of ill-fitting PPE and excessive working hours. Whilst the Tribunal accept that these matters were raised they were dealt with. In relation to the excessive working hours the Tribunal is satisfied that Mr Hananh made an offer to all contractors and employees onsite for them to be housed nearer the site in accommodation paid for. The Tribunal formed the view that the claimant did not want to do this and perhaps misunderstood that he was included in the offer but that one of his motivations was that he wanted to claim the extra hours for travelling and also his mileage, so he was motivated by finances in that regard.

5.5 The claimant alleges that during this period he was offered no support from the senior management team. The Tribunal formed the view that this was a completely different outage to those the claimant was used to. The claimant was used to small scale outages that lasted for a number of weeks, this was an outage followed by the capital expenditure that would last for several months and was on a much larger scale.

The respondent offered and gave to the claimant the assistance of Chris Hipkiss to support him. Part of the claimant's claim is that previously he had been overseen by a base manager who would deal with such issues as the contractors' village, ordering of PPE and the like. This gentleman had left working for the respondent in the December and the claimant suggests that all of the work carried out by him was then relayed onto his shoulders. Mr Gilfillen says that previously Mr Corbett had singlehandedly managed the outages at Lynemouth as they would be for a few weeks at a time. That seems to us to be correct and that this was a much larger scale operation. To an extent the claimant would require extra support. We are satisfied however that as a result of the pre-outages meetings with the claimant and Chris Hipkiss an action plan was agreed although it does seem at times the claimant was unable to carry out the actions referred to him.

5.6.1.The claimant makes a specific claim that the respondent should have been aware of his failing health because he had a dramatic weight loss. This of itself is not necessarily an indication of ill health as people lose weight for a number of reasons including doing it for their own health rather than ill health. The Tribunal is not satisfied that the claimant during this period was making the respondent via Mr Gilfillen aware that he had specific problems. Further, the claimant alleges that he was working excessive hours, in particular beyond the 48 hour limit for the Working Time Regulations. The respondent's case is that the gate receipts from the plant show the claimant was working about 10 hours a day over a five day week, not 12 to 13 hours per day. In particular they say that the claimant has accepted during his grievance that he had opted out of the Working Time Regulations.

5.6.2 It was also during this period that the claimant alleges that Mr Gilfillen amended his timesheets. The procedure for payment was as follows: all members of staff, whether they be contractors or employees, were required to fill in a timesheet. Timesheets were signed off by the claimant. They would then be sent to the Teesside office. On receipt, Debbie Bartlett who was a project coordinator would input the information onto the computer system. These would then be e-mailed to Mr Gilfillen for authorisation. He would reject a timesheet if he thought that there were issues with it. Mr Gilfillen is clear that he thought he would have spoken to the claimant if there had been an issue. However, it is also clear that during this time he changed the claimant's travelling time to a standard rate rather than the rate the claimant was used to. He did this without consultation with the claimant which is clearly not best practice. However, the claimant did raise it with him and the sums were reinstated.

5.7.1 On 23rd March Mr Hannah visited the site; he had meetings with the client and wished to walk around the site to ensure that the facilities were adequate. The Tribunal accept his evidence that he spent some time alone with the claimant. In his witness statement Mr Hannah states', the claimant impressed me with his experience' and at no time did the claimant raise any issues about his relations with Mr Gilfillan, although he did raise the issue of the site facilities. Mr Hannah agreed with the claimant that the facilities were inadequate, he liaised with the client who agreed to improve them. The next time he visited the site in July the accommodation had been provided.

5.7.2 During this visit it was raised with Mr Hannah about the employees and workers travelling time to and from site. The claimant accepts he was present was this was

raised. Mr Hannah agreed that accommodation would provide close to site. The claimant's case is that he was excluded from that offer. The Tribunal do not accept this; it is clear to the Tribunal that the claimant did not wish to stay near to the site but preferred to travel on a daily basis, this may be because he travelled with his wife or because it was more lucrative, whichever the Tribunal concluded that he was offered accommodation but did not take it up.

5.8.1 In July an issue arose in relation to apparent inspections not being undertaken. Obviously, this has huge implications for the respondent; the person responsible was identified and removed from site. The Tribunal accept that the claimant again spoke to Mr Hannah when he arrived on site on 12th July 2016 and again he raised no concerns. As a result of these failures the respondent had to carry out retests.

5.8.2 Further Mr Hannah felt it appropriate to invite United Kingdom Accreditation Service (UKAS) to carry out an inspection. The claimant was notified of this about a week prior to the inspection and on 12th July he was given a checklist of areas that UKAS would inspect. This included items such as; an organigram and job descriptions through to the presence of a flame proof cabinet for consumables. The claimant clearly raised an issue because in an email dated 15th July he was sent an ornigram and later the job descriptions to be signed by the employees or workers. It is clear that prior to the inspection the claimant was given advice and assistance from Alan Hipkiss, the claimant's complaint is that he was given insufficient time to prepare and that this was the first time he had effectively been in charge whilst such an inspection was carried out. There is nothing in any of the emails which suggest that the claimant was unhappy about the inspection or felt he could not cope with. The inspection was carried out on 22nd July, the executive summary comments

> 'Minor issues were found during the assessment and resolved
> Quickly. The staff should be commended for the professional conduct.'

5.8.3 In his evidence the claimant relies on the respondent as failing this assessment to support his assertions of health and safety failings. This is not supported by the evidence of the report.

5.9 There was a further incident of a contractor not completing an inspection report. It appears that the contractor involved was the claimant's step son. He was immediately withdrawn from site. The issue came to light just before the claimant was scheduled Tribunal take a holiday. It appeared to the tribunal that the respondent's employees believe this is the reason for the claimant not returning to site following his holiday .

5.10.1 The claimant was due to take planned holiday; in his witness statement he relates how he witness statement extremely unwell suffering physical symptoms. His wife insisted he sought medical advice. During this period the claimant asserts that he did not receive support from the respondent including no attempts to arrange for a home visit.

5.10.2 On 27th July the claimant's wife contacted the respondent via email. In this email she refers to the immense pressure the claimant has been under. She goes on that the claimant has been advised Tribunal to remain away from ANY work commitments until his next GP appointment and to have 'complete time to unload'. The Tribunal is satisfied that Ms Grogan, in accordance with her usual practice attempted to contact the claimant

on 1st August, leaving a message on the claimant's company voicemail. In total she telephoned and left messages on the mobile and the claimant's landline on 4 occasions between 1st Aug. and 24th August

5.10.3 it is clear Ms Grogan and the claimant spoke on 24th; at that time Ms Grogan wrote to the claimant and advised she wished to arrange a sickness meeting. She indicated that the meeting would be with Stuart Gilfillan on 1st September at the claimant's home address. The claimant declined this meeting for two reasons; first he was not ready to meet with anyone form the company and secondly when he was ready as he did not wish to speak to Mr Gilfillan. Ms Grogan replies on 2nd September and indicates she would be happy to meet with the claimant at a mutually agreed place and time. She concludes' we would like to offer support but also have guidance on whether you are likely to retune to work and look at Tribunal ways we can assist with this.

5.10.4 The respondent has a formal sickness absence policy covering reporting of sicknesses and the process managers should undertake, and the policy for sick pay. In Particular The policy reads 'If you are absent on sick leave you should expect to be contacted from time to time by your line manager of the HR department in order to discuss your wellbeing, expected length of continued absence ….such contact is intended to provide reassurance and will be kept to a reasonable minimum. In addition, the policy has requirements for medical examinations and return to work interviews. Under the heading 'Returning to work from a long term absence' it is noted that the respondent will support the employee in his return by obtaining medical advice, making reasonable adjustments to the workplace. The policy makes it clear that an employee must take all reasonable steps Tribunal attend a meeting and that failure may be considered to be misconduct. It goes on to relate the various stages of meetings.

5.10.5 Ms Grogan notes in her witness statement that she was keen to meet with the claimant in order to understand the reason for the absence. The claimant did not reply so Ms Grogan sent a further email on 19th September. In this email it was suggested that an Occupational Health appointment be arranged. The claimant replied on 22nd Sept declining to meet. This email arrived when Ms Grogan was on annual leave and therefore she did not respond until 10th Oct when she asks the claimant to inform her when he will be fit to meet.

5.10.6 The claimant did not response and his sick note expired on 19th Oct prompting another email from Ms Grogan; in this she explained that the sick note had expired and that the claimant's enhanced sickness ay would expire on 21st Oct.

5.10.7 It is on 27th Oct that the claimant first indicates a willingness to meet with Ms Grogan. She replies asking him to give her a call to arrange a suitable time. The claimant did not respond; Ms Grogan sent a further email on 11th Nov 'I would like to arrange a meeting with you to discuss your current health prospects for returning to employment. The claimant responds on 16th Nov indicating he has had a sickness bug and wishes to have his schedule OHT appointment before meeting with her. Ms Grogan replies and requests that the claimant contact her after the meeting on 23ed. On 25th Nov Ms Grogan sends an email to the claimant asking how the appointment had gone and asking when he will be available to meet. The claimant responded the same day indicating that he is now in a position to meet, he wishes to do that before 7th Dec when he is due to see his OHT again.

5.10.8 At meeting is arranged for a public house on 30th November; .There is a brief note of the meeting on 30th Nov the claimant appears to raise issues with Mr Gillfillan first. The claimant states that Mr Gilfillan isn't to blame for everything and is agreeable to mediation. Ms Grogan then turns to the lack of contact the claimant advises he is looking to return to work in January. Ms Grogan suggests an Occupational Health report before his return, the claimant agrees. The Tribunal is satisfied that at this time that he was looking for a phased return and a phased retirement. The Tribunal is also satisfied that Ms Grogan advised him there would be a return to work interview to ensure his duties are suitable.

5.10.9 Following the meeting the claimant sent to the respondent a sick note to cover the period 21st December to 18th January. It is clear that although Ms Grogan intended to progress an occupational health report this did not happen. Ms Grogan responds on 4th January and the claimant replies on 8th January; he is raising a concern as to his Occupational Health report as nothing has happened; in addition, he says; 'I have not received anything from Applus [Occupational Health] hence why another Fitness for Cert work submitted which concerns me as I am not getting paid by the company. Ms Grogan is clear that regardless of Occupational Health the claimant cannot attend work if his doctor says he is unfit. The claimant is of the view, understandably that he cannot return without the Occupational Health report and is clearly frustrated by the respondent's delay. Ms Grogan arranges for the Occupational Health appointment. It is unclear on the sequence of events as there is a lack of documentary evidence, however the Tribunal is satisfied that on one occasion the claimant declined to attend an Occupational Health meeting because of issues with parking, he also declined to engage with ' Fit for Work'. The only document is a letter of 25th January where there is mention of the claimant speaking to HR on 18th January indicating his return to work on 23rd JanauryThese were prior to the arrangements of the return to work interview with Mr Gilfillen

5.10.10 There is a letter in the bundle from the Alliance Psychological Services who write to say that Mr Corbett was referred by this GP that the therapist had been working with him from 28 September on a fortnightly basis. He has completed two episodes of counselling and will start on 16 December of 2017 as of November 2017 it is noted that John has stated that he feels he able to function to a degree and just wants to move on in his life although he is unable to do so at present as there is no closure from the work related stress and the psychologist says it is a general anxiety disorder. The claimant was seen by an occupational health doctor on behalf of the respondents on 4 May 2017 during the course of that clinical assessment the GP notes by December 2016 he was feeling much better and more like himself prior to going off work looking back now he felt quite stressed for a number of weeks and describes stresses at work ever since the new contract with Lynemouth was signed in November/December 2015. The period up to July 2016 was very stressful and the gradual increase in stress symptoms eventually over whelming him. He became upset one day at the office and the wife persuaded him to take a holiday. It became quite clear he was ?depression anxiety symptoms and he was signed off. In relation to adjustments the doctor reports there are no adjustments either he or nor I can think of at the current time which would enable him to return to work he is not fit enough at the current time and his mental health would have to better in my view. It is not impossible once he is feeling better that adjustments could be considered but because he cannot foresee when or if that could be not possible to consider a reasonable adjustment for a return work at the current time. The doctors

asked whether he is likely to be covered under the equality act to which the doctor replies his condition has gone on probably from March 2016 to May 2017. 'The condition described effecting his memory concentration forgetful has difficulty dealing the paperwork and writing e-mails. His motivation has meant that he has not been able to go on holiday to their campervan or drive very far even short distances. In my view it would depend if these would be regarded as significant effects as to whether the courts would apply the act, but it has certainly been long term and he feels the effect on his life has been significant, so the court may well apply.' He was asked 'Is the grievance effecting his health?' 'The issues around the grievance were causing him a lot of stress prior to going off sick and presumably ultimately resulted in preparing and making the grievance itself. He also found the grievance process very stressful. It would be hard to separate the grievance process itself from the stress about the previous issues in terms of the overall effect on his current health now and he asked what actions other than resolution of the grievance can we take. At the current time neither he nor I feel there are any actions the company could take to facilitate a return to work, if his mental health improves sufficiently that needs to be considered further and I would recommend a further occupation health assessment. That one feature which I noted in the grievance letter which was sent to me as part of this pack were that there were feelings reasonable adjustments should have been made before now especially at the end of last year. It may be that if there was a return to work in the future was contemplated then some or all of these would be considered again, but I cannot foresee this, and returning to the workplace would have to be something he considers the right thing to do and we would then assist in all possible ways within the occupational health team to provide a recommended support plan.'

5.10.11 It was the Tribunal's understanding that the respondent had accepted the claimant was disabled by reason of depression and anxiety from July 2016. The claimant makes clear in his witness statement at paragraph 31 that having advised it reads – I was advised by my GP not to communicated with the respondent for a few weeks due to this being the source of my anxiety – as a result of that we have seen the e-mail from Mrs Corbett advising, it reads – John's doctor has ordered him to remain away from ANY work commitments until he is seen again in two weeks' time he has to have complete time to unload. All I ask is that John gets this time to reflect and unburden extreme pressures placed upon him I do not want to lose John to a heart attack or another break down for work. I just ask you will support him without judgment regardless of the pandemonium his absence may cause.

5.11 Having sent that e-mail the claimant says that paragraph 31 of his witness statement following the initial period of no contact the respondent failed to supply me with the necessary support whilst at work and during my absence no attempt was made to attend my home so that I could have a face to face meeting with someone I trusted and knew from the company. Just a few attempts at calling a number which was not in use and a few e-mails. I had never previously suffered from mental illness so absence due to this would have been unheard of. I e-mailed Evelyn on 31 August advising I did not wish to meet with Stuart he continues in paragraph 32 – I eventually met with Evelyn Grogan on 30 November 2016. I met Ms Grogan in her witness statement says that she did try and contact the claimant via a telephone which was his company telephone she said that she called approximately 4 times between 1 and 24 August always leaving a message and she phoned both a mobile number and a landline. She goes on to say that she spoke to the claimant on 24 August she explained who she was and why she

was calling and if their assistance we could offer. She goes on the claimant indicated the claimant visit his GP and receiving a further fit note. I indicated I would be keen to meet him and follow this up with my letter of 26 August 2016. The opening lines of that letter read – Following our conversation of 24 August this is in complete contradiction to the claimant's assertion that he never had any contact with the company until 30 November. Clearly, he had spoken to them on that occasion during that letter Ms Grogan says the company has a duty of care towards all its employees and takes this obligation very seriously and will provide support and work with him to help. She goes on to say that she would like to arrange a sickness absence meeting which is line with the company policy. She proposes a date and time and that it would be with Mr Gilfillen at the claimant's home address. Mr Corbett immediately responded to that letter on 31 October saying that he did not want to meet that he has to decline your offer of an appointment at this moment in time. I am not ready to meet anyone from the company however, if and when I am my home is not appropriate and I do not think Mr Gilfillan is the right person. I am receiving support from my GP, have appointments with the CBT counsellor, support from my family and friends. I thank you for this offer but must decline at this moment.

5.12 This clearly shows that in paragraph 31 and 32 the claimant was not setting out the reality of the situation. Indeed, Ms Grogan replied on 2 October thanking him for his e-mail she fully understands and would offer a meeting at a mutually appropriate place. We would like to offer support but also guidance on whether you are likely to return to work and look at any other ways we can assist, please let me know which is more suitable then we can make arrangements.

5.12.1 She follows that up on 19 September that saying: Hi John, I wanted to touch base to see how you are keeping, if you are feeling any better. I wondered if you would be considering a suitable time for us to meet or for me to arrange an OH appointment so that we can assist with your recovery.

5.12.2 The claimant replied on 22 September: I wanted to wait until I had seen the doctor which was yesterday who advised some more time away from work. He goes on I have had an occupational work therapy assessment appointment recently. My doctors' advice is to attend a few more OT appointments with my counsellor before making any decisions. He concludes – thank you for your offer of help as you can understand I would like to deal with matters at this moment in time until able to respond to you request for an appointment regarding work.

5.12.3 Ms Grogan replies on 10 October indicating that she was happy to arrange a meeting when he was well enough to meet with her. She follows this up on 24 October indicating to the claimant that his fitness to work note had expired on 19 October and that he would require another fit note to cover the period up to 24 October or if he intended to return to work, it was also to let him know that his sick pay had expired.

5.12.4 Mr Corbett replies on 27 October – please find attached a fitness for work certificate I will come back to you regarding meeting you to discuss matters and arrange a mutual place and time. Ms Grogan seems to be satisfied with that. She sends another e-mail on 11 November – following my previous e-mail I would like to now arrange a meeting to discuss your current health and prospects for returning to work. Can you please let know a suitable date in the coming weeks when we can arrange

this? I have tried to call both numbers I have for you but I have been unable to reach you. If you can send a suitable contact number I can call to confirm.

5.12.5 He replies on 16 November saying that he will find somewhere for them to meet. On 18 November Ms Grogan says: Please contact me to confirm the time and the location. However, it is not until 26 November that the claimant suggests a local public house to meet and to do that on 30 November.

5.12.5 It is clear therefore that during this period Ms Grogan tried on a regular basis to keep in contact with the claimant. She did not invoke the company sickness absence policy which did seem a little strange, however she has taken the soft approach to the claimant's health bearing in mind it is a mental health issue rather than a physical issue. There are some very brief minutes from that meeting issues were discussed surrounding Mr Gilfillan – present were Mr Corbett, Ms Grogan and Ms Leitch with an HE Rep. Ms Grogan raised concern over the lack of contact and required on an update. Mr Corbett advised that he was attending at Alliance for counselling he does not want to the leave the company this way, looking to return in the new year. Ms Grogan suggests mediation to solve and issues.

5.12.6 At that time Mr Corbett says that Mr Gilfillan isn't to blame for everything and does not want any issues, but they discuss issues with technicians and other matters. Suggest occupational health review prior to returning and was happy to do that and sign a consent form that he didn't although the notes show that a phased return was discussed a phased retirement would be his plan, that is what the notes say. Ms Grogan advises on his return to work. Full return to work interview conducted to ensure duties are suitable in reference to phased return plans Mr Corbett does not agree that this was said. He advised he would want a short phase into retirement, again he does not agree that that was said. The Tribunal are satisfied that an occupational health review was to be undertaken and advise that they also happy that the claimant at this time was talking about retirement and what he was looking for was a phased retirement. It seems that an occupational health appointment was not made between that date and the 4 January. On 8 January the claimant e-mailed Ms Grogan to say that he had not received anything to do with the occupational health report which is why he had submitted another fitness for work certificate. That concerned him as he was not getting paid by the company although as far as the Tribunal understand he was receiving his statutory sick pay. Ms Grogan replied regardless of an OH appointment if your doctor is stating that you are unfit to work I am afraid there is nothing I can do regarding you not being paid

5.7.1 The next significant event is 23 January when Mr Corbett returned to work. There is a direct conflict of evidence between Mr Corbett and Mr Gilfillan as to what occurred on that date. Mr Corbett says that he was aware, although it is unclear how he became aware, that Mr Hipkiss who was his junior on site was telling everybody that he was not returning to site. the claimant went to meet with Mr Gilfillan; in his witness statement, the evidence about this meeting is a little confusing. He says:" upon attending the meeting 'my information was confirmed accurate with Stuart advising that I return to a desk job and not the Lynemouth site," and he said that he became anxious and upset. He asked Stuart if they were trying to remove me by settlement and that he felt Stuart was trying to push him out. He goes on "Stuart stated that I am not going to return to work he would not need his laptop or his phone."

5.7.2 Mr Gilfillan's description of the meeting in his witness statement is at complete odds with that in that he says; the claimant looked calm, relaxed and confident, it appeared that all the claimant was interested in was getting some form of financial compensation from the company and he said in a quite an aggressive way he was willing to go to court to settle it if required. He seemed in complete control, there was no hyperventilating or any signs that he was nervous or anxious. Mr Gilfillan send an e-mail to Ms Grogan in which he says he carried out a return to work interview with John which was very amicable however John advised me that he was not returning to work only to negotiate an exit settlement therefore the form was not completed.

5.7.3 In relation to this Mr Gilfillan was cross examined by Counsel and asked further clarification questions by me. The conclusion the Tribunal came to was this, that Mr Gilfillan carried out the return to work interview with the claimant, at some point, reference was made to the claimant having an exit settlement; we have been unable to determine whether that was because of the suggestion from Mr Gilfillan that the claimant return to Hartlepool to work, although that does seem likely; the Tribunal concluded the events were as follows; the return to work interview was carried out with the suggestion that the claimant return to the Hartlepool office as a base that then the claimant raised the issue of not coming back to work if he wasn't going back to site.

5.7.4 What the Tribunal cannot understand is why Mr Gilfillan then insisted on the return of the claimant's computer and phone unless he believed the claimant was leaving his employment at that time further the Tribunal cannot understand why the claimant was denied permission to go back to site to speak to other members of the team.

5.8.1 Following the e-mail from Mr Gilfillan, Ms Grogan who up until this point seems to have had an excellent relationship with the claimant sent him a letter which in part reads:- 'During the meeting you acknowledged that your fitness to work statement had expired however you were getting another one from your doctor if required. I am concerned by this as your absence from work is not due to any genuine condition or illness but rather to leverage some form of exit package. If that is the case, then that may well become a subject of disciplinary action.

5.8.2 Of course it would not be unheard of for an employee to be advised that returning to work is the best thing form them but if there was a meeting at which there were restrictions place on work which was not foreseen or where items of working properties such as phones and laptops were removed this may case such stress that the employee returns to his GP to obtain further advice.

5.9.1 This sets in chain a chain of events in relation to the claimant and his employers. On 3 February Mr Corbett sets out in a lengthy document running to 5 pages a grievance against the company. His specific grievances at paragraph 5 of the letter are a failure of a statutory duty pursuant to the Health and Safety at Work Act;, a relevant failure under section 2 of the Health and Safety at Work Act; a relevant failure of section 21 and section 35 of the Equality Act, a failure to adequately manage sickness absence or to have reasonable steps to accommodate, facilitate or rehabilitate my return to work, a multiple breach of the implied terms of trust and confidence, discrimination arising in consequence of disability and a failure to pay overtime for hours worked.

5.9.2 He does not, during that letter expand upon what his grievances are, he then goes on to deal with the letter which Ms Grogan sent to him. An e-mail is then sent on 9 January expanding upon the grievance – this document runs to some 18 pages and according to Mr Corbett was written on his behalf by an employment advisor. On the first page he lists various issues in relation to the implied terms of mutual trust and confidence, he rehearses at paragraph 8 the earlier grievances he refers to constructive knowledge of disabilities he refers to proper assessment of disabilities and reasonable adjustments which should have been made; with reference to the meeting with Stuart Gilfillan, he says, 'Stuart was under the impression he was there to complete forms and formulate a plan for my return to work which he said was to have in the office one or two days per week. As stated above I do not believe Stuart was best placed to articulate the root cause of my stressors.' He goes on, 'I felt Stuart was acting in a calculating manager serious undermine (if not destroy) the implied term of mutual trust and confidence.' He then relates at some whistle blowing grievances but that relates to overtime and not any other health and safety issues.

5.9.3 Leonard Collins acknowledges receipt of the document and invites the claimant to a meeting on 1 March at 11am that specifically says that the purposes of the meeting 'is allow you to explain your grievance and discuss with us how it can be resolved.' The claimant responds by sending another e-mail, 'I am asking you to observe the implied term of mutual trust and confidence and not act in a manner which is calculated to fundamentally destroy any trust and confidence. The avoidance of doubts my position the employer is acting in a calculated manner by omitting to communicate with me and furthermore providing information I have requested on 19 February.

5.10 On 23 February Ms Grogan e-mails the claimant again offering support and a reiterating her request for an occupational health appointment. The claimant objects to the way the respondents have dealt with him in particular that reasonable adjustments were not suggested at the meeting. Mr Collins replies that by suggesting the grievance is dealt with by way of questions. The claimant agrees to this.

5.11 On 10th April the claimant submitted a request for early conciliation with ACAS in relation to all of his claims save that of constructive dismissal.

5.12.1 On 24 April Mr Collins responded to the claimant's grievance at which he says he had broken to four main sections and individually dealt with them. There is no need to rehearse them here, the outcome was the grievance was not upheld. He was advised that there would be an availability to appeal within 5 working days of that letter.

5.12.2 On 2 May Mrs Corbett e-mailed Mr Hannah the managing director. She advises that 'John's disability is affected by work related stress and is suffering a great deal. When endeavoured to get the appeal reasons to you by Friday as Mr Collins stated that this was the deadline. I am sure you will agree that if John is unable to properly address the appeal by this date because of disability an extension will be granted. Mr Hannah replied the following afternoon that whilst she was trying to help he can't discuss confidential matter with her without the consent of the employee. Mr Corbett responds with a letter of authority for Mrs Corbett; Mr Hannah replies 'to be clear the normal requirement for appeal should be logged within 5 days but have extended this to 10 days I trust that this will be enough. ' As a result of which a letter dated 4 May the claimant sets out his grounds of appeal.

5.12.3 Mr Hannah replies in an e-mail which reads: 'I am glad you felt sufficiently recovered to write in such a short space of time', he an appeal hearing on 15 May at the Teesside office The appeal hearing was held on 15 May, although, as a result of the claimant 's representations not at one of the respondents offices but at a neutral venue in Newcastle. Mr Corbett was accompanied by a trade union representative, the respondents having refused him to have a family member, presumably Ms Shoron. this of itself seems unsympathetic as Mrs Shoron had been at the very least a worker for the company. The criticism made of this meeting is that Mr Hannah seemed to be in a rush to get somewhere else that at the claimants view at time, which is still maintained, is the grievance had not dealt with the issue he had raised. In his grievance letter the appeal was on the basis that the procedure was unreasonable, biased and flawed and that the outcome was biased and flawed.

5.12.4 The claimant says, 'Neil, [Mr Hannah], advised he wished only to discuss the appeals listed by me with his trade union rep wished to have a wider discussions due to the failings of the grievance to deal with the many issues raised.' the claimant complains that Mr Hannah was uninterested in what he had to say and was impatient and anxious to be away.

5.12.5 Mr Hannah's view was that he was not rehearing the original grievance but instead be going through the grounds of appeal making sure he had a full opportunity of bringing new evidence and information to the attention. the meeting concluded at 2.30pm by which time Mr Hannah had formed the view that there was a lot of repetition going. Mr Hannah sent his grievance appeal decision on 22 May in which referred to the grievances discussed and suggested 'John, [the claimant] had been confrontational and abusive'. the claimant's view is this grievance letter does not cover of 106 points raised in the grievance the Tribunal disagree, it is a comprehensive response.

5.13 The claimant requested a copy of his contract; he was only ever sent a scanned copy of this document; he produced evidence that the document was modified in 2016. he claims that the signature is a forgery. This Tribunal is not an expert in handwriting and heard no further evidence from the expert. We accept the respondent's evidence that the date referred is the date the contract was scanned onto an electronic system and the original destroyed. We do not accept that the signature is forged. This is a serious allegation which would require cogent proof.

5.14 Whilst the grievance was ongoing it came to light that the claimant had failed to submit a sick note when one expired on 13th April. An Occupational Health report was received on 10th May which indicated that whist the grievance was ongoing the claimant was unlikely to return to work and that at that time there was little that could be done to assist in his return to work.

5.15 On 1st June the claimant, amongst other employees, was sent a letter regarding clocking discrepancies. No disciplinary action was proposed but there was request for £2828.51 to be repaid.

5.16 On 8th June the claimant emailed Mr Hannah to request that they meet to discuss his health and safety concerns. Mr AHnnadh replied on 9th June and declined that is was inappropriate.

5.17 On 9th June the claimant presented his first ET 1; this included all his complaints save for constructive dismissal.

5.18 By letter dated 9th June Ms Grogan requested the claimant attend a Formal Stage 1 sickness absence meeting on 20th June at his home address. The letter was delivered and signed for in 13th June the claimant resigned on 19th June

5.19 On 9th August the claimant presented his second ET1 to include an allegation of constructive dismissal

The Law

6.1 Under section 47B Employment Rights Act 1996 a worker has the right not to be subjected to any detriment by any act or deliberate failure to act by his employer done on the ground the worker has made a protected disclosure. The Tribunal therefore must ask itself did the claimant disclose information as set out in his schedules at the dates and times and to whom the persons he says. Did he have a reasonable belief at the time that what he was saying was true and did he have a reasonable belief that what he was saying was in the public interest?

6.2 If the Tribunal are so satisfied it must then go on to look at whether the claimant was subjected to a detriment under section 47B of the Act. A detriment is widely defined but may include a person being ostracised, demotion, suspension, disciplinary matters. That of course is not the end of the matter because a Tribunal then must be satisfied that the worker was not subjected to that detriment by his employer claiming the worker made that protected disclosure.

6.3 Turning to disability discriminations, reasonable adjustments under section 20 of the Equality Act 2010 in relation to this the Act requires that where a provision, criterion or practice of the employer puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled the employer shall take such steps as it is reasonable to have to avoid the disadvantage. This requires the Tribunal to identify the PCP which put the claimant at the disadvantage to consider whether it is substantial in comparison to a person who is not disabled. The Tribunal then must consider did the respondent fail to take such steps as was reasonable in order to avoid that disadvantage and in this particular case there was a question as to whether or not the respondent knew or should have known that the claimant was a disabled person at the time and was placed at a disadvantage he alleges.

6.4 Section 15, disability arising from discrimination, with regards to this an employer discriminates against a disabled person if it treats him unfavourably because of something arising in consequence of a disability and cannot show the treatment is for proportionate means of achieving a legitimate aim.

6.5 Constructive dismissal, section 94 of the Employment Rights Act 1996 gives an employee the right not to be unfairly dismissed. Section 95 of the same Act defines dismissal as, appropriate to these circumstances, circumstances where the employee

terminates the contract under which he is employed in circumstances in which he was entitled to terminate without notice by reason of the employer's conduct.

With regards to that the following cases are relevant:-

Western Excavating v Sharp [1978] ICR 121 – there must be a repudiatory breach which is a fundamental breach of the contract on the employer's part. This must have caused the employee to resign and the employee did not delay in doing so.

Mamood v BCI [1997] IRLR 407 – the test is expanded to this point. The test is without reasonable or proper cause, the employer conducted himself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence.

Omilaju v Waltham Forest London Borough Council [2005] ICR 481 – confirms the position that there may be a number of other breaches which lead to a culmination in what are called last straw cases. The last straw however need not be blameworthy of itself although usually it is and it must contribute to the breakdown in the relationship.

6.5.1 If it is concluded that the claimant was entitled to resign the Tribunal would then have to go on to consider fairness under the general principles in section 98 although the respondent has not forwarded any reason which would fall within section 98(2) such as capability or conduct or redundancy or the like.

6.6 Section 48 of the Employment Rights Act 1996 deals with complaints to Employment Tribunals in relation to public interest disclosures and that time limits apply and that the Tribunal shall not consider a complaint unless it is presented before the end of a period of three months beginning with the failure to act or where it is a part of a series of similar acts, the last of them the Tribunal may extend the period within such further period as the Tribunal considers reasonable in a case where it is satisfied it was not reasonably practicable for the complaint to be presented before the end of the period of three months.

Submissions

7 Both Mr Miller and Mr Legard provided the Tribunal with written submissions which they then expanded upon. It is not proposed to rehearse them here.

Discussions and conclusions

8.1 The Tribunal noted that throughout his evidence the claimant was at pains to show the respondent in the worst of possible lights and frequently exaggerated or understated certain facts. For example, when discussing the events following his sickness absence the claimant's paragraph 31 reads: "Following the initial period of no contact the respondent failed to provide me with the necessary support wise at work and during my absence no attempt was made to attend home, so I could have a face to face meeting with someone I trusted. Just a few attempts at calling which was not any use and a few e-mails".

8.2 The Tribunal, as noted above, examined that particular period of history and concluded that the claimant was being obstructive and did not wish to engage with the respondent during this period. Ms Grogan contacted the claimant on more than one occasion in order to assess his ongoing health issues. At every turn she was obstructed by the claimant. The claimant only started to engage with his employer when he believed he was his financial position was in jeopardy; this refers to his email regarding his pay being cut because the r has not undertaken the Occupational Health assessments is an example of the claimant exaggerating. In addition, in relation to This led the Tribunal to question some of the claimant's other evidence.

Public Interest Disclosure

9.1 Turning to the public interest disclosures and particularly those which are alleged to have occurred at Allerton Steel. Those are numbers 1, 2, 3 and 4 at pages 127-130 of the bundle.

9.2 Mr Legard argues that whilst the detriments from this period may be out of time that the claimant can still rely upon the disclosures which ultimately led to detriments which started in 2016; the basis upon which the claimant's whole case is put is that he was considered, by the respondent to be an old school pedant and that his previous disclosures would have informed the respondent's view of him. To that end the Tribunal was able to say that those detriments predating those arising in 2016 are disregarded for the purposes of this Tribunal; the Tribunal concluded that if they were to be relied upon there is insufficient nexus, in terms of time, to the later detriments in order for them to form a series of events; they are out of time. No reason has been advanced as to why any of those detriments could not have been presented to the Tribunal within the period of three months of them occurring. In relation to the list of issues this is numbers 5.1; 5.2; 5.3; The same applies up to and including the claimant being denied training in 2014 and there is a clear cut off point in the detriments alleged on page 130.

9.3.1 Turning to the matters which the claimant alleges in relation to the Lynemouth site. At paragraph 24 of his witness statement the claimant complains that there was the incorrect PPE was ordered and that overalls that were ordered were of the wrong size. He says that this was done in January 2016 and prior to the job commencing. The Tribunal do not accept that this was when it happened as the evidence from other witnesses is that although the claimant was on site with Mr Hipkiss there were no technicians on site until late February early March and therefore the Tribunal cannot accept that he was asking for personal protection equipment or that it was the in anyway inadequate.

9.3.2 In relation to disclosure number 6 the chemical storage unit, as noted above the Tribunal do not accept that the claimant at any time asked Mr Gilfillen for a storage unit; we are satisfied that there was a storage unit on site although it may that it was as described tired. In relation to the site inspection on in July 2016 although the respondent failed in some minor respects the lack of an appropriate secure chemical container was not one of them. As soon as one was requested, subsequent to the claimant being absent a new was provided.

9.3.3 Disclosure Number 7, the Tribunal is not satisfied that the claimant raised issues with the HR department as to the sending contractors onto site.

9.3.4 In relation to disclosure number 8 and 9 , concerns for health and safety the Tribunal concluded the claimant had a discussion with Mr Gilfillen, which in effect was a rant about the matters not being dealt. It was not a question of him calmly ringing or speaking to Mr GIlfillen or other people and raising these matters. The Tribunal concluded that the claimant railed at Mr Gilfillen in relation to what the claimant believed to the respondent's failings. In relation to these however the Tribunal is not satisfied that the claimant made complaints about excessive working hours or working excessive hours with his travel.

9.4.1 Turning to the detriments he alleged to have been suffered, the fact that Mr Gilfillen would say he was too busy to deal with the claimant and would put the phone down on him. The Tribunal is not satisfied that that of itself would not be a detriment nor the fact that Hipkiss and Anderson did not return his calls. In any event the tribunal does not accept that they occurred. Specifically, here the claimant says that he began to suffer low mood and anxiety due to the failure of the respondent. We were not satisfied that in law that could amount to a detriment.

9.4.2 The claimant says that he felt stressed, bullied and harassed by Stuart's failure to deal with his concerns regarding hazardous chemicals. He began to suffer from depression and anxiety and worried about the effect failure to properly house hazardous chemicals would have. First the Tribunal does not accept that the unit was requested but neither is the Tribunal satisfied that the claimant felt stressed and bullied and indeed we are not satisfied that at that time he began to suffer from depression and anxiety.

9.4.3 In relation to the health and safety concerns and the detriment was that he was forced to manage two roles, the Tribunal do not accept that that was the fact. The claimant was given a subordinate, Chris Hipkiss to assist. The claimant did not at any time request further assistance or make complaint that he couldn't cope. The only issue he raised was the notice he was given for the UKAS Again here is another example of exaggeration by the claimant. He was working in excess of 48 hours a week despite not signing a working time opt out. That is in direct conflict to his grievance where he says that he did. The detriment that Chris Hipkiss advising technicians he would not be returning, not sure how that would be a detriment.

9.4.4 Whilst failing to take a health and safety risk assessment to assess the claimant's health and refer him to occupation health until January 2017 may amount to a detriment; the Tribunal then have to go on to consider whether the respondent's actions were because of the previous disclosures. The Tribunal concluded that this was an administrative error, which although regrettable was not because of the disclosures prior to the claimant being absent through ill health

9.4.5 Turning to the grievance; the Tribunal considered first whether it was a qualifying disclosure for the purpose of section 47B;e claimant did not particularise what his concerns were. He simply raises them as health and safety aspects under sections 1 and 2 of the Health and Safety at Work Act. The claimant does not import information to the respondent which would be required for them to be qualifying disclosures Even

when he was asked the questions he did not provide further information. In order to be qualifying the disclosure must disclose information not simply say that there is a health and safety risk, there must be some information to it. As a result, therefore, the Tribunal do not consider that any of those matters related to a public interest disclosure.

Disability

10.1 At the commencement of the hearing Mr Millar on behalf of the respondent conceded that the claimant was disabled from July 2016 the primary fact in relation to the claims therefore is whether the respondent was aware of the disability.

Knowledge

10.2 The claimant's case is that the respondent should have known that the claimant was disabled; It is clear that the respondent was unaware of the true nature of the claimant 's ill health for some time; simply because the claimant's sick notes refer to stress or the length of time away from the workplace of itself, although may raise a concern. The Tribunal concluded that throughout his illness the claimant was obstructive in assisting the respondent in understanding the nature of his illness. Indeed, even when referred to occupational health he found reasons not to attend, the Tribunal do not consider that the respondent was aware that he was disabled or that the respondent should have been on notice of the disability until they had receipt of the occupational health report on/or about 4th May.

Reasonable Adjustments

10.3 During the hearing specifically when giving evidence the claimant abandoned his claims for failure to make adjustments claims that relate prior to his illness manifesting itself fully in July 2016.

10.3.1 The provision, criterion or practices alleged in the submissions are a requirement to undertake the role of site supervisor that placed the claimant at a material disadvantage in comparison to those not suffering from his disability.and alternatively that he would work for 10 hours a day or undertake a raft of specific duties.

10.3.1.1The Tribunal is not satisfied that the whole of the claimant's job can be a provision criterion or practice, each specific aspect of the job description should be particularised as to how it was a provision practice or criterion. Alternatively, the provision practice or criterion of the requirement to work 10 hours a day and undertake a raft of specific duties and the grievance procedure. In relation to the requirement to work 10 hours a day, on the evidence we have heard that was at his own request. We are not satisfied that he had a raft of specific duties and would require them to be specified.

10.3.2 The Tribunal do not accept that the application of a grievance procedure can amount to a failure to provide reasonable adjustments of itself. The claimant's case is the failure of the respondent to adjustment the procedure according to his needs. On the evidence the Tribunal heard the claimant invoked the procedure, knowing what the

procedure entailed he did not ask the respondent to modify it; he was offered a meeting with the respondent; it was at this time he raised the issue of not wishing to attend; the respondent duly modified the procedure. Therefore, adjustments were put in place.

10.3.3 The first point the Tribunal makes is that the adjustments refer to below were not included in the list of issues which the Tribunal were referred to at the commencnet of the hearing. The adjustments that are set out in the submissions of Mr Legard are as follows – a timely referral to occupational health, obtaining expert medical opinion on the nature of his condition, maintaining regular contact, arranging a home visit, not requiring to attend a meeting, to provide timely and effective sickness absence management, reduction of hours, reduction in working hours, reduction of duties, phased return, mediation between himself and Mr Gilfillen, supporting a workplace conflict and undertaking to respond constructively and proactively in the event of JC raising legitimate health and safety concerns. It is clear therefore that the claimant has dropped any of his failure to make adjustments claims that relate prior to his illness manifesting itself fully in July 2016.

10.3.4 The Tribunal do not accept that the respondents failed to maintain regular contact with the claimant; to arrange home visits or welfare meetings; provide timely and effective sickens management; mediation between the claimant and Mr Gilfillen was offered and refused by the claimant there was an offer to have a phased return to work with a reduction in duties.

10.3.5 In relation to the health and safety concerns, the Tribunal do not accept that the claimant raised any such issues or raised them in such a way as to alert the respondent that the claimant required support; in any event it seems to the Tribunal that this adjustment is not sufficiently particularised as to be properly considered. This also applies to the adjustment of 'supporting in workplace conflict'; the claimant was offered mediation but didn't take the respondent up on it.

10.3.6 The only adjustments which the respondent perhaps did not put in place is a referral to an occupational health department in a timely manner. The referral having been suggested in November was not undertaken until March . However, in order to succeed the Tribunal would have to be satisfied that the adjustment would prevent any disadvantage as a result of the provision criterion or practice. The claimant has not set out the disadvantage, save that it may refer to his return to work. The claimant did return to work but was not prepares to return on the basis that the respondent offered. The occupational health report may have informed this meeting, but it is clear to this Tribunal that the claimant, in light of his complaints that his job and its pressures caused his illness could not return immediately to site and would require a phased return.

<u>Discrimination Arising</u>

10.4 In relation to discrimination arising the unfavourable treatment is the failure to manage his sickness absence appropriately. The Tribunal is satisfied that the respondent did manage his absence appropriately indeed with a somewhat with a light touch; its own policy was not aggressively pursued, and the claimant was given several opportunities to et with the respondent to engage with them as to his helath.

The Tribunal is not satisfied that although the grievance is a protected act that in fact the matters which he raises were in fact as a result of it.

Victimisation

10.5.1 It is accepted that the grievance from the claimant may amount to a protected act for the purposes of the Equality Act 2010; the Tribunal therefore had to determine if the claimant was subjected to a detriment as a result of it.

10.5.2 The claimant's case as pleaded in his ET1 and the submissions from Mr Legard is as follows: ' the respondent's managing director, Neil Hannah, advised that he would listen to the claimant's concerns in a further meeting. By email dated 8th June the claimant requested a meeting with Neil Hanna to discuss the disclosure he had previously raised, further concerns he wished to make about health and safety and to discuss the detriment he suffered. Mr Hannah responded by email on the same date that he would not meet with the claimant to discuss concerns as 'other matters' which have been on hold during the claimant's grievance/appeal are now proceeding.' Of itself the Tribunal concluded that the decision of Mr Hannah did not amount to a detriment. The Tribunal in applying the Shamoon definition did not consider that a reasonable worker might take the view they had been disadvantage. further if it did the Tribunal concluded that Mr Hannah was entitled to refuse to meet as the claimant had at that time issued proceedings against the respondent for claims including the public interest disclosures.

10.5.3 Mr Legard sought to expand upon this in his submissions and went on to include further incidents in his submissions. The Tribunal concluded that these matters were no0t properly pleaded as 'detriments' and as such can properly be rejected however the t went on to look at each in turn.

10.5.4 The statements of occurrence'; it is unclear to the Tribunal how these are said to have impacted upon the grievance/appeal process such as to amount to a disadvantage, there is a bald statement they were to blacken the claimant's name. There is no evidence before us that this is what in fact happened. The mere fact they were sought does not amount to a detriment, the statements must have an impact on the claimant's grievance, we see no evidence of that.

10.5.5 Next the submissions include the appointment of a senior manager, the refusal to meet up by Mr Hannah and the manner in which the respondent has defended the case; the Tribunal do not accept any of these are 'detriment'. There is no evidence to support the assertions that these acts had any impact upon the grievance or this hearing. In particular as noted above the refusal to meet of itself does not appear to this Tribunal to be a detriment. Even if they are detriments the Tribunal concluded that they were not motivated by the claimant's protected act.

10.5.6 Mr Legard also cites the questioning by Ms Grogan of the true nature of the illness if it is an illness. This occurred prior to the protected; even if it didn't the Tribunal concluded that it was a legitimate question for Ms Grogan to ask, although perhaps it was framed in an insensitive way.

10.5.7 Finally, the timesheet discrepancies; the Tribunal do not accept that the letter itself would amount to a detriment. If the respondent had proceeded to an investigation or threatened legal action that it may be. However, the evidence we heard was that a number of other people were sent similar letters at the time. The Tribunal concluded that the respondent having received complaints from its client on this matter, investigated, as it was being asked to repay the client, this it was entitled to do. It was also entitled to request repayment from its workers and employees. The Tribunal note in particular that the claimant did not respond to this letter requesting further information and the respondent took no further action.

Constructive Dismissal

10.6.1 Turning to the issue of the termination of the claimant's contract; the Tribunal must be satisfied that the employer acted in such a way as to fundamentally undermine the contract of employment, in this case by breach the implied term of trust and confidence; that the employee resigned as a result of that breach and did not waive the breach.

10.6.2 The claimant cites the respondent's behaviour commences with the failure to manage his absence correctly. The Tribunal refer to its conclusions above regarding that. The only failing was the occupational health report; however as noted when the respondent did eventually request one the claimant was obstructive in attending. The respondent did however attempt to put in place a 'back to work' plan. Whatever happened at the meeting the Tribunal is clear that it was unlikely that the claimant would have been able to return to site and commence his full duties, indeed, having seen this claimant, what is clear is that if he had returned to site immediately he would have raised that as an issue as well. The Tribunal concluded this was not a breach of the implied term of mutual trust and confidence.

10.6.3 The management of the grievance; the initial complaint was a failure to make adjustments, as soon as this was raised the process was modified and dealt with, by agreement with the claimant, by the asking of a series of questions. Again, the claimant, challenged the location for the appeal, the respondent was amenable to it being a neutral venue. The only issue the Tribunal take with the appeal is the manner of Mr Hannah's response to the request for an extension. The Tribunal have no hesitation in saying this email was insensitive and derogatory to the claimant. Of itself however the Tribunal did not conclude that it was insufficient to breach the implied term.

10.6.4The claimant goes on to complain that Mr Hannah's refusal to meet was a further breach. The Tribunal so not agree, at the time of the refusal the claimant had issued proceedings again the respondent; the claims related to the issues raised by the claimant in his grievance. It was perfectly proper for Mr Hannah to refuse to meet in such a circumstance.
10. 7 Overall the Tribunal concluded that the respondent did not breach the implied term of trust and confidence. The Tribunal is satisfied that whilst the respondent's behaviour was not exemplary it di mot breach the implied term of trust and confidence.

10.8.1 However, if it did the Tribunal concluded that the claimant did not resign in response to any such breach. The claimant's case is that the last straw was the refusal

by Mr Hannah to meet in an email of 8th June an examination of the facts at this time does not support this. The claimant lodged his first ET1 on 8th June, it incudes the refusal by Mr Hannah to meet. On 9 June Ms Grogan sent a letter to the claimant to invite him a formal review meeting under stage 1 of the sickness absence. The date proposed is 20 June at 1.00 at his home address. There is an e-mail in the bundle on 19 June asking whether the e-mail was delivered, and we are given to understand that it was delivered and signed for on 13 June. We know that on 20 June at 16.24 an e-mail was sent from Mr Hannah a letter was sent from Ms Grogan on behalf of Mr Hannah confirming the resignation, so a resignation letter was received on 19 June. The second ET1 received on 9th August is a rehearsal of the first, save for the addition of a constructive dismissal claim. The Tribunal concluded that the claimant resigned because he was invited to a formal review of his absence, and in the manner with which he dealt with moat issues, was clearly disinclined to attend. He never responded to that email save by tendering his resignation.

Wrongful dismissal

11 For the same reasons as outlined above the Tribunal does not consider that the respondent breached the claimant's contract entitling him to resign.

12 All claims are dismissed,

EMPLOYMENT JUDGE PITT

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON
3 October 2018
JUDGMENT SENT TO THE PARTIES ON

4 October 2018

AND ENTERED IN THE REGISTER

G Palmer

FOR THE TRIBUNAL