EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105086/2016

Held in Glasgow on 31 May, 1, 2, 7,19, 20, 21, 23, 28 June 3, 4 & 5 July 2017

Employment Judge: Shona MacLean
Members: Mr P O'Hagan
Mr A Ross

Mr Alastair Logan — Claimant
In Person

BAE Systems Surface Ships Ltd — Respondent
Represented by:
Mr G Mitchell
Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claimant's claims of under Section 207F and Section 103A of the Employment Rights Act 1996 and Section 13, Section 26 and Sections 27 of the Equality Act 2010 are dismissed.

REASONS

Background

1. The claimant presented a form ET1 (the claim form) to the Tribunal on 6 October 2016. It identified his employer as being "*BAE Systems Plc – BAE Systems Maritime? Naval Ships".* It stated that the claimant had been employed from 23 March 2015 until 20 July 2016 when he was unfairly dismissed. The claimant complained of discrimination on the grounds of disability contrary to section 13, section 26 and section 27 of the Equality Act 2010 (the EqA), that he was owed notice pay, holiday pay and other payments.

2. The claim form referred to claims being based on an alleged breach by his employer of:

a. The Employment Relations Act 1999 (Blacklist) Regulations 2010 (the Blacklist Regulations).
b. The Public Interest Disclosure Act 1998 (the PIDA).
c. Section 1 of the Employment Rights Act 1996 (the ERA).
d. Section 4 of the ERA.
e. Section 103 of the ERA.
f. The Working Time Regulations 1998 (the WTR).

3. In a form ET3 (the response form) issued by the respondent on 4 November 2016 it was contended that the BAE Systems Surface Ships Limited had employed the claimant throughout his period of employment. The response form also contained a denial that the respondent had unfairly dismissed the claimant or had discriminated against him because of the protected characteristic of disability. It was denied that the respondent had subjected the claimant to harassment or that he had been victimised. The respondent also denied that during the claimant's employment it had breached any of the Blacklist Regulations, the PIDA, the ERA or the WTR. Generally, it denied that the claimant had suffered any detriment by the respondent.

4. A preliminary hearing (case management) took place on 9 December 2016 (the December PH). It was scheduled for two hours but lasted for more than five hours. It was noted that the claimant accepted that he was employed by the respondent. The claimant indicated that he was not persisting with his claims under section 1 of ERA, his claim of holiday pay and his claim that the respondent had breached the provisions of the WTR. These claims were dismissed.

5. It was agreed that during the claimant's employment he did not have a disability envisaged by section 6 of EqA. It was also agreed that the claimant's claims in respect of sections 13, 26 and 27 of EqA were based on the claimant's allegation that the respondent perceived that he had a disability as envisaged by section 6 of EqA and that having obtained such

a perception the respondent had acted towards him in a way which was based on that perception of him having a disability (perceived disability).

6. The claimant's unfair dismissal claim was founded on alleged procedural unfairness and on the real reason being a combination of any other breach of the Backlist Regulation, the PIDA and the EqA and as such was automatically unfair dismissal.

7. Tribunal orders were issued for additional information in respect of the claimant's claims of breach of the Blacklist Regulations; the PIDA; and the automatic unfair dismissal provisions of the ERA.

8. A deposit order of £500 was issued as a condition of continuing to advance the allegation that the respondent had breached the provisions of section 4 of ERA.

9. The claimant had found alternative employment and therefore his preferred remedy was compensation. Tribunal orders were issued for the claimant to provided clarification of whether "*the personal injury*" to which he referred in section 9.2 of the claim form and/or the compensation in respect of psychiatric damage on the part of the "*injury to feelings award*" or whether they were distinct heads of claim and if so on what basis such claims were made that the Tribunal could determine whether it had jurisdiction to consider such distinct heads of claim.

10. The claimant's response to the Tribunal's orders for additional information extended to 456 pages. The deposit order was not complied with and the claim under section 4 of the ERA was struck out.

11. A further preliminary hearing (case management) took place on 22 March 2017 (the March PH). The note of the March PH records that the main issues were:

    a. The respondent's case was that the claimant was dismissed because of conduct. The claimant did not have qualifying service for a standard unfair dismissal claim.

b. The claimant's case was that he was dismissed for one or more of the following inadmissible reasons and that his dismissal was therefore automatically unfair:

i. He states his dismissal related to a blacklist of trade union members and those who have taken part in trade union activities;

ii. Alternatively, or additionally he states that he was perceived to be disabled and was dismissed because of this.

iii. And/or he asserts that he was dismissed because he made a protected disclosure.

12. Following further specification provided in relation to the PIDA claim, the claimant's position was that he made accumulative disclosures beginning at a meeting on 1 December 2015 attended by James Larkin, Abby Sloan and Tanya Hennebry; and followed by emails from the claimant to Ian King and others sent on 25 April 2016 and 8 May 2016.

13. The claimant said that he may wish to use audio evidence at the Hearing. He was asked to produce transcripts of the passages upon which he sought to rely and to send those to Mr Mitchell, the respondent's representative along with the audio recordings and a note of where on those recordings the passages he wished to use occurred and a brief description of their relevance to the matters in dispute. Mr Mitchell would then indicate whether he objected to this material being used and if so the nature of his objection. If the audio evidence was objected to the matter was to be considered at the Hearing.

14. It was agreed that the Hearing would be restricted to determining liability only.

15. The respondent confirmed that it would be calling the following witnesses: Alan Nicholson (disciplinary outcome), Paul Feely (disciplinary appeal

outcome), Catherine Lawler (grievance outcome) and Sean McGovern (grievance appeal outcome).

16. The claimant was granted a witness order for Kenneth Jordon, Unite representative. The claimant said that he had not finalised his list of witnesses and that he might deviate from that set out in the December PH agenda. The claimant was invited to prepare a list of witnesses for whom he was requesting witness orders and provide a paragraph in relation to each setting out the relevance of their evidence. Before requesting witness orders, he was to liaise with Mr Mitchell as whether those witnesses remained employees of the respondent and whether they may be prepared to attend voluntarily.

17. At the beginning of the Hearing there were outstanding issues about the audio recordings and the witnesses whom the claimant wished to attend the Hearing to give evidence on his behalf.

18. The claimant had covert recordings of numerous conversations and meetings while employed by the respondent. Until these proceedings the respondent was unaware of the recordings and none had been made available to the respondent during the internal process.

19. While the claimant had offered Mr Mitchell the opportunity to listen the recordings he had declined to do so as the claimant had not complied with the directions set out at the March PH. It was unclear which recordings were relied upon and for what reasons in terms of the claimant's case. There were also IT and data protection issues that arose to prevent the recordings being played at such short notice.

20. The claimant wished the recordings to be available to the Tribunal. He had transcribed some of the recordings which had been an onerous task. The transcripts were produced in the claimant's set of productions.

21. Having regards to its overriding objective the Tribunal did not considered that it would be appropriate use of time to listen to all recordings during

the claimant's evidence. The Tribunal noted that some of the documents appeared to be a transcript of the whole meeting/incident while others contained selected extracts of the meeting/incident along with claimant's commentary. The Tribunal considered that when giving evidence the claimant could refer to the transcripts in his productions. The Tribunal noted that the respondent did not agree with the accuracy of those transcripts/extracts. Subject to that caveat the respondent had no objection to these being put to the witnesses. The Tribunal said that if on completion of all the evidence the parties agreed to the Tribunal listening to specific parts of the recordings the parties should make an application. At that stage, the Tribunal would be in a better position to assess whether it was necessary to listen to the recordings in order to determine the issues before it.

22. Before the Tribunal heard evidence, the claimant made an application for 15 witness orders. Two had already been granted in relation to himself and Mr Jordan (Unite). Mr Mitchell confirmed that four of the other witnesses were already attending to give evidence for the respondent and therefore witness orders were not required. In relation to the remaining individuals the respondent was keen that all relevant witness evidence was heard on the dates assigned for the Hearing. Mr Mitchell said that there were issues about the relevance of the additional witnesses and was concerned that the claimant was attempting to add numerous irrelevant witnesses unnecessarily, some from outwith Scotland to put the respondent to expense and disrupt its business. The Tribunal was referred to its overriding objective. If all the witnesses attended the case could not complete within the eleven days assigned.

23. The Tribunal did not grant the additional witness orders sought by the claimant. Based on the information available the Tribunal was not convinced those witnesses would be able to speak to the issues that had to be determined by the Tribunal. However, the Tribunal indicated if after

the claimant had given evidence he wished to make a further application in respect of any of those witnesses he should feel free to do so.

24. The claimant gave evidence on his own account, Kenneth Jordan, Regional Representative (Unite) gave evidence on his behalf. For the respondent, the Tribunal heard evidence from Alan Nicholson, Project Manager, Paul Feely, Engineering Director BAE Naval Ships (Maritime). Catherine Lawler HR Director, Future Programme & Services and NAI Early Careers and Sean McGovern, Managing Director, BAE Regional Aircraft Business.

25. The Tribunal found the following essential facts to have been established or agreed.

Findings in Fact

26. The respondent employed the claimant as “Senior Engineer-Maturity & Process” following an interview conducted by Kenneth Andrews and James Larkin (production R16/105). The claimant’s employment started on 23 March 2015. He was issued with terms and conditions of employment (production R16/105-112). The claimant worked in the Engineering Function.

27. The disciplinary policy applies to all employees of BAE systems wholly owned businesses in the UK (the Disciplinary Policy) (production R14/93-102). At all stages of the procedure employees have the right to be accompanied by a trade union representatives, employee representatives or work colleague. No disciplinary action is to be taken against an employee until the case has been appropriately investigated. The investigation determines whether there may be a case to answer but it will not make any recommendations or suggestions regarding the level of any disciplinary sanction.

28. Managers chairing the hearing make the final decision. HR provides support to management and employees to ensure that the procedure is

followed properly. Employees are given the opportunity to state their case and answer any allegations before a decision is reached. Employees are able to ask questions of statements provided by witnesses by advising of the questions before the hearing to ensure that answers are provided.

29. Issues of minor misconduct, misbehavior, absence or unsatisfactory performance are often dealt with informally. Examples of disciplinary offences which may lead to action being taken against employees include verbal or physical, threatening or aggressive behaviour; failure to follow a reasonable instruction from management; insubordination; and unsatisfactory conduct or behaviour. If an employee is accused of an act of gross misconduct they may be suspended from work on full pay until the alleged offence is investigated. Examples of gross misconduct include serious insubordination.

30. There is a right of appeal against disciplinary action and the appeal decision is final. It needs to be confirmed in writing to the employee normally within five working days.

31. The grievance policy applies to all employees of BAE Systems wholly owned businesses in the UK (the Grievance Policy) (production R13/85-92). The Grievance Policy provides for matters to be dealt with informally. Formal grievances need to be sent to line managers in writing using the standard form. Following appropriate investigation, a line manager or a nominated alternative manager arranges a stage 1 hearing. After the hearing the hearing manager responds to the grievance in writing. If the matter is not resolved at stage 1 there is a right of appeal to the next in line manger by using a standard form and setting out specific grounds for escalating the grievance. The next in line manager (or nominated alternative manager) then requires to arrange a stage 2 hearing. Where appropriate any further hearing may be adjourned to allow further investigation to take place. The appeal process is not a full rehearing of the grievance and will only be heard if the employee appeals and provides reasons why the stage 1 outcome has not resolved the grievance and why

they feel a different outcome should have been arrived at. After the stage 2 hearing the manager will respond to the grievance in writing using the standard pro forma. There is then a further right of a final appeal.

32. When an employee raises a grievance during a disciplinary process the disciplinary process may be suspended to deal with the grievance. Where grievance and disciplinary cases are related, it may be appropriate to deal with issues simultaneously.

33. A code of conduct also applies to all BAE Systems employees (the Code of Conduct) (production R/547). An ethics helpline is available on the internet for employees and anyone else who wishes to raise a potential issue or concern. The ethics helpline is operated by an external company specialising in operating confidential telephone reporting systems. The external company takes written details and then makes a confidential report to BAE Systems. Additionally, advice can be taken from ethics officers who are in internal employees who report to the Director of Governance. The claimant was aware of the Code of Conduct.

34. On starting employment with the respondent, the claimant participated in the formal induction process. The claimant was based in Scotstoun. He was one of a team reporting to Mr Larkin. None of the team other than Mr Andrews and Mr Larkin who met the claimant at interview had any knowledge of the claimant. The team was spread out and distributed across several banks of desks. Initially the claimant sat with the team but not next to Mr Larkin.

35. The team had a busy workload. The claimant and Mr Larkin disagreed about the claimant's work and the way it was to be completed. The claimant considered there was insufficient workload and it was causing him stress. He felt his objectives had not been discussed and that his role might come to an end.

36. Around September 2015 Donald Hevern replaced Mr Andrew as Engineering Manager. Mr Hevern had a more hands-on management style. He had not met the claimant before.

37. The claimant contacted HR as he wished to be considered for a move to the Commercial Function. The claimant openly discussed that he was looking for roles outside the Engineering Function.

38. The claimant had presented a claim to the Tribunal against his former employer, Vodafone Limited (the Vodafone Proceedings). The claimant did not tell any of his colleagues about the Vodafone Proceedings. A preliminary hearing took place on 3 September 2015 (the Vodafone PH). Unknown to his colleagues and managers the claimant attended the Vodafone PH. No one from the respondent was present at the Vodafone PH.

39. On 16 September 2015, the claimant met Lorraine Crawford, HR Manager (production C377). They discussed the claimant's interest in the Commercial Function. Ms Crawford said that the claimant had applied for and was employed in the Engineering Function. The claimant considered that he had more commercial experience than engineering experience. Mr Hevern also spoke to the claimant. Mr Hevern said that before applying for other roles the claimant needed to get a good reputation. The claimant said that sounded like a threat. The claimant recalled that "reputation" was discussed at the Vodafone PH. The claimant considered that his discussion with Mr Hevern mirrored the discussion at the Vodafone PH. He did not mention this to Mr Hevern.

40. Around October 2015 following a re-organisation office accommodation changes were made and a result the claimant was located closer to Mr Larkin.

41. Mr Larkin was finding it difficult to manage the claimant. Mr Hevern and Mr Larkin decided, on Ms Crawford's advice to hold a meeting with the claimant on 12 November 2015 (the November Meeting). The claimant

was not given notice of the November Meeting. Mr Hevern said that there was no training available in the Engineering Function before April 2016. The claimant felt stressed. He left the November Meeting and after speaking to occupational health the claimant went home.

42. A further meeting took place on 1 December 2015 (the December Meeting). Abby Sloan, HR Manager attended as Ms Crawford was going on maternity leave (R33/147; C379-380). Ms Sloan advised the claimant that the December Meeting was an informal discussion following up on the November Meeting. The claimant was assured that it was not a disciplinary or grievance meeting. The claimant was accompanied by Tanya Hennebry, Unite representative. During the December Meeting the claimant recited a list of comments that the claimant said were made by Stephen Cattanach, Mr Hevern's line manager.

43. On 3 December 2015, the claimant attended a meeting with Mr Larkin at which the claimant's performance objectives were set. This was a positive meeting.

44. The claimant was on annual leave in December 2015. Unknown to his colleagues the claimant was attending a Hearing in Vodafone Proceedings (the Vodaphone Hearing).

45. The claimant attended an interview for Project Manager (EV) on 18 December 2015. Rachel Wilson interviewed the claimant. He was unsuccessful and was provided with verbal feedback on 29 January 2016 (production R49/219). Ms Wilson suggested areas for development. She referred to the claimant appearing nervous at interview despite having a good understanding of the subjects. There was discussion about the claimant having shaky hands.

46. Around 12 January 2016 the claimant had a further PDR session with Mr Larkin.

47. On 3 March 2016 Neil Harrison and the claimant had a heated discussion in the office during which the claimant accused Mr Harrison of fabricating that the claimant had said at a business meeting that he was looking for a job and would be off (the March Incident) (production R30/138; C384). Mr Cattanach became aware of the March Incident.

48. Mr Hevern spoke to the claimant on 4 March 2016 (production R34/154; C386-387). Mr Hevern raised with the claimant that on 2 March 2016 he had observed the claimant sitting at his desk wearing earphones looking at the BAE Home page. There had been no evidence of any task activity that afternoon. The claimant did not like Mr Hevern's body language and said that he was leaving the meeting because he felt Mr Hevern was being unreasonable. The claimant considered that he was calming the situation.

49. The claimant then spoke to Mr Cattanach (production R37/163; C387). The claimant complained about Mr Hevern's body language and the smirk on his face. Mr Cattanach said that he would speak to Mr Hevern for his version. Mr Cattanach said that he had heard about the March Incident from Mr Harrison. The claimant said that he was going to visit occupational health, which he did. The claimant decided to remove himself from the situation and go home. The claimant returned to the office and advised Mr Cattanach that he was going home. Mr Cattanach confirmed that if the claimant was unwell there was no problem with him going home.

50. Later that afternoon Caroline MacKinnon, HR Manager unsuccessfully tried to contact the claimant on his mobile telephone and left a voicemail message (production R31/141). The claimant did not return her telephone call. Ms MacKinnon made a further telephone call to the claimant and left a voicemail explaining that if he did not respond she would contact his next of kin. There was no contact. Ms McKinnon telephoned the claimant's mother and left a message explaining that she was attempting to get hold of the claimant (production C389). She had tried to call the claimant's mobile but he had not responded. Ms MacKinnon asked if a message could be passed to the claimant to call her back.

51. The claimant contacted Ms MacKinnon. She explained that she wanted to offer him occupational health support. The claimant challenged her qualifications. The claimant was offered occupation health appointment on 10 March 2016. The claimant was unable to attend.

52. The claimant was absent from work from 4 March 2016 due to stress. He returned to work on 16 March 2016. Mr Harkin conducted a return to work interview (production C227). It was noted that the claimant had removed himself from a stressful situation. The claimant considered that he was fit for work but had experience a mild stress/anxiety reaction because of Mr Hevern's comments.

53. The claimant attended occupational health and was seen Lorraine Leahy, Clinical Operations Manager. Ms Leahy subsequently prepared a report in which she recorded that the claimant reported symptoms of a stress reaction which occurred on 4 March 2016 and when he returned to work on 16 March 2016 (the OH Report). The claimant denied any symptoms of psychological ill health and that he had no significant underlying medical conditions. The claimant described a feeling of "being ostracised from other members of his team but also recognises that he does not engage readily, socially in the workplace" (production R18/117).

54. In relation to specific questions raised in the occupational health referral Ms Leahy advised that she did not have any medical evidence at her disposal to suggest that the claimant was not fit to be at work. There was no evidence of a psychological illness at the time. There were no recommendations in respect of any adjustments. It was recommended that the claimant's workload be assessed and consideration given to a workplace stress risk assessment and mediation. Neither the claimant nor the respondent considered there was any issue of disability.

55. The claimant's medical certificate dated 18 March 2016 stated that his General Practitioner assessed him on 15 March 2016 (production C226).

The General Practitioner noted that the claimant was not fit to return to work.

56. Mr Larkin attempted to set up a meeting with the claimant on 24 March 2016 to discuss issues including the recommendations in the OH Report. The claimant did not attend the meeting (production R33/149).

57. On 25 March 2016 Mr Cattanach sent the claimant an invitation to attend a meeting to discuss some of the incidents that had occurred over the past few days (the Suspension Meeting). The claimant expressed concern about the absence of an agenda and insufficient time to prepare.

58. The claimant attended the Suspension Meeting. Ashley Thomson accompanied Mr Cattanach. Ms Thomson had no previous involvement and did not know the claimant. It had been decided that the claimant was to be suspended because of his unreasonable behaviour regarding the meetings in the workplace. It was considered that it would not be helpful to have the claimant present at work while that investigation was taking place. The Suspension Meeting was short. Mr Cattanach indicated that he was following the Disciplinary Procedure. Ms Thomson interjected and clarified that it was suspension to allow the investigation process. The claimant was advised that there was no right of appeal against suspension.

59. After the Suspension Meeting Ms Thomson wrote to the claimant (the Suspension Letter) (production R31/131). The Suspension Letter stated that the claimant had been suspended from work until further notice to allow the respondent to investigate the following allegations:

a. Failure to follow a reasonable instruction from management (in contravention of section 6 of the Disciplinary Policy).
b. Unsatisfactory conduct or behaviour (in contravention of section 6 of the Disciplinary Policy).

60. The claimant was advised that during his suspension he would continue to be employed and paid a salary and normal benefits. The claimant was asked to make himself available to co-operate with the investigation. It was also confirmed that the suspension was not a disciplinary sanction and in no way implied that any assumptions had been made to the truth of the allegation that had been raised against him. The claimant was advised that if it were considered that there were grounds to invoke disciplinary procedure he would be invited to attend a disciplinary hearing. The claimant was provided with Ms Thomson's contact number should he require an update on the investigation or wish to be provided with an occupational health appointment during his period of suspension.

61. Lisa Taylor, Head of Business Improvement & Strategy conducted the investigation. Donna Cook, HR Adviser and Laura McLeod, HR Assistant assisted Ms Taylor.

62. Ms Taylor interviewed the following witnesses: Christ Westcott, HR (production R29/134); Neil Harrison T26PLM and Configuration Manager (production R30/137); Caroline MacKinnon, HR Adviser (production R31/141); John O'Donnell, Security (production R32/144); James Larkin, Product Maturity Manager (production R33/146); Donald Hevern, Engineering Manager (production R34/152); Karen Watt, Sign Assurance Manager (production R36/159); Stephen Cattanach, Head of Central Engineering Type 26 (production R37/162); Daniel McKendry, Type 25 Whole Ship PLM & IBOM Manager (production R38/167).; Tom Brady, Budget Director – Delivery Type 26 Global Combat Ship (production R39/170).

63. The claimant was invited to attend an investigation meeting with Ms Taylor on 7 April 2016 (the Investigation Meeting). The claimant was advised that this was his opportunity to state his case in relation to the issues raised and that the investigation meeting was purely to establish the facts. The claimant was advised that he was entitled to be accompanied by a trade

union representative, employee representative or colleague (production R40/172).

64. At the Investigation Meeting the claimant was to be accompanied by Henry Wilson of Unite. Following a brief discussion with Mr Wilson the claimant advised that he did not wish Mr Wilson or a trade union representative at the Investigation Meeting.

65. During the Investigation Meeting the claimant read out a list of comments that the claimant said had been made by Mr Cattanach, which he had communicated during the December Meeting. The claimant was asked about his PDR objectives. The claimant believed that the team had gone to the pub and produced his PDR objectives between them. When asked for evidence the claimant described what had occurred. He did not get invited to social events but would not have attended anyway. The claimant said he knew the PDR had been completed at 3pm that day but did not provide any further explanation. The claimant referred to being excluded from meetings chaired by Mr Hevern. In the investigation interview record it was noted (production R42/177):

"AL said that one trivial reason had been around someone that had mentioned Strathclyde shooting club and that there had been discussion around firing. AL added that he couldn't recall the discussion between the two parties but they weren't the main antagonists. AL said that there had been a meeting with 5/6 people and that Daniel McKendry had emerged from the meeting and had remarked something along the lines of 'there was nothing that we could call him out on. It was too subtle'."

66. The claimant explained that Mr McKendry's statement had led him to believe that there were allegations against him. Mr Cattanach was one of Mr McKendry's closest friends.

67. After the Investigation Meeting Ms Taylor prepared an Investigation Summary Report (production R45/190).

68. In relation to the allegation of failure to follow a reasonable instruction from management Ms Taylor considered that the following evidence had been established:

a. A refusal to attend for longer than a couple of minutes a meeting to discuss poor behaviour (November 2015).
b. Refusal to attend a meeting to agree performance objectives for 2016 (January 2016).
c. Refusal to attend regular one to one sessions with line manager to discuss task/progress on objective and cancelling these (from January 2016 onwards).
d. Refusing to attend/contribute to weekly team meetings with middle manager.
e. Refusing to attend return to work meeting with line manager (16 March 2016).
f. Refusal to attend return to work meeting with line manager and HR (16 March 2016).
g. Refusal and non-attendance at the various Occupational Health appointments.

69. In relation to unsatisfactory conduct/behaviour Ms Taylor considered that she had evidence of the claimant:

a. Pushing back on tasks/objectives (where objectives had been agreed in October 2015 to February 2016).
b. Limited interaction with line manager.
c. Refusing to attend/contribute to weekly team sessions with middle manager.
d. Conducting no/very limited amount of work with time spent staring at BAE home page with earphones in March 2016.
e. Disruptive behaviour in CE portal meetings in March 2016.

70. Ms Taylor concluded there was a case to answer. She felt that the investigation process had shown that the claimant was having a big impact on the team with individuals feeling extremely uncomfortable around the claimant and finding his behaviours overly challenging. She recorded the following:

"AL's behaviour is at times aggressive and there is a 'fear' of how he will react or 'who' he will choose to overly challenge. Some Managers (within the team) are diverting and rearranging work in order to limit an interaction with other members of their team have with AL as they expressed how uncomfortable his behaviour makes them feel.

AL has a perception of how he is treated by others, he believes people are talking about him, smirking and has a level of paranoia that is affecting his judgment of situations, example shown in his interview referencing shooting ranges when he interprets this to mean he was being fired.

The amount of management time and effort afforded to managing AL is above and beyond what would be deemed reasonable or acceptable for a senior engineer within the organisation".

71. On 14 April 2016 Ms Taylor wrote to the claimant advising that the investigations were concluded and that an investigation document was being forwarded to the disciplinary manager for consideration (production R46/193).

72. On 20 April 2016 Archie Paterson, T26 Head of Project – Platform. Type 26, wrote to the claimant inviting him to attend a disciplinary hearing on 26 April 2016 (production R48/195). The claimant was advised that Mr Paterson would be chairing the disciplinary hearing and Ms Cook and Ms McLeod would be present. The letter continued that the purpose of the disciplinary hearing was to give the claimant an opportunity to state his case in relation to the allegations raised against him: Failure to follow a reasonable instruction from management (in contravention of Section 6 of the Disciplinary Policy); and unsatisfactory conduct or behaviour (in

contravention of Section 6 Disciplinary Policy). The claimant was advised that if the allegations were substantiated disciplinary action up to and including dismissal may be taken against him. The claimant was advised of his right to be accompanied. Enclosed with the letter were copies of the Disciplinary Procedure and the following documents:

a. The Suspension Letter
b. Outcome investigation letter dated 14 April 2016.
c. The investigation notes dated 7 April 2016.
d. The investigation summary report dated 12 April 2016.
e. The Occupational Health report dated 16 March 2016.
f. Mr Hevern's evidence.
g. Mr Larkin's evidence (timeline emails, PDR, fit note and return to work form).
h. Neil Harrison's evidence, emails 18 to 23 March 2016.
i. Email for OH confirming missed appointments dated 30 March and 7 April 2016.
j. Occupational Health invite letter dated 5 April 2016
k. Email from George Sneddon first aider dated 7/8 April 2016.
l. Witness statements from Donald Hevern; James Larkin; Stephen Cattanach; Anonymous; David Harrison; Daniel McKendry; Pamela McKinnon; John O'Donnell; Chris Westcott and Tom Brady.

73. On 25 April 2016, the claimant sent an email to Ian King, Chief Executive BAE Systems plc and others with the subject "Internal Employee Grievance and qualifying public interest disclosure" (the 25 April Email) which was acknowledged by Mr Dodsworth, Mr King's Chief of Staff (production R49/197).

74. Mr Paterson required at short notice to attend a pricing exercise. In his absence Mr Paterson asked Alan Nicholson to conduct the disciplinary hearing on 26 April 2016 (the Disciplinary Hearing). Mr Nicholson was

passed all the documentation which had been previously sent to Mr Paterson.

75. Ms Cook was present at the Disciplinary Hearing that Mr Nicholson conducted. Laura McLeod took notes (production R50/251). The claimant did not consider that Mr Nicholson was impartial. He also did not consider Ms Cook to be impartial as she had attended the Investigation Meeting where he considered she had displayed an emotional outburst. It was explained to the claimant that it was normal practice for the same HR Adviser to attend the investigating meeting and disciplinary hearing. When asked why Mr Nicholson was not impartial the claimant indicated that Mr Nicholson and Mr Hevern were part of a close-knit team. While Mr Nicholson did not work with Mr Hevern the claimant considered that they were “very junior middle managers”. The claimant was asked if he wished the Disciplinary Hearing to be rescheduled for another person to be found. The claimant wished the Disciplinary Hearing to proceed. Mr Nicholson endeavoured to reassure the claimant that he was impartial.

76. The claimant was asked if he wanted a trade union representative which he declined. The claimant considered that he could represent himself.

77. Mr Nicholson had considered all the witness statements and endeavoured to obtain the claimant’s response to the allegations. Mr Nicholson sought to clarify the claimant’s role and the tasks which he had been asked to undertake (production R50/253). Mr Nicholson asked about the allegation of the claimant sitting with the BAE internet home page on his desktop with earphones in his ears and not doing any work (production R50/254). The claimant said that he had been using the internet to learn about the company. Mr Nicholson asked about the claimant’s objectives. The claimant did not consider that the respondent used PDR productively. The claimant set himself substantial objectives. Mr Nicholson explored the claimant’s working relationship with Mr Larkin in relation to the claimant’s behaviour which witnesses felt to be “aggressive”. The claimant

challenged the veracity of the witness statements. The claimant wished to give Mr Nicholson some feedback in relation to the grammar and spelling. The claimant was asked about his failure to attend occupational health. The claimant did not recognise some of the behaviours referred to in Mr Larkin's statement. Mr Nicholson sought to clarify that the claimant had had an opportunity to read through all the witness statements. The claimant indicated that he had and had "tried to respond to them all through another process". The claimant did not wish to elaborate as it was confidential. Mr Nicholson sought to clarify the process to which he was referring (production R50/258). Mr Nicholson also sought to clarify the claimant's relationship with Mr Harrison. The claimant suggested that the witness statements had been fabricated and that his work would be phased out. He said that this was evidence of "victimisation of a trade union member". Mr Nicholson also raised comments from Mr Cattanach's statement regarding the claimant's behaviour. There was also discussion about the allocation for funds within the department. The Disciplinary Hearing was adjourned.

78. When Mr Nicholson reconvened the Disciplinary Hearing he indicated that he would consider all the information and provide his decision in writing. The claimant did not dispute the detail of the incidents. Mr Nicholson was unaware of the 25 April Email. Mr Nicholson reached his decision within a week or so after the Disciplinary Hearing. The notes were prepared and sent to the claimant.

79. In the meantime, the 25 April Email was passed to the BAE Systems Plc Ethics Helpline to investigate. Lisa Allan, Ethics Manager - Maritime was assigned the case. Her responsibility was to ensure that the concerns raised were considered by the appropriate people. Ms Allan sent an email to the claimant asking him to contact her to discuss his concerns so that she could better understand them (production R52/265).

80. Around this time Mr Rowan (Maritime Sector Lead, Case Management) was informed that the claimant had raised concerns and that these had been passed to the Ethics team. Mr Rowan was not informed of the content of 25 April Email nor was anybody else involved in the disciplinary process. However, he considered that it was appropriate to suspend the disciplinary proceedings while the complaint was being handled. The disciplinary process would be resumed when appropriate but meantime the claimant's suspension was to continue. Mr Rowan wrote to the claimant advising his of this (production R51/264).

81. On 8 May 2016, the claimant sent an email to Ms Allan (8 May Email) (production R53/267). He referred to having done nothing wrong and wanting to return to work. The claimant had not referred the issues to the Ethics Helpline. He was uncomfortable about using his person email address and telephone with people with whom he was unfamiliar. The email attached a PDF document which incorporated the 8 May Email and the 25 April Email.

82. The 25 April Email had the following headings: Work ethic; Health and safety.; Misuse and representation of data and communication; Performance management and organisation behaviour; Misuse of process; Aim; Recruitment; and Dishonesty.

83. The document also included a "Grievance Summary" with the following headings: Poor introduction; Non-cooperation; Isolation; Job title/description/Job offers/interviews; Falsified records/missing communications; Differing treatment and scrutiny with valid comparators; and Widespread dishonesty including senior managers (Tom Brady).

84. Ms Allan approached Catherine Lawler, HR Director – Futures Programmes & Services and MAI Central Functions to conduct the stage 1 grievance hearing Ms Lawler was provided with the 25 April Email and the 8 May Email. Ms Lawler was independent to the business in which the

claimant worked. She did not know the claimant and was not provided with any of the documents relating to the disciplinary process.

85. Ms Lawler met the claimant on 18 May 2016 to understanding his grievance and the outcome the claimant was seeking (the Stage 1 Grievance Hearing). The claimant indicated that he would consider moving to other sites and another role. He commented that he thought his employment might be terminated through the disciplinary process. Despite not being employed for two years it would be discriminatory and unfair. The claimant said that he had a degree but was looking at other University courses. The claimant was invited to go through his issues in more detail.

86. The claimant said that before the December Meeting with Ms Sloan he had read the Disciplinary and Grievance Procedure. He was aware that in both processes there was an informal stage but Ms Sloan was keen to state that it was a chat. The claimant considered that he was not being provided with work and was being squeezed out of the department. The claimant expressed concern at Ms Crawford's response to his attempt to apply for alternative roles. He said that Ms Crawford considered that all the claimant could do was engineering and that he needed to be contributing. The claimant said he felt isolated from his own department as he sat next to the estimating team who were hostile towards him. The claimant wanted to be considered for alternative roles. Ms Crawford had copied Mr Cattanach into an email and the claimant then discussed matters with Ms Crawford's manager, Mr Westcott who was head of HR. The claimant referred to disciplinary notes which he said were inaccurate. Ms Lawler explained that she did not have these documents and that the only paperwork provided to her were the 25 April Email and the 8 May Email. The claimant confirmed that there were seven categories to his grievance to which Ms Lawler said that she wished to go through point by point.

87. In relation to work ethic, the claimant had said in the 25 April Email that work had been duplicated, replicated and that there was evidence of failed systems. Ms Lawler asked about the evidence to support this. The claimant referred to the CAM review and design reviews. He considered that the process caused delays, projects were for individuals rather than the company benefits and mistakes were replicated.

88. In relation to dishonesty the claimant referred to Tom Brady knowing "characters" at Ryanair in Prestwick. The claimant formerly worked at Ryanair. He considered that Mr Brady was keen to have Mrs Watt's husband work in Scotstoun. The claimant considered that Mrs Watt was dishonest in her witness statement which referred to one of her team not wanting to talk to the claimant because he was scary.

89. Ms Lawler asked how work was distributed across the team. The claimant indicated that there was no work.

90. As regards health and safety the claimant had referred in the 25 April Email to fire and safety and the creation of a health and safety forum. Mrs Lawler asked the claimant to explain. He said that Mr Hevern instructed one third of the floor to evacuate via the same stairwell as the opposite floor with only one shared exit. This was nonsensical and led to delay. While it was only a test Mr Hevern then used that to create a health and safety meeting. One of the recommendations from that form may have been to highlight that 50% use of one stairwell and 50% use of another. The claimant had attended one of the meetings and he considered that they had come up with an agenda because he was present. They identified that here was a strange smell coming from the aircon but it was identified because people were eating bacon sandwiches at their desk.

91. Ms Lawler asked if the claimant was suggesting that people were making up unnecessary activities to fill their time and missing other obvious issues. The claimant said that there were poor communication and grammar being used across the team. People were claiming to do roles

that they did not understand and blocking people such as the claimant from doing things.

92. About misuse and representation of data Ms Lawler said that she understood that this related to the disciplinary meetings and notes of which the claimant had had sight. The claimant said there were inaccuracies within Mr Brady's interview notes where the claimant had been sent work from Mr Brady which previously been sent by Mr Hevern to Mr Larkin. The claimant did not understand the reason for the delay. The claimant thought that it was protectionism and gang mentality.

93. The claimant raised concerns about Ms MacKinnon contacting his parents but this may be due to victimisation as he was a trade union members and previously used to be a trade union representative. When Ms Lawler sought clarification, the claimant did not want to go into detail but would do so if it ended up in court.

94. Ms Lawler asked about objectives. The claimant said he had only one review in a year and objectives were not really discussed. He also explained why he considered that Ms Bolland was taking credit for work undertaken by him previously.

95. The claimant was asked about his concerns in relation to the misuse of process in connection with the investigation/disciplinary and misuse of process. The claimant explained that this related to being asked to attend an Occupational Health appointment at short notice. He was suffering from stress and that he had started receiving calls from Dr Miller. The claimant did not know who she was.

96. The claimant said that he had been suspended and told there was no appeal. He was then informed that allegations constituted gross misconduct but he felt there was no evidence of that. The claimant advised that the respondent had a perception about him. Ms Taylor had referred

to the claimant showing signs of “paranoia”. Ms Taylor had taken an unjustified medical view that was defamatory.

97. When asked about the “public disclosure” the claimant referred to the fact that he was unable to obtain a job and that mistakes were being repeated on Type 45 things that had gone on in past projects. The claimant referred to flash programming. He felt there must have been a significant amount of money for subcontractors to be involved and this should have been kept in-house and given to someone who was not doing anything. Subcontractors were being brought in with limited skills and the respondent was planning for failure. The claimant referred to BAE Systems using Vodaphone where he used to work. Glasgow was quite close and people tended to know each other. There were 3,000 blacklisted construction workers who were not able to find work. Why other graduates obtained graduate roles whereas he took 24 applications over 10 years. He had been networking and had built a website.

98. The claimant considered his main issues were poor introductions, isolation, non co-operation, job title and job description, interviews, training, treatment against valid comparators and dishonesty.

99. The Stage 1 Grievance Hearing was adjourned to allow Ms Lawler to carry out investigations.

100. Ms Lawler took statements from Ashley Thomson, HR Manager (production R55/321 to R324); Donna Cook, HR Adviser (production R56/325 to R329); Donald Hevern, Engineering Manager (production R57/331 to R337); James Larkin, Engineering Manager (production R58/339 to R347); Stephen Cattanach, Engineering Manager (production R59/349 to R355).

101. Following the Stage 1 Grievance Hearing the claimant was sent copies of the notes to review. The claimant acknowledged receipt by email sent on 25 May 2016 in which he recorded, “The notes are generally very good

and an attempt to record a significant level of detail." The claimant made several amendments (production R60/357).

102. Ms Lawler met with the claimant on 9 June 2016 to inform him of the outcome of her investigation. Ms Dewhurst participated remotely. Ms Lawler started to read the outcome of the grievance and confirmed that the claimant would be provided with a copy. The claimant indicated that this was bringing on a stress reaction and left. The meeting was adjourned (production R61/359 to R366).

103. Ms Lawler sent a letter to the claimant dated 9 June 2016 (Outcome of Grievance Stage 1) (production R62/367 to R374). The grievance was not upheld.

104. On 15 June 2016, the claimant sent an email to the leadership team (including Mr King) appealing against the Outcome of Grievance Stage 1 (production R63/375). Attached to the emailed attaching a document heading "Complaint" (15 June Email) (production R63/377 to R492). Mr Dodsworth replied for Mr King confirming that the claimant's concerns would be considered under stage 2 of the Grievance procedure .

105. On 30 June 2016, Sean McGovern, Managing Director Regional Aircraft invited the claimant to a stage 2 grievance hearing on 7 July 2016 (the Stage 2 Grievance Hearing) (production C300). The claimant was advised that the Stage 2 Grievance Hearing was to discuss the reasons why the claimant disagreed with the Outcome of the Grievance Stage 1 in more detail. The claimant was informed that this hearing would not be a full rehearing of the original grievance but instead to focus on the claimant's grounds of appeal.

106. At the Stage 2 Grievance Hearing Clare Gavaghan, HR accompanied Mr McGovern. The claimant was unaccompanied. The claimant indicated that he thought Mr McGovern was "reasonably" independent. Mr McGovern confirmed that he had read the 15 June Email and invited the claimant to

expand on his grievance and any information not covered at the Stage 1 Grievance Hearing which the claimant considered relevant. Mr McGovern wanted to understand what the claimant wanted to get out of the process.

107. The claimant referred to the delay in the disciplinary process; he felt that it had been decided but not communicated. Mr McGovern reiterated that he was independent and dealing with the grievance.

108. The claimant explained that the respondent and other companies had strong links and he had made over 20 applications to the respondent without being employed. The claimant was said he was told he would be blacklisted. The claimant asked whether Mr McGovern knew Andy Marshall. Mr McGovern stated he did not. The claimant said that there was blacklisting in the industry backed up by his 20 applications and experience base in the office of National Statistics. Mr McGovern denied this. He said the company had never been involved in blacklisting any trade union members.

109. Mr McGovern endeavoured to understand the claimant's points about his recruitment and allocation of work. Mr McGovern found the discussion confusing and at some points contradictory as the claimant was suggesting that the notes were inaccurate although he had previously been complementary about them. Mr McGovern asked about the basis of the allegations made about whistleblowing. The claimant said that these were small indicators of larger problems. There was a short adjournment.

110. When the Stage 2 Grievance Hearing reconvened Mr McGovern asked if the claimant wished to develop any points or bring new information. Also, he wanted to understand how the claimant wished to resolve matters. The claimant considered that the respondent could offer him a challenging role. Ms Lawler had misrepresented the HR fault he had touched upon; she referenced the Glasgow job market which was antagonistic. Mr McGovern felt that the most important point raised by the claimant was

that the claimant said he had information that would be supportive of his position on his laptop.

111. The Stage 2 Grievance Hearing concluded. Mr McGovern was not satisfied that there was sufficient new evidence to challenge the findings at Outcome of Grievance Stage 1. Mr McGovern did, however, believe the claimant had raised some practical concerns in relation to the time that the claimant had been suspended, not receiving payslips over the last three months and being unable to access his laptop in to review information which he may wish to provide in support of his case. Mr McGovern therefore recommended that the disciplinary process should recommence as soon as possible. If the claimant appealed against the outcome of the grievance stage 2 then the disciplinary process should run parallel with this and any other ongoing progress; he enclosed payslips for the last three months and provided a contact number for the missing payslips to be sent to him and arrangements can be made for the claimant to view his laptop. This required to be arranged via Joe Rowan by email or telephone number. The claimant was advised of this by letter dated 18 July 2016 (Outcome of Grievance Hearing (Stage 2)) (production R65/509 to R513). Also enclosed was a copy of the Stage 2 Grievance Hearing notes (production R64/493 to R513). The claimant was advised of his right of appeal. The claimant did not appeal this decision.

112. In the meantime, Mr Nicholson who was unaware of the grievance issues wrote to the claimant on 15 July 2016 advising that he had been told that at the Stage 2 Grievance Hearing the claimant had requested that the Disciplinary Hearing be restarted notwithstanding that the grievance process had not yet been exhausted (production R65/509). Mr Nicholson asked about arrangements to deliver the outcome of the Disciplinary Hearing. The letter advised that if the claimant did not respond it would be assumed that the claimant was content to receive the outcome letter via post.

113. The claimant did not respond. Accordingly, Mr Nicholson issued the outcome letter on 21 July 2016 (Outcome of Disciplinary Hearing) (production R67/515 to R518).

114. Mr Nicholson had reviewed the witness statements and concluded that the claimant had refused to complete work given to him in a timely manner or as instructed and his reaction when work was delegated was uncooperative and uncompromising. Mr Nicholson also concluded that the claimant's behaviour in the instances set out in the investigation were unprofessional and not acceptable. Mr Nicholson therefore upheld the allegation that the claimant had failed to follow reasonable instructions from management. Mr Nicholson also concluded that the claimant's behaviour in the workplace was unacceptable and that he was concerned that the claimant was rude to others with his displays of aggression and intimidation. Mr Nicholson upheld the allegation against the claimant's unsatisfactory conduct.

115. Mr Nicholson noted that while the claimant had been offered support in terms of Occupation Health, numerous meetings with HR and line manager he found that the claimant either refused to attend or walked out halfway through discussions. Mr Nicholson therefore concluded that nothing more could have been done to help the claimant given that he was not willing to participate with any advice or support offered. Mr Nicholson decided that the claimant's employment should be terminated with notice. The claimant was advised that he had a right of appeal.

116. On 26 July 2015, the claimant attended a meeting with Mr Jordan, Regional Representative of Unite. Mr Jordan understood that the purpose of the meeting was to discuss an appeal against the claimant's dismissal. Mr Jordan asked Tam Connerty, Regional Legal Officer to join the meeting with a view to giving some advice. Mr Jordan's involvement with the claimant was solely in relation to the disciplinary appeal. Mr Jordon had not been involved in the grievance process. Mr Jordan believed that he

was representing the claimant's rights at the disciplinary appeal hearing and did not accept that he was information gathering for the respondent.

117. Although the claimant sought advice from Mr Jordan, the claimant submitted his own disciplinary action appeal (production R519). The claimant stated:

> "It is within the company's capability to disprove these facts [maintained in the disciplinary outcome] via its records of email communications and databases of work that categorically disprove that evidence and minutes… It is reasonable that the company provide access to the claimant's laptop in order to present pertinent facts."

118. The claimant challenged disciplinary decison, the evidence on which the decision was based and the reasonableness of the decision itself. The claimant maintained that use of words "scary", "paranoid" and "posed a risk to others with your displays of aggression and intimidation" were defamatory language and suggested long term and severe conditions made by unqualified individuals calculated to cause the claimant detriment. The claimant maintained that the respondent had consistently over his employment provided special treatment to the claimant in relation to recruitment. Over 25 applications including a recent interview by Ms Wilson was an example of unfair recruitment practices and dishonesty applied to him in relation to attempting to obtain a workload and substantive role. He also claimed that there was theme of victimisation in raising valid grievances and suggesting public interest matters in an informal, reasonable and pragmatic manner. The claimant referred to a serious false allegation that he had acted aggressively to Ms Watt which was later withdrawn. Calendar invites indicated that he was the one who was organising meetings and that he should be returned to work at the earliest opportunity with: "full continuity of employment terms and detriments remedied where possible to avoid legal action that is clearly avoidable on behalf of the business, public and shareholders' interests."

119. Paul Feely, Engineering Director wrote to the claimant on 15 August 2016 confirming that he would conduct the disciplinary appeal hearing on 22 August 2016 and Zoe Taylor, Head of HR (Type 26 and RN OPV Programmes) would accompany him. In a letter dated 17 August 2016 Mr Feely confirmed that he knew the claimant was to be accompanied by a trade union representative (production R72/524/R525).

120. On 19 August 2015, the claimant sent an email to Ms Taylor stating that he wished to ensure that his laptop, internet access and password reset arrangements were in place for the meeting to facilitate production of tangible evidence. Ms Taylor replied she saw no official request for access to a company laptop or access to the system. She referred to the claimant's grounds of appeal. She explained she understood this to be a statement and not a request for production. Accordingly, she had not acted upon that request before the disciplinary appeal hearing. As the claimant was no longer an employee she was unable to provide him with access to a laptop or the BAE system. She did state:

"However, we can certainly discuss this point at your appeal hearing on Monday. Perhaps if you can inform us in the meeting exactly what you are looking for and where to find it we will do our best to try and locate it. However, I cannot at this stage determine if the laptop has or hasn't been wiped following your dismissal, which would be normal procedure when an individual leaves the company. I hope to be able t confirm this to you on Monday in your appeal hearing once I've had an opportunity to discuss it with IT."

121. The disciplinary appeal hearing took place on 22 August 2016 (the Disciplinary Appeal Hearing). Mr Jordan accompanied the claimant. Ms Taylor and Ms McLeod were both present.

122. The claimant and Mr Jordan were met by Ms Hennebry. They were given an opportunity to prepare for the Disciplinary Appeal Hearing.

123. Mr Feely explained the purpose was for him to obtain a better understanding of the points in the appeal. The claimant raised the issue that Mr Nicholson should have been the disciplinary manager but he felt that Ms Cook (HR Adviser) had acted as the chair. He also said that Ms McLeod (who had taken the notes) had failed to represent the content and who was speaking predominantly. The claimant maintained that during the Disciplinary Hearing he had continually asked what was the single substantial reason for his disciplinary investigation and dismissal and that Ms Cook had continually referred to the disciplinary pack.

124. Mr Feely then asked about the claimant about his statement that the respondent's capability to disprove allegations within email communications and databases. The claimant said that the allegations could be disproved by tangible information. The claimant considered that he had been the one to set up meetings in the first place. There was discussion about an email that the claimant had sent regarding inaccuracies within the disciplinary pack. Ms Taylor indicated that it would be helpful if a copy of this email could be provided. The claimant was also advised that if he had an email containing information relating to his case then it was best to provide it to Mr Feely so that it could be considered. The claimant indicated that that email contained a complaint against Mr Feely. Discussion followed as to whether this issue having been raised the clamant was comfortable with the Disciplinary Appeal Hearing proceeding with those that were in attendance. The claimant said that he was not. Ms Taylor indicated that on that basis they could not proceed with the hearing. The claimant considered the decision had been made anyway. Ms Taylor assured that it was not. The claimant was referred to Ms Taylor's email of 19 August 2016. She had been working at home and could not verify where the laptop was. The claimant indicated he was getting really stressed around Ms Taylor's behaviour. Ms Taylor said that

she had the claimant's old laptop and could confirm that it had not been wiped. At Mr Jordan's request, the Disciplinary Appeal Hearing was adjourned.

125. The Disciplinary Appeal Hearing reconvened half an hour later. There was discussion around the claimant's access to the laptop. Ms Taylor confirmed that the laptop had not been wiped and that he should provide a written indication as to what he would like the business to find on his laptop. The claimant said that he needed access to the server. It was explained that the business could not authorise to give a former employee access to the system. At that point, it was confirmed that the claimant no longer wished to be represented by Mr Jordan and that was recorded in the notes. The claimant indicated that it was all causing him stress and that he was going home and had nothing further to say. The claimant was asked if he would like to continue the Disciplinary Appeal Hearing through a modified procedure. The claimant indicated that he would not. Ms Taylor offered to explain what the modified procedure meant. Ms Taylor indicated that there could be continued dialogue via email or letter which may be less stressful. The claimant indicated that he had nothing further to add and that the business had all the information. Mr Feely said that the situation appeared to be causing the claimant undue stress. He told Mr Feely that he was not qualified to say that. Mr Feely confirmed that all the information would be considered and a final decision as to the outcome would follow after due consideration.

126. The claimant sent an email to Ms Taylor and Mr Jordan on 29 August 2016 requesting an update. Ms Taylor replied on 29 August 2016. Her email included the following (production R76/537):

"I will respond with a decision as soon as myself and Paul Feely have had an opportunity to review all the information which has been made available to us. Due to already full diaries last week this was not possible.

The further complexity was that you ended the appeal hearing prematurely due to the fact you found the process stressful and uncomfortable and not we had to defer to include independent decision makers. What we did need to do, however, as the appeal hearing ended prematurely, was seek legal advice over whether an appeal could be considered and concluded which we will confirm to you in due course. You also dispensed with your trade union convener and declined any further assistance from him and you did not wish to discuss a modified procedure as you said 'it does not sound interesting'. We did not have a full opportunity to discuss each of your points contained in your appeal. We may need to go back though all the information already submitted in order to ensure we reach a fair decision based on the information we have at hand and information you gave us during the meeting.

Taking all factors into consideration, this is not a process we are prepared to rush in order to reach a decision as quickly as possible. Our aim is to be as fair as we can possibly can which requires a thorough review of all the evidence. This may mean we have further questions to ask of any witnesses who provided statements, but this will become clear as we work through the information."

127. On 6 September 2016 Mr Feely wrote to the claimant with the outcome of the disciplinary appeal hearing (Outcome of Disciplinary Appeal Hearing) (production R77/540 to R545). Also enclosed was note of the Disciplinary Appeal Hearing and an appendix setting out evidence from the witness statements which Mr Feely concluded supported the allegations.

128. Mr Feely said that given what had happened at the Disciplinary Appeal Hearing he had been unable to gain clarity of the points raised within the appeal letter. The claimant did not wish to deal with matters by way of a modified procedure and accordingly Mr Feely had based his decision on the evidence previously submitted, the points raised in the appeal letter and what had been discussed at the beginning of the Disciplinary Appeal

Hearing. He had also spoken to Mr Nicholson regarding the claimant's allegation that there had been undue HR influence at the Disciplinary Hearing. As regards the email that the claimant had referred to related to inaccuracies in the disciplinary pack Mr Feely had been unable to identify this email and asked the claimant if he not forwarded the email to Mr Feely or Ms Taylor and the absence of knowing what documentation to be considered from the company server, Mr Feely had unable to look at these.

129. Mr Feely decided that the appeal could not be upheld. He explained that in light of the claimant's comments about the truthfulness of the evidence contained in the statements, he had considered them and collated examples of insubordination or unacceptable conduct. Mr Feely considered that there was sufficient consistency between the witnesses for him to believe they were truthful. Ms Watt who had previously asked for her witness statement to be anonymised had waived anonymity to allow him to consider her evidence statement with the same weight as the others. Mr Feely considered that there was sufficient number of episodes of insubordination and unacceptable conduct in the allegations to have been found. He also felt there were a number of occasions when the claimant had displayed aggressive and intimidating behaviour towards colleagues. Mr Feely was not satisfied that there was evidence of victimisation or discrimination towards the claimant nor was there evidence to indicate the suspension process was unfair.

130. Mr Feely considered that there was substantial workload. However, the evidence was that the claimant chose not to do the work which was requested referring instead to focus on matters which he preferred to do but which he had not been assigned. Mr Feely also concluded there was no evidence to suggest that the respondent had failed to act on medical advice. Instead there was evidence to suggest there were attempts made to assist the claimant but he declined to attend on a number of occasions. Mr Feely also did not consider that there was any evidence of unfair

recruitment practice. The claimant was advised only that future applications would not be considered whilst there were unresolved performance and behavioural issues. He was also not satisfied that there was evidence of undue influence of HR.

131. The claimant was advised that consequently his dismissal was confirmed and that as the Disciplinary Appeal Hearing was final there was no further recourse available under the disciplinary procedure.

Observations on Witnesses and Evidence

132. The Tribunal considered that the claimant was intelligent and well informed. The Tribunal had no doubt that the claimant believed what he said in evidence. The Tribunal felt that at times it was challenging to distinguish facts from the claimant's perception of what happened after analysis of events based on his research and previous experiences. The claimant appeared to assume that the witnesses and the Tribunal had his level of background knowledge and understanding. The claimant did not appear to have the insight he might be wrong or mistaken about his belief in people's understanding and awareness of events or that someone else's perception of what happened might be different and that they too might have a reasonable and genuinely held belief.

133. The claimant's evidence often involved suspicion and conspiracy which at times the Tribunal found incredible. For example, the respondent employed the claimant in March 2015. The claimant said the respondent signed a contract with Vodafone Limited to replace O2 as its telecom supplier. The claimant referred to the Vodafone PH where the word "reputation" was mentioned in a context of blacklisting. The claimant then referred to an audio record of a discussion with Mr Hevern on 16 September 2015 in which Mr Hevern said that if he was going to be successful in applying for other roles the claimant needed to get a good "reputation". The claimant considered that statement could "only be

explained as an intent to blacklist the claimant by another name" (production C90). The respondent's evidence was that the claimant's Curriculum Vitae (CV) referred to his previous employment with Vodafone Limited. Mr Andrews and Mr Larkin saw the claimant's CV when he was recruited. There was no evidence that they were aware of the Vodafone Proceedings at that time or indeed later. Mr Hevern replaced Mr Andrews. Mr Hevern saw the claimant's CV when the claimant was applying for other roles. There was no evidence that Mr Hevern was aware of the Vodafone Proceedings or the Vodafone PH. The claimant was unwilling to concede that Mr Hevern's use of the word "reputation" might be a coincidence given he was unaware of the Vodafone Proceedings and that Mr Hevern talking about the claimant obtaining a good reputation in the Engineering Function with a view to then applying to another department within the respondent's organisation. There was also no evidence that any of the witnesses who appeared before the Tribunal, especially Mr Nicholson whose took the decision to dismiss the claimant, were aware of the Vodafone Proceedings or had any involvement in the decision to appoint Vodafone Limited as a telecom supplier.

134. As the Hearing progressed, the Tribunal endeavoured to provide assistance and guidance to the claimant. The Tribunal's impression was that the claimant only heard what he wanted to hear to validate his position and tended to take comments out of context. For example, throughout the proceedings the Employment Judge wanted to ensure that all the witnesses attended the Tribunal's office only when their evidence to be heard. This was to minimise inconvenience as some did not work or live locally. There was discussion about this in relation to each witness. However, the claimant repeatedly commented that the Tribunal did not wish to inconvenience Mr Feely because he was a busy man.

135. Mr Jordan appeared as a witness under Tribunal Order. The Tribunal was aware from the claimant's evidence that during the Disciplinary Appeal Hearing the claimant had indicated that he no longer wished Mr Jordan to

represent him. The Tribunal's impression was that Mr Jordan endeavoured to answer the claimant's questions truthfully. The Tribunal accepted his evidence there being no cross-examination by Mr Mitchell.

136. The Tribunal considered that Mr Nicholson gave his evidence honestly and candidly. The Tribunal's impression was that Mr Nicholson was task orientated. He did not rise to the personal comments made by the claimant in the Disciplinary Hearing and Hearing. The Tribunal considered that the claimant appeared to be oblivious to the effect that his behaviour was having on others not only at the time but throughout the Hearing.

137. The Tribunal considered that Mr Feely was an honest and reliable witness. The Tribunal felt that Mr Feely was fair minded in his approach to the Disciplinary Appeal Hearing. The Tribunal considered that he endeavoured to deal with the Disciplinary Appeal Hearing thoroughly and independently. Mr Feely's task was not made easier by the fact that the claimant raised issues about his impartiality and referred to evidence but was unwilling to provide details of exactly what was being referred to.

138. Ms Lawler gave her evidence in a straightforward manner and was in the Tribunal's view credible and reliable. The Tribunal considered that she endeavoured to deal with matters thoroughly and independently.

139. Mr McGovern was also in the Tribunal's view a credible and reliable witness. He approached the Stage 2 Grievance Hearing with an open mind. The Tribunal's impression was that he was optimistic that he could resolve the matters and that it was with frustration that he felt the Stage 2 Grievance Hearing did not have the focus that he intended.

140. The Tribunal considered that it was important to make comments about evidence before it and why the Tribunal has made the above findings.

141. As set out in the introduction the claimant offered to provide the Tribunal with the covert audio recordings. While the Tribunal acknowledged this

offer, it was explained and the Tribunal believed understood by the claimant, that this was a disproportionate use of the Tribunal's time.

142. During the claimant's evidence, he did not agree with the accuracy of the respondent's notes of the disciplinary hearings and grievance hearings. The Tribunal understood that at each hearing a person was present whose sole responsibility was to take notes. The notes were extended shortly after the hearings and the claimant was provided with copies. In relation to the Disciplinary Hearing notes the claimant did not cross-examine Mr Nicholson about the accuracy of the Disciplinary Hearing notes. The claimant did, however, raise concerns about the accuracy of the witness statements obtained as part of that process as part of his grievance. The Tribunal understood the claimant to be disagreeing with the content rather than suggesting the witness statements not recording what the wtinesses said. The claimant initially indicated, subject to some comments, that the Stage 1 Grievance Hearing notes were reasonable. However, during the Stage 2 Grievance Hearing he took issue with them.

143. The claimant had the respondent's notes and the audio recordings for some time. He had prepared transcripts of parts of meetings and hearings that he wished to rely upon. They were produced in his set of productions which extended to 692 pages. Some of the transcripts appeared to be transcripts of what was said throughout the entirety or part of a hearing. Other transcripts were extracts and comments were noted at certain times and the claimant made commentary on what he considered that dialogue meant.

144. The Tribunal was mindful that the respondent's witnesses had not listened the audio recordings and could not vouch for the accuracy. However, it seemed to the Tribunal that these transcripts should be treated as the claimant's notes of the various meetings and hearings. Where the claimant specifically referred the Tribunal to the transcripts in his evidence and where those transcripts were put to the respondent's witnesses in

cross-examination, the Tribunal considered them when reaching its findings.

145. As indicated the claimant's productions included correspondence relating to the Vodafone Proceedings; a summary of job applications by the claimant since 2007; the recruitment processes of "BAE Systems Defence partners"; Raython Thales; excerpts of interviews with Lloyds, Santander, Vodaphone; interviews with Frazer Nash & Atkins. Also included were statistics from the Office of National Statistics. While during his evidence the claimant referred to these documents in the generality he did not put these documents to the respondent's witnesses. The Tribunal therefore put little weight on this evidence.

146. The claimant's evidence was that over the years he had made numerous job applications to the respondent which had been unsuccessful. He believed that he was on a blacklist. Although the respondent employed him in March 2015 this was because the respondent was aware of the Vodafone Proceedings and that his employment with the respondent would be considered in making a financial award against Vodafone Limited. The claimant also believed that being on a blacklist was a reason for his dismissal.

147. The respondent denied the claimant was on a blacklist or being a trade union member had any bearing on his recruitment or subsequent dismissal. The claimant admitted in his evidence that at his interview with Mr Andrews and Mr Larkin they considered that his experience particularly in relation to bite size educational videos that the claimant produced which was of value to the team. Ms Lawler explained that as part of her investigation into the grievance she had considered the claimant's complaint he had applied for several roles within BAE Systems both before and during his employment and had been unsuccessful. Initial screening was undertaken by an external organisation who matched CVs against role descriptions. There was no input from past employers or

current line leaders at that stage of the process. She therefore concluded that perhaps initial screening had identified gaps in the matching process in the claimant's skills and experience. In relation to progress within the organisation Ms Lawler's investigation was while the Engineering management team were supportive of the claimant exploring roles within the Commercial Function that training was not linked to the claimant's current role and therefore could not be funded by the Engineering Function and that professional engineering qualifications are not approved by the local management team. Mr Nicholson gave evidence about the reasons why he decided to dismiss the claimant.

148. The Tribunal considered that the respondent's explanation for appointing the claimant in March 2015 was entirely plausible; following initial screening the claimant's CV matched the role and the claimant demonstrated at an interview that he had the necessary attributes to undertake the role. While the Tribunal acknowledged that the Vodafone Proceedings would be a matter of public record the Tribunal considered that it would be highly unlikely that Mr Andrews and Mr Larkin would be aware of the Vodafone Proceedings when the claimant was recruited. The Tribunal also considered that it was highly unlikely that Mr Hevern would have been aware of the Vodafone PH. From the evidence produced the Tribunal did not know whether the Vodafone PH was a public or private hearing. If it was private the Tribunal considered that Mr Hevern would have been unaware of what was discussed. If it was a public a judgment would have been issued to the parties and be a matter of public record. However, there was no evidence to suggest that a judgment was available before Mr Hevern's discussion with the claimant on 15 September 2015 and that Mr Hevern was aware of its contents. The Tribunal therefore concluded that the reference by Mr Hevern to "reputation" was in the context of the claimant's reputation in the Engineering Function and his desire to move to the Commercial Function.

149. There was no evidence to suggest that any of the individuals involved in the Vodafone Proceedings knew or were in contact with any of the claimant's colleagues or line managers at the respondent. Mr Nicholson who took the decision to dismiss the claimant and indeed Mr Feely, Ms Lawler and Mr McGovern were unaware of the Vodafone Proceedings. The Tribunal appreciated that any Judgment in relation to the Vodafone Hearing would be a matter of public record but there was no evidence to suggest that that Judgment was available in July 2016.

150. The claimant's evidence was that he believed that the reason for his dismissal was because the respondent perceived him as having a disability. The claimant said that he had this belief based on comments in the witness statements which culminated in the Investigation Report which states that the claimant had "a level of paranoia that is affecting his judgment".

151. Mr Nicholson's evidence was that in reaching his decision to dismiss the claimant he formed no view on the claimant's mental health. He had read the witness statements and had concluded that people found the claimant's behaviour to be aggressive. A member of the team found the claimant to be "scary". Mr Nicholson said that he did not consider that the reference in the Investigation Report to the claimant having a degree of "paranoia" was perceived by him as a reference to the claimant having mental health issues which result in symptoms of severe paranoia. Mr Nicholson knew of the claimant's discussion with Ms Wilson following an interview in December 2015.

152. The Tribunal did not require to have reference to Occupational Health as this appeared to be in relation to stress in the workplace. Based on the available medical evidence there was no reason for the respondent to consider that the claimant was suffering from anything other than stress. It is not a medical condition. The Tribunal accepted Mr Nicholson's evidence.

153. The claimant's said that he also believed he was dismissed because he made a public interest disclosure. He considered that the disclosure was made continuously from the December Meeting and subsequently in correspondence: the 25 April Email and the 8 May Email. While the claimant's evidence was unclear the inference he gave was that everyone was aware that he had made a protected disclosure. The respondent's position was that the processes were entirely separate. The people involved in the disciplinary process were unaware of the content of the grievance and those involved in the grievance process were unaware of the detail of the disciplinary issues.

154. The respondent's HR Advisers are responsible for different aspects of HR procedure. Donna Cook was present during the investigation interviews and Disciplinary Hearing. Zoe Taylor was involved in setting up and attending the Disciplinary Appeal Hearing. Neither of them were involved providing HR support in relation to the grievance. This was dealt with by Lisa Allan, the Ethics Officer who was separate from the HR function. She then referred the matter to Amy Dewhurst who was present at the Stage 1 Grievance Hearing and Clare Gavaghan who was present at the Stage 2 Grievance Hearing. The Tribunal considered that it was highly unlikely any of the HR Advisers would have been discussing the different processes with each other.

155. The Tribunal noted that the disciplinary process was conducted by managers within the Engineering Function. The Tribunal considered that during the Disciplinary Hearing the claimant alluded to the 25 April Email but Mr Nicholson had no idea what he was talking about. The 25 April Email and/or possibly the 8 May Email was probably in the Tribunal's view the email that the claimant was referring to in his Disciplinary Appeal Hearing but neither Mr Feely nor Ms Taylor were aware of what was being referred to and the claimant did not clarify the position to them. The Tribunal also felt it was significant that Ms Taylor was unaware of Mr

McGovern's recommendations regarding access to the claimant's laptop following the Stage 2 Grievance Hearing. The Tribunal considered that during the Hearing Mr Feely was notably taken aback on reading the claimant's comments about him in the 25 April Email. The Tribunal impression was that this was the first occasion that he knew of them.

156. The grievance process was dealt with by managers in other parts of the business. Neither Ms Lawler nor Mr McGovern worked with Mr Nicholson or Mr Feely. Ms Lawler did not know any of the people involved in the matters that she was investigating as part of the grievance process. She was not provided with disciplinary process paperwork: witnesses statements taken by Ms Taylor; notes of the Investigation Interview; Investigation Report; and notes of the Disciplinary Hearing. It was apparent during the Hearing that Mr McGovern had not heard of Mr Nicholson and was unaware of his involvement in the disciplinary process. Mr McGovern was surprised at the Hearing when it was suggested to him that following his recommendation the claimant experienced any difficulties getting access to his laptop. Mr McGovern said that no one, including the claimant had approached him about this.

157. The Tribunal considered that the evidence of the respondent's witnesses and their reaction and response to cross-examination was consistent with their position that those involved in the disciplinary process were not privy to the grievance process and vice versa.

The Law

158. Section 104F of the Employment Rights Act 1996 (the ERA) provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or if more than one, the principal reason) for the dismissal relates to a prohibited list and either (a) the employer contravenes Regulation 3 of the Employment Relations Act (Blacklists) Regulations 2010 (the 2010 Regulations) in relation to that prohibited list, or (b) the employer (i) relies on information supplied by a person who contravenes

that regulation in relation to that list, and (ii) knows or ought reasonably to know that the information relied on is supplied in contravention of that regulation.

159. If there are facts from which the Tribunal could conclude, in the absence of any other explanation, that the employer (a) contravened Regulation 3 of the 2010 Regulations, or relied on information supplied in contravention of that Regulation the Tribunal must find that such a contravention or reliance on information occurred, unless the employer shows that it did not.

160. Regulation 3 of the 2010 Regulations state that *subject to regulation 4, no person shall compile, use, sell or supply a prohibited list which is a list that (a) contained details of persons who are or have been members of trade unions or persons who are taking part or have taken part in the activities of trade unions, and (b) is compiled with a view to being used by employers or employment agencies for the purposes of discrimination (treating a person less favourably than another on grounds of trade union membership or trade union activities) in relation to recruitment or in relation to the treatment of workers.*

161. Section 103A of the ERA provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure. A “protected disclosure” means a qualifying disclosure (as defined by Section 43B) which is made by a worker in accordance with any of Sections of 43C to 43H.”

162. Section 43B of the ERA provides that a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to be one or more of the following (a) that a criminal offence has been committed, is being committed or is likely to be committed; (b) that a person has failed,

is failing or is likely to fail to comply with any legal obligation to which he is subject, (c) that a miscarriage of justice has occurred, is occurring or is likely to occur; (d) that the health or safety of any individual has been, is being or is likely to be endangered, (e) that the environment has been, is being, or is likely to be damaged, or (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or likely to be deliberately concealed."

163. Section 6 of the Equality Act 2010 (the EqA) defines a person as having a disability if the person has a physical or mental impairment and the impairment has a substantial and long term adverse effect on the person's ability to carry out normal day to day activities.

164. Section 13 of the EqA provides that *A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others*.

165. Section 26 of the EqA states that a person (A) harasses another (B) if (a) A engages in unwanted conduct related to a relevant protected characteristic, and (b) the conduct has the purpose or effect of (i) violating B's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B. In deciding whether conduct has that effect account must be taken of (a) the perception of B; (b) the other circumstances of the case; (c) whether it is reasonable for the conduct to have that effect.

166. Section 27 of the EqA provides that A person (A) victimises another person (B) if A subjects B to a detriment because (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act. Each of the following is a protected act (a) bringing proceedings under the EqA, (b) giving evidence or information in connection with proceedings under the EqA; (c) doing any other thing for the purposes or in connection with the EqA; (d) making an allegation (whether or not express) that A or another person has contravened the EqA.

Submissions

167. The clamant and Mr Mitchell helpfully prepared written submissions to which they referred the Tribunal. The following is a summary of their respective positions.

The Claimant's Submissions

Blacklisting

168. The Tribunal was referred to the statutory provisions including Section 136 of the Equality Act 2010 and the cases of *Barton v Investec Securities Ltd [2003] ICR 1205* as revised by *Igen v Wong [2005] ICR 9311*. Reference was also made to production C114.

169. The claimant referred to the statistical quantification of his skills within the workforce and market forces that should in theory make him highly employable within many sectors of the United Kingdom economy. The outcome of the internal BAE Systems applications went beyond the balance of probability threshold but tended towards the certain use of a prohibited list to restrict access to suitable vacancies within the United Kingdom labour market. He pointed to making approximately 500 unsuccessful job applications since he was made redundant from a prestigious graduate scheme in 2007. The claimant's treatment was not the norm. He said that he had recurring treatment with four employers over ten years involving total inactivity in isolation separated by five years unemployment. This shifted the burden of the test as he had proved on the balance of probabilities facts from which the Tribunal could conclude, in the absence of any adequate explanation that the respondent had committed blacklisting

170. If the Tribunal did not accept that the claimant had demonstrated substantial and significant supplementary evidence of prima facia facts supportive of tackling national interest topic of blacklisting the Tribunal was referred to ongoing treatment which demonstrated highly probable

knowledge of the Vodaphone Case which included claims under the EqA and blacklisting. The Tribunal was referred to the supplementary evidence that Mr Herven's reference to "reputation" mirrored comments in the Vodafone PH. The claimant said that the Tribunal had access to audio files demonstrating that Mr Hevern and Mr Larkin restricted the claimant access to internal vacancies. Mr Hevern also mirrored language about waterfall approach to design which mirrored recruitment of Raytheon at Rosyth. The claimant believed that there are inappropriate third-party communications, that allowed Mr Hevern, who previously worked at Rosyth who commented on the claimant's CV being "too flowery" and having lots of gaps. The claimant disputed that his CV has significant gaps, therefore Mr Hevern's source of background knowledge must have come from another source. Mr Hevern's comments about the claimant's CV suggested that he thought that the claimant should not have been employed Mr Hevern's source of knowledge must have come from another source.

171. The claimant submitted that the respondent demonstrated all the usual components and indicators of blacklisting including union busting tactics, damage to reputation, inappropriate third-party communications, outcomes of long term unemployment, unfair recruitment practices, undue HR influences and non-consideration of the claimant`s application. The claimant referred to numerous documents in his productions. He said that there was mirroring language and treatment by the respondent's recruiting partners (Fraser Nash, Morison and Alexander Mann). He referred to interviews with Raytheon, Thales and Babcock and unsolicited emails from recruiters about jobs in Prestwick and Vodaphone. The claimant also commented on the close relationship between Mr Feely and Mr Hevern and their past employment.

172. The claimant said that the disciplinary process witnesses statement stigmatised and harassed him mirroring phrases highlighted within background cases in support of long term blacklisting such as "scary

chap". The Tribunal was referred to Ms Lawler's response to the claimant's concerns of blacklisting at the Stage 1 Grievance Hearing. At best it demonstrated a disinterest in blacklisting and unfair restriction to roles. More probably it demonstrates a recognition of blacklisting and unfair recruitment practices within the wider BAE Systems business. The respondent chose Mr McGovern for the Stage 2 Grievance Hearing. The Tribunal also saw that unsolicited job roles at Prestwick began to be sent to the claimant's personal email from this time in an apparent response to potential solutions and constructive avenues suggested by him during meeting for the benefit of the business and the claimant. Ms Lawler also made cryptic references to the job market in the Outcome of Grievance Stage 1 letter and was unable to provide credible or constructive justification for her statements. The implication was that she knew he would be unable to find suitable employment following any dismissal.

173. The claimant referred to Mr Jordan's evidence which the claimant said conveyed highly unusual intimidating references to the Official Secrets Act, discretionary union support and what appeared to be an attempt to gather information for the respondent. Mr Jordan was very defensive of the respondent and acted against the claimant as a Unite member. Mr Jordan fondly described aspects of his job that were sponsored by the respondent and that there are wider themes of union busting antics employed by the respondent.

174. The practical test of blacklisting is to be refused to interview or to recruitment for a single role for which a prospective employee has suitable capability and experience. Several successful publications goes beyond the basic test. In employing the claimant, the respondent provided a commercial benefit to commercial telecommunications partner at the discrete point in time a new supply contract was being agreed at the Scotstoun site. The Tribunal should draw strong inferences from the collective detrimental recurring coincidences. The Tribunal should then turn to consider what inferences could be drawn and must assume that

there was no adequate explanation for them. It must not take the employers explanation into account at this stage.

175. The Outcome of Disciplinary Appeal Hearing said that there was no evidence of unfair recruitment practice and that the claimant was merely advised that future applications would not be considered while there were unresolved performance and behavioural issues. As this claimant was told of this on termination it indicated that there was a permanent restriction on fair access to roles within the respondent on a permanent basis. This reads as an official non-consideration of future applications on a permanent basis which is an admission of intent to blacklist.

176. The Tribunal was referred to text books and the website of Thompson, Solicitors. The Tribunal was also referred to the following Tribunal cases *Willis v CB & I (UK) Ltd [2010] Case No: 1101269/09*; *Tattersfield v Balfour Beatty Engineering Services Ltd [2011]* and *Dooley v Balfour Beatty Ltd Case No; 2203380/2009 (5 March 2010)*.

177. The Tribunal should find on the balance of probabilities as prima facia facts to support an unfair dismissal by real reason of blacklisting. The respondent did not demonstrate the real reason for dismissal was in no way whatsoever to do with blacklisting and the Tribunal should find that the real reason for dismissal is the claimant's applications were not considered and that the dismissal was based on an unofficial black mark against the claimant's name in whatever form that was practically administered. The outcomes of blacklisting are certain and some of the most weighty evidence of blacklisting presented in any case the Tribunal should exercise the powers available to it.

Dismissal for Making Interest Disclosures

178. The Tribunal was referred to Sections 103A and 43G. The claimant said that he made cumulative disclosure with time dated "facts" associated with serious health and safety issues, fraudulent use of defence budgets,

misrepresentation of work, dishonesty and improper recruitment processes between December 2015 and 15 June 2016. The Tribunal was referred to the case of *Norbrook Laboratories (GB) Limited v-Shaw UK/EAT/ 0150/13* at paragraph 27: Each email contains information or facts or references to previous communications and can be seen to be a general cumulative disclosure although there is one clear primary qualifying disclosure made in close proximity to the dismissal decision.

179. The claimant said he first raised concerns in a low key and informal method at the December Meeting which he referred to Mr Cattanach instructing the team on 17 November 2015 to generate a milestone plan for the department based on “notional activities”. Other indicators of fraudulent misrepresentation in the defence programme included Mr Hevern saying to Mr Cattanach, “You’re not currently assigned any booking codes?” and Mr Cattanach replying “We need to have a wee meeting to decide what I’m doing. Don’t worry there is plenty of bunce in the system.” The respondent can be seen to have taken negative retaliatory actions at every stage of reasonable disclosure including inferring PDR in the objectives to be arranged to lead to the dismissal of the claimant.

180. In the 25 April Email the claimant sent “a significant and detailed main disclosure”. He sent facts associated with the fire evacuation decisions that negligently and intentionally endangered hundreds of employees because of a six minute delay in test evacuations resulting from that in self interested decision making and software contracts issued to third parties and use of software systems to misrepresent work completed. The claimant believed that these decisions had no innocent explanation and that it would fraudulently mislead external auditors of work carried out and indicators of criminal activity.

181. The claimant maintained that the disclosure was made in good faith and was based on an honest belief that it was a qualifying disclosure that could

benefit many people. The Tribunal was referred to *Chesterton Global Limited & Another v Nurmohamed UK/EAT/0335/14/DM*. The claimant maintained that his actions were constructive, productive and justified.

182. The claimant also referred the Tribunal to *Mills & Financial Services Limited v Crawford UK/EAT/0290/13* as the main disclosure was a detailed provision of information and pointers to certain evidence in the fire records and company action logs that would demonstrate beyond doubt malpractice necessitating a public interest disclosure.

183. The only outcome of the disclosure was the claimant was dismissed. The claimant said that it was evident that his issues had not been investigated and that the respondent do not welcome problems and issues being highlighted to them. The claimant did not believe that he had the opportunity to raise any issues via a third- party helpline and his treatment would have been any different. The claimant had been conditioned not to speak with "*Ethic Helplines*" as part of his past employment.

184. The claimant did not have access to the respondent's procedures and anticipated that his protected disclosure would follow a whistleblowing procedure rather than a grievance procedure. Any unnecessary stresses applied to him was aimed at causing him personal injury and limit his ability to work. He said this amounted to criminal harassment. It was clear that Ms Lawler raised whistleblowing scenarios with colleagues and did not keep the claimant's anonymity.

185. The respondent relied on tainted evidence to dismiss the claimant and to dismiss valid and meritus public interest concerns. Mr Nicholson was manipulated by individuals producing fictitious witness statements with direct managerial responsibility for the claimant. The real reason for dismissal was to victimise the claimant for making a protected disclosure.

186. In the 15 June Email the claimant raised concerns about the inappropriate handling of his whistleblowing claim by Ms Lawler. He suggested that Ms

Lawler was not fair or impartial towards him. The Tribunal was referred to Ms Lawler's comments about the job market in Glasgow. The Tribunal was also referred to the fact that Mr Feely had not been investigated in relation to allegations raised by the claimant. The claimant also submitted that Mr McGovern's comment that the company was driven by processes and "one of the most important in my opinion is the Ethics Helpline with great respect it has been done very deliberately to ensure employees can raise a grievance, fairly and without any sense of intimidation" "to protect employees' rights" "why wasn't that line followed". The claimant said that this suggested that the respondent intimidates employees raising grievances if they were not raised via an external helpline anonymously.

187. The main disclosure includes four references to Mr Feely, four to Tom Brady, and six to Archie Paterson and malpractice within the HR. The disciplinary headings were amended by disciplinary Section 6 complaints to Section 7 complaints without any foundation. This would not have occurred but for the proximity to the qualifying disclosure. The Tribunal saw that "whistling" was referenced within the disciplinary minutes without reasonable explanation. The decision was unusually put on hold at this time. Mr Nicholson stated that the hearing chair was altered at the "last minute" within the same team. It lacks credibility that the disclosure was not known to the disciplinary team, Mr Paterson, Mr Nicholson and Ms Cook. The real reason for the dismissal was making a qualifying disclosure and was automatically unfair in these circumstances.

Discriminatory Reasons for Dismissal

188. The Tribunal was referred to the Equality Act 2010 and in particular Sections 6, 39, 13, 26 and 27.

189. The Tribunal referred to the Investigation Report where Ms Taylor stated that the claimant had "a level of paranoia that is affecting his judgment". The claimant said this demonstrated that the respondent believed he had

a mental disability that is severe and by nature long term carrying great stigma.

190. The Tribunal was referred to the definition of paranoia in DSM 5 and ICD-10 World Health Organisation as a delusional disorder, psychosis, photogenic and schizophrenia. The Tribunal was referred to *Colman v Attridge Law [2008] IRLR 722* protecting the claimant from discrimination on the grounds of a false perception of mental disability.

191. In addition the Tribunal was referred to the innuendos, statements and actions aimed at characterising the claimant as having a substantial and long term mental disability impacting his work. The Tribunal was referred to the witness statements contained falsehoods and slurs in an attempt to portray the claimant as having a severe mental impairment that would limit his ability within his role and within his workplace. These witness statements are tainted evidence and are relied upon by Mr Nicholson and Mr Feely.

192. The Tribunal was referred to *Pnaiser v NHS England & Coventry City Council UK/EAT/0137/15*. This removes the need to demonstrate direct intent of the employer. Mr Nicholson had been influenced by the perception that the claimant was disabled having paranoia that effected his judgment and mental instability and would impact on his work over the longer term. That was the view taken by Ms Taylor who was more senior than Mr Nicholson. It also led Mr Feely to believe that the claimant was a great threat to others.

193. In relation to the claimant's claim under Section 27 the claimant relied upon the fact that previous line managers with previous employers demonstrated an inappropriate knowledge and reference to medical referrals leading to the claimant's dismissal. These themes are evident and mirrored the claimant's employment with the respondent. The claimant's dismissal and poor treatment can be directly linked to Vodafone

Proceedings against a commercial partner of the respondent. Dismissal can be seen to be victimising.

194. As regards the claim under Section 26 of the EqA the claimant has suffered a campaign of harassment associated with false allegations of serious mental health conditions and aggressiveness without foundation. There are recurring themes of being “scary”, “aggressive”, “paranoid” and the Tribunal should recognise the long term harm this conduct would have on any individual.

195. The claimant did not accept the reason advanced by the respondent for his dismissal. The Tribunal was referred to *Broecker v Metroline Travel Ltd EAT/2016* and against Smith v *Glasgow City District Council [1987] ICR 796* which prevents an employer leaving the reason obscure or indeterminate.

196. The claimant was not guilty of any misconduct. No other reasonable employer would have taken this decision. The claimant acted in a measured and constructed manner throughout and there is no contributory fault that led to the dismissal. There is nothing the claimant could have done to obtain a constructive role within the business or build relationships from day one. The respondent’s actions are grossly disproportionate and based upon foundations of poor standard inaccuracies and false processes.

197. Mr Nicholson and Mr Feely introduced directly or certainly authorised dishonest insertion of misleading passages within the hearing minutes that did not take place. The minutes were lacking credibility and were symptomatic of an almost entirely flawed process. The respondent attempted to portray the claimant as aggressive. Mr Feely presented as someone who had taken pride in a range of individuals used of author slurs against the claimant. Mr Nicholson appeared to have a clear dislike of the claimant and was not impartial in any way but determined to dismiss the claimant.

198. The audio files would have disproved the respondent's evidence almost in its entirety. The claimant has been guided with the principals of *Vaughan v London Borough of Lewisham & Other UK/EAT/0534* finding the reliable focused use of audio evidence in Tribunals, provided clear and persuasive evidence of widespread wrongdoing and inaccuracies tending towards dishonest within the respondent`s senior management. The Tribunal was invited to prefer the claimant's evidence.

199. The respondent's disciplinary procedure refers to out of date ACAS guidance. Neither Mr Nicholson nor Mr Feely was aware of the ACAS Code of Practice. hHR failed to inform the senior managers of the responsibilities. There were more flaws in the respondent's investigation. Dismissal would not appear to have been an available decision to Mr Nicholson for a first offence. Mr Feely then embellished on the allegations to justify gross dismissal.

200. Although the claimant did not have qualifying service to bring a standard unfair dismissal claim it was argued that members of HR had demonstrated an inappropriate and undue influence on the disciplinary hearings. The Tribunal was referred to *Ramphal v Department for Transport UK/EAT/0352/16/DA*.

201. The dismissal decision was an unfair one as HR strayed beyond advice on the issues of consistency and questions of law, for example, into opinions of culpability and sanction. Ms Taylor said that he claimant would not be returning to work or have any future dealings with her populated words "look after yourself Alastair". Integrity is about what you do when you think no one is listening. The dismissal is therefore unfair and the respondent have not demonstrated a genuine reason.

202. The entire process was flawed, the investigation was carried out in bad faith rather than to cure flaws in the previous suspension. The investigation, disciplinary, appeal and every other previous hearing was

managed in a more unreasonable and dishonest format than the last. The claimant had done nothing wrong and accepted no contributory fault for his automatically unfair dismissal. He acted proportionately and reasonably throughout his employment attempting to do the right thing at every stage. The respondent's case is based on repeated of the even more severe and inaccurate slurs and malicious falsehoods.

203. The claimant asserted his implied contractual right to be treated with a duty of care. The respondent had a duty of care towards him and there was known and recognised application of known stressors and negligent decisions taken contrary to medical guidance which has resulted in a foreseeable and known injury. A contractual claim cannot be heard separately from the evidence and this is the best and chosen forum by the claimant to legitimately pursue this head of claim.

The Respondent's Submissions

Introduction

204. The Tribunal was invited to reject all the claims. The claimant's case was that he was dismissed because of one or all of the following prohibited grounds: blacklisting; public interest disclosure and perceived disability discrimination. The claimant has less than two years continuous service. There is no standard unfair dismissal claim. There is no stand-alone victimisation claim in the sense of being victimised because he brought the Vodafone Proceedings.

205. The Tribunal was invited to find that there were no facts from which it could conclude that the dismissal was by reason of or even tainted by any of the prohibited grounds.

206. Having regard to the perceived disability discrimination claim it was argued that there were no *prima facia* facts which would have brought the reversal of the burden of proof provisions in discrimination cases into consideration (*Igen Limited (above)*). The claimant must offer to prove a *prima facia* case: (i) a difference in status (in this case that he has been perceived to have had a disability); (ii) a difference in treatment; and (iii) something more - the reason for difference in treatment. The burden on the respondent to provide an adequate explanation does not shift simply because of the claimant establishing a difference in status and a difference in treatment (*Madarassy v Nomura International Plc [2007] EWCA Civ 33*. The absence of an adequate explanation only becomes relevant if a *prima facie* case is proved by the claimant. This has not happened in the present case.

207. It is not sufficient for the claimant to simply plead that he suffers a disadvantage due to the respondent's treatment and the difference in a (perceived) protected characteristic, something more is needed (*Maksymiuk v Bar Roma Partnership*, Langstaff J paragraph 7). It is not

sufficient for the claimant simply to prove facts from which the Tribunal could conclude that the respondent could have committed an unlawful act of discrimination. The bare facts of difference in (perceived) protected characteristics and a difference in treatment only indicate a possibility of discrimination. They are not without more sufficient material from which the Tribunal could conclude that on the balance of probabilities the respondent had committed an unlawful act of discrimination.

208. The reason for dismissal was conduct being a potentially fair reason under Section 98 of the ERA. The Tribunal was referred to *British Home Stores Limied v Burchell [1978] ICR 303*.

209. It was significant that the claimant did not put forward his position in relation to each incident, in question and instead in general adopted an approve that all statements were inaccurate and all the incidents in question did not happen. It was the claimant's choice and it was the claimant's position at the time that is relevant not the arguments he adopted in retrospect.

210. Alternatively, the reason for dismissal was not conduct it was some other substantial reason justifying dismissal in accordance with Section 98.

211. Even if the Tribunal did not consider that either of these fair reasons for dismissal are made out the claimant still does not succeed with any aspect of his claims if he cannot show that the dismissal was for one or more of the prohibited reasons as above.

212. There was evidence and the relevant facts (or lack of them) is key to the case. The claimant was self-centred, vague and an unreliable historian. He had an excessive suspicion of the motives of others and at times demonstrated unreasonable superiority to others and is argumentative. He interrupted constantly. He did not listen nor read documents that were not helpful to his viewpoint or theory. He filtered out recollection of matters against him and events that did not fit with his theories. In contrast, the

respondent's witnesses were all credible and reliable and diligently and fairly carried out the function assigned to each of them. There was a clear division between the respective functions. Mr Nicholson and Mr Feely who were the hearing managers in disciplinary process did not know about the alleged public interest disclosures and they were not as a matter of fact in any way influenced by perceived disability nor blacklisting. The Tribunal was invited to prefer the respondent's evidence in relation to any factual issues that required to be determined.

213. The claimant's case was an elaborate conspiracy theory based on his misguided perception that given his view of his own intelligence and skills he should have earned more in his entire career than he has to date. The claimant admitted that he does not interview well (due to nervousness) and that he has difficulty in social/workplace situations. The reason that he has not found work over the years is not for the Tribunal to determine as a relevant factual issue. However, his performance at the interview may be a factor. In any workplace the claimant appears to have difficulties with colleagues and to take instructions. He had repeatedly referred to difficulties with previous employers. Such is his suspicion of potential employers he was recording during the recruitment process. From day one of his employment he had a negative view. The respondent's code of conduct and disciplinary process makes clear that aggressive behaviour and insubordination are unacceptable. The claimant was aggressive within months and he was recording key meetings by August 2015. Despite repeated attempts to engage and support him to provide work and objectives he repeatedly pushed back all such support and regarded them with suspicion. Matters were discussed with him in November/December 2015. There were further attempts to discuss his behaviour with him. The claimant was on holiday in December and the respondent closes during festive period. This may be the reason for the number of incidents reducing at that time. The serious disciplinary allegations were considered at the Disciplinary Hearing before the claimant sent the 25 April Email. That was carefully and thoroughly considered and rejected. It was rejected

that there even an arguable protected disclosure. The claimant then asked for the disciplinary process to proceed to a conclusion without waiting for a second level appeal in the grievance to proceed. The claimant did not exhaust the internal grievance procedure.

214. The reasons for dismissal were clear, cogent and straightforward. They were based on witness statements in relation to specific incidents clearly in breach of the respondent's disciplinary policy. The claimant provided hundreds of documents and spent nearly four days in his evidence in chief. However, he had not and does not consider nor in detail dispute the events narrated in the statements. His position appears to be that everybody is against him so that all the witness statements are incorrect. At the time and during the Hearing the claimant had not chosen to read the detail of the witness statements. This is unfortunate and has lengthened the Hearing and led to bizarre evidence where the claimant did not know what the allegations against him were.

215. The respondent showed great patience in this matter and kept the decision makers in the grievance separate from those in the disciplinary process.

Blacklisting

216. The claimant claims that the use of the word "reputation" in the Vodafone PH and at a meeting with Mr Hevern supports this head of claim. Any such theories are entirely speculative and there is no factual basis to show any link.

217. The claimant claims that the summary of his grievance, isolation, poor induction etc are similar to that in relation to the Vodafone Proceedings. The claimant also suggests mirroring this employment issues. The obvious conclusion is that the claimant may have acted in a similar way in various employments and the reaction to his behaviours by employers

may or may not show similarities. This is unknown, unproven and irrelevant to a backlisting claim.

218. The claimant also cites various trade union representatives as being on a conspiracy to blacklist him including Tanya Hennebry and Mr Jordan because they were not supportive of him. Mr Jordan gave evidence that this was not the case. The claimant also cited wild cat industrial action taken by contractors to another shipbuilding organisation that did not involve BAE Systems.

219. There was no evidence of a prohibited list containing the claimant's name used against him. There was no detriment made out and there was no less favourable treatment. He has not suffered any "*restricted access to the labour market*." This head of claim was without foundation and should be dismissed.

Public Interest Disclosure

220. The respondent disputes that there is a "potential" disclosure before the 25 April Email.

221. The alleged potential disclosures appear to be:

a. A comment by the claimant as to a better way to organise staff to exit the building in the event of a fire. This is an opinion and not information of a safety breach.
b. A more practical way of dealing with refrigeration/food/air conditioning in the workplace. This was also an opinion and not information of a safety breach and is arguably not in the public interest.
c. A suggestion that colleagues work inefficiently and as such there was a waste of funds. Many employees feel this way. It was a serious allegation but does not appear to be based on any information.

d. A suggestion that a spreadsheet that was updated regularly by staff from time to time was updated by him with his initials but then later by someone else with their initials and as such this was "dishonesty by other staff members". There was no breach of a legal obligation.

e. An allegation that software was inefficient and therefore unwisely procured. There was no factual basis for this.

222. Nonetheless the claimant appeared to be unclear about his public interest disclosures when asked about this by Ms Lawler at the Stage 1 Grievance Hearing. It was suggested this was a tactic raised by the claimant after he received witness statements relating to the disciplinary process.

223. The respondent submitted that these occasions were not qualifying disclosures.

224. The Tribunal was referred to Section 43 onwards of the ERA

a. If the Tribunal considers that there may be potentially any qualifying disclosures they it can only be those contained within 25 April Email 8 May Email and 15 June Email (the Three Emails).

b. The alleged "ongoing disclosures" from December 2015 are unspecific and unsupported in fact or law.

c. When examining the Three Email (which repeat their content) the Tribunal was invited to conclude that there was no information provided that discloses any information that tends to show one or more of the circumstances in paragraph 43B of the ERA.

d. As such there are no "protected disclosures" in terms of Section 43B.

e. If the Tribunal considered there are any protected disclosures it is accepted that at the time the disclosures were made there was no longer a requirement for them to be made in good faith. However, such disclosures require to be in the public interest. The Tribunal was referred to *Chesterton Global Limited* (above) and *Underwood*

v Wincanton Plc UK/EAT/0163/15. It was submitted that in order to be in the public interest, the matter must affect the public (being more than the claimant).

f. If the Tribunal considered that there were any protected disclosures there were no detriments in terms of Section 47B.

g. The dismissal was not in any way connected to the alleged protected disclosures. The evidence of Mr Nicholson and Mr Feely was clear that they did not know about the grievance/alleged public interest disclosures and so in no way were they influenced by it.

225. At the Stage 1 Grievance Hearing and during the Hearing when asked what he wanted as a result of raising the concerns the claimant the claimant said that he wanted to transfer to another role in the respondent's organisation (the Commercial Function). The claimant did not believe these concerns to be breach any legal obligation or constitute a criminal act. He raised them tactically at the point of attending the Disciplinary Hearing without Mr Nicholson knowing of them. He did not want the issues resolved. There were no issues to be resolved. He wanted to derail the disciplinary procedure and attempt to "have a claim "or an attempt at a claim as he stated he knew he had no right to (ordinary) unfair dismissal if he was later dismissed.

The Perceived Disability Claims

226. The claimant's assertion appears to be reference to the following showed that various individuals perceived he had a disability: "scary", "non-functioning autistic", "paranoid", "shaky hands", "stress".

227. Ms Watt provided a statement anonymously as she was scared of the claimant. Another member of the team had told Ms Watt that she found the claimant scary. This was reflected again in a number of witness statements that made mention of allegations of "aggressive behaviour by the claimant." This culminated in the Investigation Report which stated that the claimant's behaviour "is at times aggressive and there is a fear as

to how he will react". That is factual and straightforward. It does suggest that there was a perception that the claimant was suffering from a mental health disorder being a mental impairment of sufficient degree to amount to a disability. Mr Nicholson and Mr Feely's evidence should be accepted.

228. The claimant alleged that he overheard colleagues in his department describing another employee as "*a non function autistic*". This is denied. In any event it is irrelevant. The claimant's evidence in chief was that this comment was about another person in another department. Furthermore, it was not put to Mr Nicholson or Mr Feely in cross-examination.

229. The Investigation Report mentioned that the claimant had a degree of "paranoia". Given the context and the comments made by the witnesses this was a known medical use of the word, simply meaning "excessive suspicion of the motives of others". This behaviour had been demonstrated throughout the Hearing. There are two definitions and this is the colloquial version as opposed to a medical condition where there is a serious mental health issue that results in symptoms of severe paranoia. This was not suggested or perceived by anyone as such. Again Mr Nicholson and Mr Feely's evidence should be accepted.

230. The claimant attended an interview in December 2015 with Ms Wilson. He admitted in the feedback session that he had been nervous and "*shaky hands*" were discussed. The claimant may or may not have shaky hands when nervous but most people have minor habits or traits when they are nervous. The Tribunal was asked to accept that the claimant was the one who mentioned this given "we discussed shaky hands at C152. If Ms Wilson had stated this "out of the blue" the claimant would have said so. This does not result in the respondent or any of its employees perceiving the claimant to be disabled with a mental health condition. In any event there was no evidence to suggest Mr Nicholson or Mr Feely used these words to describe the claimant or any evidence to suggest that they formed a view of perceived disability.

231. The protected characteristic of disability is defined under Section 6 of the EqA as a physical of mental impairment that has a long-term adverse effect on an individual's ability to carry out normal day-to-day activities. The respondent accepted that there can be discrimination by erroneous perception of such a protected characteristic.

232. The Tribunal was referred to *Aitken v Commissioner of Police of the Metropolis [2012] ICR 78* in which the Court of Appeal held that the ET was justified in finding that the reason for the respondent's treatment of the claimant was not his disability but on the basis of how the claimant appeared to others.

233. Neither the respondent nor any of the decision makers individually perceived the claimant as suffering from a mental health or physical impairment being a disability or otherwise. The occupational health report dated 16 March 2016 stated that the claimant was not suffering from any mental health condition or impairment. The claimant mentioned that he was "stressed" on occasion but that is not a medical condition no matter a disability.

234. The respondent's response was appropriate and an attempt was made to arrange a stress risk assessment. It is generally recognised that disciplinary and grievance processes can inevitably cause a degree of inconvenience and stress to employees.

235. In any event it was irrelevant to the reason for dismissal and there was no claim made out in this respect.

236. Given the lack of facts alleged no matter proven that are relevant the claim pled in his case is easy to determine. The respondent seeks that the claims are dismissed.

Conclusion

237. In the strict sense the procedure adopted is relevant as there is no claim for ordinary unfair dismissal. If the Tribunal finds that the procedure was in any way flawed the claimant would have been fairly dismissed if other procedure had been used. The aggressive incidents and serious insubordination was such that they justified termination of the contract of employment. Furthermore, had the respondent known that the claimant had been covertly recording in breach of company rules this would have been an issue for consideration.

238. The respondent reserved its position in relation to an application for expenses.

Deliberations

Blacklisting

239. The Tribunal started its deliberations by considering the claimant's complaint under Section 204F(1) of the ERA. The Tribunal noted that an employee will be regarded as unfairly dismissed if the reason, or principal reason, for the dismissal related to a prohibited list and either the employer contravened Regulation 3 of the Blacklist Regulations relating to that list or the employer relied on information provided by a person who contravenes Regulation 3 of the Blacklist Regulations in relation to that list, and knows or ought reasonably that the information relied on is supplied in contravention of Regulation 3 of the Blacklist Regulations.

240. The Tribunal noted that the dismissal need only relate to a prohibited list and with the partial reversal of the burden of proof in Section 204F(2) any dismissal that arises from circumstances where a blacklist was complied, or used by an employer carries a substantial risk of being automatically unfair.

241. The Tribunal referred to its findings. While the Tribunal acknowledged that the claimant had made numerous unsuccessful applications for employment with the respondent it accepted Ms Lawler's evidence that

initial screening is done by an external organisation matching CVs against role descriptions. This was what happened in March 2015 when the claimant was appointed following a successful interview with Mr Andrews and Mr Larkin. The Tribunal was not satisfied that Mr Andrews and Mr Larkin were aware of the Vodafone Proceedings when they recruited the claimant or at all.

242. The claimant also referred in his submissions to Mr Hevern mirroring the discussion in the Vodafone PH by using the word "reputation". The Tribunal did not find that Mr Hevern was aware of the Vodafone Proceedings. Mr Hevern's use of "reputation" was in the context of the claimant seeking to move to the Commercial Function. The Tribunal noted from Ms Lawler's investigation that Mr Hevern did not have funding in the Engineering Function to train the claimant for the Commercial Function. Mr Hevern also did not have the authority to approve any professional engineering qualifications. The Tribunal was not satisfied that Mr Hevern denied the claimant access to internal vacancies.

243. The claimant also referred in his submissions to Mr Hevern's comments about the claimant's CV in the witness statement provided at the Stage 1 Grievance Hearing that it "was quite flowery with lots of gaps". The claimant suggested that Mr Hevern must have background information from another source as he said there were no gaps in his CV. While the claimant's CV formed part of his productions (C141) the Tribunal was uncertain if this was an updated version of the one to which Mr Hevern was referring. The Tribunal did not know if the reference to "gaps" was in relation to dates or experience. In the Tribunal's view Mr Hevern was expressing an opinion about the claimant's CV which presumably was not shared by Mr Andrews and Mr Larkin who appointed the claimant.

244. The claimant also submitted that words witnesses used to describe him in their statements mirrored phrases highlighted background cases and were in support of long term blacklisting. The Tribunal was not convinced

that that was so. The Tribunal considered that the witnesses described their recollections of events and how they individually perceived the claimant. If there was similarity in language the Tribunal considered that the claimant was the common factor rather than there being a prescribed list.

245. The claimant said Ms Lawler's response to blacklisting in the Stage 1 Grievance Hearing and the Outcome of Grievance Hearing Stage 1 suggested that she had a clear knowledge that the claimant being unable to find suitable employment in Glasgow following any dismissal. That was not the Tribunal's reading of the paragraph. The Tribunal considered that Ms Lawler was commenting on information provided by the claimant about his difficulty in securing employment in the past. The Tribunal also did not consider that Mr Feely's statement in the Outcome of Disciplinary Appeal amounted to statement of non-consideration of future applications on a permanent basis because of a prohibited list. The comment about not considering future applications while there were unresolved performance and behavioural issues was in the Tribunal's view a comment about considering applications for other roles within the business while there were ongoing internal procedures.

246. The claimant said that Mr Jordan was defensive of the respondent and acted against him. Further that Len McClusky, Unite General Secretary recognised the need for an independent investigation into Unite representatives collusion with employers in support of blacklisting. The Tribunal had no evidence before it of Mr Jordan colluding with the respondent in support of blacklisting. The Tribunal did not consider on the evidence before it that Mr Jordan was acting against the claimant.

247. The Tribunal concluded that there was no evidence of the claimant's name being on a prohibited list and the respondent using this against him. The Tribunal was not satisfied that any detriment (dismissal) or less favourable

treatment was related to the claimant being on a prohibited list. This claim was therefore dismissed.

Automatic Unfair Dismissal

248. The Tribunal next turned to consider the claimant's complaint that he had been unfairly dismissed because he made a protected disclosure.

249. The Tribunal referred to Section 103A of the ERA which states that an employee will be regarded as unfairly dismissed if the reason or (if more than one), the principal reason of the dismissal is that an employee made a protected disclosure.

250. For a disclosure to be protected under the ERA in must be a disclosure of information; it must be a qualifying disclosure and be made in accordance with one of the six specified methods of disclosure.

251. Accordingly, to succeed with this claim the Tribunal had to be satisfied on the evidence that the 'principal' reason for the dismissal was that the claimant had made a protected disclosure. A principal reason is the reason that operated in the employer's mind at the time of the dismissal (see *Abernethy v Mott, Hay and Anderson 1974 ICR 323, CA*).

252. If the fact that the claimant made a protected disclosure was a subsidiary reason to the main reason for dismissal, then the claim under Section 103A is not made out.

253. The Tribunal noted that in establishing the reason for dismissal in a Section 103A claim the Tribunal required to establish the decision-making process in the dismissing officer's mind.

254. Dismissal was admitted. The burden of proof was on the respondent to show the reason for the dismissal. The respondent's position was that the reason for dismissal was conduct.

255. The Tribunal noted that in his claim form the claimant contended that he was dismissed after making protected disclosures. There was reference to the December Meeting at which he "recited a series of inappropriate time dated quotes made by Stephen Cattenach". The claim form also referred to the 25 April Email. The claimant argued in his submissions that between the December Meeting and 15 June 2016 he made cumulative disclosures with time dated "facts" associated with serious health and safety issues, fraudulent use of defence budgets, misrepresentation of work, dishonesty and improper recruitment exercised.

256. Before considering whether the claimant was unfairly dismissed because he made a protected disclosure the Tribunal first considered whether the claimant had made a protected disclosure.

257. The claimant said he first raised concerns in a low key and informal method at the December Meeting. The Tribunal found that at the December Meeting the claimant recited a list of comments that the claimant said were made by Mr Cattanach. The Tribunal referred to the 25 April Email that listed "inappropriate statements" under the Grievance Summary. The Tribunal understood that those pre-dated December 2015 where mentioned by the claimant at the December Meeting. While the claimant submitted that the "inappropriate statements" were indicators of fraudulent misrepresentation in the defence programme the Tribunal considered that the "inappropriate statements" which the claimant attributed to Mr Cattenach were statements without context not containing information tending to show one or more of the circumstances set out in Section 43B of the ERA.

258. The Tribunal then referred to the 25 April Email which the claimant submitted was "a significant and detailed main disclosure". He said that the 25 April Email contained facts associated with the fire evacuation decisions that negligently and intentionally endangered hundreds of employees because of a six minute delay in test evacuations resulting

from that in self interested decision making and software contracts issued to third parties and use of software systems to misrepresent work completed. The respondent submitted that there were no qualifying disclosures although this was a matter for the Tribunal to determine.

259. The 25 April Email contained several headings which the Tribunal considered in turn asking whether there a disclosure of "information" containing facts tending to show the failure to or likely failure to comply show one or more of the circumstances set out in Section 43B of the ERA.

Work Ethic

260. The Work Ethic section contained a comment about the claimant being provided with minimal work and being blocked from applying for other roles despite performing more productively and to a higher standard than his colleagues. The claimant alleged that design work was being drawn out and evidence from previous projects was being replicated rather than eliminated. The Tribunal did not consider that the Work Ethic section disclosed information that showed or tended to show the failure to or likely failure to comply show one or more of the circumstances set out in Section 43B of the ERA.

Health and Safety

261. In the Health and Safety section the claimant expressed concerns about managers' attitudes and performance causing long term risk for builders and end users. The claimant provided an example a fire drill where a third of the floor used the same stair well as the opposite floor with only one share exit which caused delay following which a health and safety forum was established to communicate health and safety improvement strategies including fire evacuation procedures. The Tribunal considered that the claimant had provided information about a fire drill, which he perceived to be a threat to health and safety. The Tribunal had no doubt that the claimant had a genuine belief. It considered if the claimant's belief was reasonable. The Tribunal thought that on balance the belief was

reasonable given the delay and the forum subsequently being created. The Tribunal also concluded that the claimant believed that the disclosure served the public interest. The Tribunal considered that it was a protected disclosure.

Misuse and Representation of Data and Communications

262. The Misuse and Representation of Data and Communications section contains the claimant's comments on the accuracy of the witness statement provided by Mr Brady as part of the Disciplinary Investigation. The Tribunal did not consider that the Misuse and Representation of Data and Communications section disclosed information that showed or tended to show the failure to or likely failure to comply show one or more of the circumstances set out in Section 43B of the ERA.

Performance Management and Organisational Behaviour

263. The Performance Management and Organisational Behaviour section contained statements about other employees taking credit for the claimant's work and being given training opportunities that the claimant has been denied. The claimant also refers to work being outsourced and close personal relationships between managers. Also that software was inefficient and therefore unwisely procured. The Tribunal considered that the claimant made allegations but did not disclose information that showed or tended to show the failure to or likely failure to comply show one or more of the circumstances set out in Section 43B of the ERA.

Misuse of Process

264. In the Misuse of Process section the claimant gives his opinion on the Disciplinary Investigation and challenges the honesty of the witnesses who gave statements as part of that process. The Tribunal did not consider that the Misuse of Process section disclosed information that showed or tended to show the failure to or likely failure to comply show one or more of the circumstances set out in Section 43B of the ERA.

Aim

265. The Aim section contains the claimant's opinion that there is misconduct by senior managers. It also refers to breach of criminal harassment legislation and long-term victimisation of a trade union member. The Tribunal did not consider that the Aim section disclosed information that showed or tended to show the failure to or likely failure to comply show one or more of the circumstances set out in Section 43B of the ERA

Recruitment

266. In the Recruitment section the claimant refers an email that he sent to Ms Wilson following feedback for the Project Manager EV role. The claimant refers to a personal attack, which appears to be reference to "shaky hands". He says that the role was not filled. He refers to making unsuccessful applications to the company over the past ten years. Since being employed he has been provided with no workload and the most likely explanation is victimisation of a trade union member or a poor reference for a previous employer. The claimant provides the example of Mr Hevern telling him to consider his reputation, which coincided with external events and refers to Ms Crawford's comments about the claimant being employed as an engineer. The Tribunal considered that the Recruitment section made allegations about the respondent being of breach of a legal obligation but such information that was provided was confusing and did not disclose information that showed or tended to show

the failure to or likely failure to comply show one or more of the circumstances set out in Section 43B of the ERA.

Dishonesty

267. The Dishonesty section referred to the Suspension Meeting and challenged the veracity of Ms Watt's witness statement and her honesty. The Tribunal did not consider that there was disclosure of information containing facts that showed or tended to show the failure to or likely failure to comply show one or more of the circumstances set out in Section 43B of the ERA.

8 May Email and 15 June Email

268. The Tribunal considered that the 8 May Email and 15 June Email repeated the content of the 25 April Email.

Stage 1 Grievance Hearing

269. The Tribunal did not understand the claimant to submit that he made any additional disclosures at the Stage 1 Grievance Hearing. Ms Lawler did however ask the claimant for evidence to support the issues that he raised in the 25 April Email.

270. The claimant submitted that the only outcome of the protected disclosure was his dismissal; there was no investigation and the respondent did not welcome problems being highlighted to them. The Tribunal did not agree with this submission. The respondent made available an ethics helpline for anyone wishing to raise a potential issue or concern. While the claimant chose not to raise the issue via the Ethics Helpline Ms Allen considered his concerns and endeavoured to clarify the issues following which Ms Lawler was appointed to investigate the claimant's grievances. She sought unsuccessfully to clarify what the claimant considered were protected disclosures. She investigated his grievances. Mr McGovern considered the claimant's complaints about Ms Lawler contained in the 15 June Email. The claimant submitted that Mr McGovern's comments about

the Ethics Helpline suggested that the respondent intimidated employees raising grievances if they were not raised via an external helpline anonymously. The Tribunal did not consider that there was evidence before it to support the claimant's submission.

271. The claimant had made multiple complaints before his dismissal in July 2016. The Tribunal asked whether taken as a whole the protected disclosure in relation to health and safety was the principal reason for the claimant's dismissal.

272. The Tribunal considered that the claimant had shown that he made a protected disclosure in the 25 April Email. Before that he had been suspended and invited to the Disciplinary Hearing. The claimant showed that the disciplinary process was initially put on hold pending the grievance process. The claimant reiterated his disclosures during the grievance process. The claimant submitted that the respondent relied on tainted evidence to dismiss him. He also submitted that Mr Nicholson was manipulated by the claimant's managers producing fictitious witness statements. The real reason for dismissal was to victimise the claimant for making a protected disclosure.

273. The Tribunal then turned to consider why the respondent terminated the claimant's employment. A reason for the dismissal is a set of facts known to the employer or may be of belief held by him, which cause him to dismiss the employee.

274. The decision to dismiss the claimant was taken by the Mr Nicholson. The claimant submitted that the last minute change of dismissing officer from Mr Paterson to Mr Nicholson suggested that the 25 April Email was known to Mr Paterson, Mr Nicholson and Ms Cook. The Tribunal did not accept that submission. It is not uncommon for people conducting disciplinary hearings to change at short notice due to business need especially when senior managers are involved. Also Mr Feely was mentioned in the 25

April Email and he conducted the Disciplinary Appeal Hearing. The Tribunal was satisfied the Mr Feely was unaware of the contents of the 25 April Email and therefore considered it highly likely that Mr Paterson, Mr Nicholson and Ms Cook to were also unaware.

275. The claimant also submitted that the reference in the Disciplinary Hearing Record to the claimant whistling on his way out was without reasonable explanation. The Tribunal disagreed. Mr Nicholson said that it reflected what happened. The Tribunal considered that this was plausible as the sentence continues that the claimant challenged the reception staff on security processes.

276. The decision to dismiss was communicated to the claimant in the Outcome of Disciplinary Hearing. The reason stated for the dismissal was that Mr Nicholson concluded that the claimant was asked to perform reasonable tasks and the claimant behaviour was unprofessional. Further some of the claimant's behaviour in the workplace was completely unacceptable and posed risk to others with displays of aggression and intimidation.

277. Mr Nicholson's evidence at the Hearing was that reason for the dismissal was the claimant's behaviour. He was not involved in the grievance process and was unaware of the existence of the 25 April Email at the Disciplinary Hearing and was unaware of its contents when he had his decision and issued the Outcome of Disciplinary Hearing. He was aware that the claimant had pursued issues through the grievance procedure which had not been exhausted but the claimant had had requested that the disciplinary process be reconvened.

278. The purpose of the Disciplinary Hearing was to discuss the claimant's failure to following instructions and unreasonable behaviour. The claimant has been provided with the witness statements. The claimant was given an opportunity to comment on the allegations in the witness statements.

The claimant chose not to respond to each incident. His approach was that the witness statements were inaccurate and/or the incident did not happen. The claimant was asked about his working relationships and whether he recognised the behaviours to which his colleagues referred.

279. The Tribunal considered its findings in relation to Mr Nicholson's reasoning when deciding to dismiss the claimant. He reviewed the witness statements and concluded that the claimant had refused to complete work given to him in a timely manner or as instructed and his reaction when work was delegated work was uncooperative and uncompromising. Mr Nicholson also concluded that the claimant's behaviour in the instances set out in the investigation were unprofessional and not acceptable. Mr Nicholson therefore upheld the allegation that the claimant had failed to follow reasonable instructions from management. Mr Nicholson also concluded that the claimant's behaviour in the workplace was unacceptable and that he was concerned that the claimant was rude to others with his displays of aggression and intimidation. Mr Nicholson upheld the allegation against the claimant's unsatisfactory conduct. Mr Nicholson also considered the support that had been offered: Occupational Health, numerous meetings with HR and line manager. Mr Nicholson found that the claimant either refused to attend or walked out halfway through discussions. Mr Nicholson therefore concluded that nothing more could have been done to help the claimant given that he was not willing to participate with any advice or support offered. Mr Nicholson decided that the claimant's employment should be terminated with notice. The claimant was advised that he had a right of appeal.

280. The claimant exercised his right of appeal. The Tribunal noted that the claimant argued that there was undue HR influence at the Disciplinary Hearing. Mr Feely investigated this and found that not to be so. In any event the Tribunal noted that the HR advisers involved in the disciplinary process were not the same as those involved in the grievance process.

281. While Mr Feely was mentioned in the 25 April Email he was unaware of its contents. He and Ms Taylor were also unaware of Mr McGovern's Outcome of Grievance Hearing (Stage 2). While Mr Feely amended the disciplinary headings from Section 6 complaints to Section 7 complaints the Tribunal did not agree that he did so without any foundation and it would not have occurred but for the proximity to the qualifying disclosure. The Tribunal considered that Mr Feely set out his findings, which included an annex setting out the evidence upon which he based his decision. The Tribunal was mindful that it was not considering a standard unfair dismissal claim but a claim under Section 103A of the ERA.

282. The Tribunal was not satisfied on the evidence that the 'principal' reason for the dismissal was that the claimant had made a protected disclosure. The Tribunal concluded that the claimant was not automatically unfairly dismissed under Section 103A of the ERA and that claim was dismissed.

Disability Discrimination

283. The Tribunal next turned to consider the claimant's disability discrimination claim. The Tribunal referred to Section 13(1) of the EqA. The Tribunal noted that it was not necessary for the claimant to posses the protected characteristic: disability. It was sufficient that the claimant was someone who was perceived to have a protected characteristic.

284. The Tribunal also noted that while disability is defined in Section 6(1) of the EqA there is no definition of a perceived disability.

285. The Tribunal understood the claimant's position to be that from late 2015 until his dismissal in July 2016 a number of people perceived him to have a level of paranoia that would limit his ability in his role and at the workplace.

286. The Tribunal understood that the claimant maintained that the respondent and the alleged discriminators perceived him to have a mental impairment

which had a substantial and long term adverse, affect on his abilities to carry out normal day-to-day activities.

287. The Tribunal considered from the evidence that in September 2015 the claimant openly discussed with HR and colleagues moving from the Engineering Function to the Commercial Function. Mr Hevern had only recently assumed the role of Engineering Manager. Mr Larkin was finding it difficult to manage the claimant. At the November Meeting the claimant was stressed and after speaking to Occupational Health the claimant left the office. There was a follow up discussion at the December Meeting. The claimant and Mr Larkin had a positive meeting on 3 December 2015 to set performance objectives. The Tribunal did not consider that at this stage the claimant's colleagues perceived him as having a disability rather that he wanted to move department and found meetings involving feedback about his performance stressful.

288. The claimant was on annual leave in December 2015. He attended an interview with Ms Wilson on 18 December 2015 but was unsuccessful. The claimant was given feedback on the interview in January 2016 at which there was discussion about the claimant being nervous at the interviewed and having shaky hands. The Tribunal did not understand the claimant to dispute that he was nervous at the interview and may have had shaky hands. The Tribunal did not consider that this suggested any perception by Ms Wilson that the claimant was disabled with a mental health condition.

289. Next there was the March Incident followed by the meeting with Mr Hevern on 4 March 2016 after which the claimant attended Occupational Health and decided to remove himself from the office. Mr Cattenach had no issue with the claimant leaving the office if the claimant felt unwell. Given that the claimant went home after visiting Occupational Health following a meeting with a line manager the Tribunal could understand why Ms MacKinnon was concerned about the claimant when she was unable to

contact him. The Tribunal did not consider that she perceived the claimant as having a disability but rather was genuinely concerned about his well-being. The Tribunal considered that this concern was not unmerited given that the claimant was subsequently unfit to attend work due to stress.

290. The Tribunal considered that there was a degree of confusion about the claimant's fitness to attend work on 16 March 2016. His General Practitioner assessed the claimant on 15 March 2016 because of "stress at work" and issued a statement dated 18 March 2016 that the claimant was not fit for work. The claimant attended work on 16 March 2016. Mr Harkin carried out a return to work interview. The OH Report referred to the claimant's stress reaction. There was no evidence of any psychological illness. There was a recommendation of assessing the claimant's workload and considering a workplace stress assessment and mediation.

291. The Tribunal did not consider that at this stage the claimant's colleagues perceived him to have disability. The focus was on the claimant being stressed at work and the need to provide him with a "healthy and positive workplace environment". There was also an acknowledgement that there might be relationship issues and the need to develop strategies to resolve them. In the Tribunal's view at the time the claimant also accepted this as he referred to stress reaction and that he did not engage readily socially in the workplace.

292. The Tribunal then turned to the Investigation. The claimant's main assertion was that various colleagues made innuendos, statements and actions that demonstrated that they believed that he had a mental disability that was severe and by its nature long term. The Tribunal was referred to the witness statements which the claimant said contained falsehoods and slurs in an attempt to portray him as having a severe mental impairment.

293. The Tribunal considered the witness statements. Ms Watt's witness statement referred to one member of the team not wanting one to one interactions with the claimant as they found him "scary". Ms Watt felt that the claimant could be intimidating or aggressive although she did not think he intentionally meant it. Other witnesses also mentioned that the claimant's manner could be aggressive. In the Tribunal's view the witnesses were narrating their recollection of events and how they viewed the claimant's behaviour towards colleagues and managers. The Tribunal considered that any reference to stress or having shaky hands did not suggest that there was any perception of the claimant being disabled with a mental condition.

294. While the claimant referred in the Investigation Meeting to Mr Cattenach referring to "non-functioning autistic" the claimant did not suggest that this comment was about him.

295. The Tribunal turned to consider the use of the word "paranoia" in the Investigation Report. The claimant submitted that this demonstrated that the respondent believed he had a mental disability that is severe and by nature long term carrying great stigma.

296. The Tribunal noted that the word appeared in the section of the Investigation Report where Ms Taylor set out her reasoning for believing there was a disciplinary case to answer. She explained the impact that the claimant's behaviour was having on the team by summarising how they perceived he treated them; the fact that he was at times "aggressive" and there was a "fear" of how he will react or "who" he would choose to overly challenge. Ms Taylor then commented on the claimant's perception of how he was treated by others, he believed people were talking about him and smirking. She said he had a level of paranoia that was affecting his judgment of situations. The OH Report that, Ms Taylor examined as part of the investigation specifically stated that the claimant was not suffering from a mental health condition or impartment. Any subsequent referral to

Occupational Health was for stress risk assessment. The Tribunal noted that Ms Taylor was medically unqualified. She did not say that the claimant was paranoid but had commented that he had a level of paranoia affecting his judgment of situations. The Tribunal considered that this was Ms Taylor's view and her use of the word "paranoia" was vernacular and not because she perceived the claimant to have a symptom of a mental health disability.

297. Mr Nicholson read the Investigation Report and witness statements. He did not request that the claimant be re-referred to Occupational Health before the Disciplinary Hearing or afterwards. The Tribunal considered that this was indicative of him accepting the OH Report that he did not perceive the claimant to have a disability because of the use of the word "paranoia" in the Investigation Report. The Tribunal considered that during the Disciplinary Hearing Mr Nicholson sought the claimant's comments on his colleagues' version of events and how they felt the claimant treated them. While Mr Nicholson accepted what was said in the witness statements in preference to the claimant's version of events, the Tribunal did not consider that forming such a view amounted to perceiving that the claimant had a disability.

298. Ms Lawler and Mr McGovern did not see the paperwork relating to the disciplinary proceedings. The Tribunal did not consider that they formed any view about the claimant's health.

299. Mr Feely also read Investigation Report and witness statements. His findings set out in the Outcome of Disciplinary Appeal Hearing focus on the witness statements, which he considered showed consistency as to the types of behaviour the claimant exhibited and corroborated some incidents. Mr Feely referred to the claimant displaying aggressive and intimidation behaviour towards colleagues. The Tribunal did not consider that forming such a view amounted to perceiving that the claimant had a disability.

300. In all these circumstances the Tribunal formed the view that none of the alleged discriminators perceived the claimant as disabled.

301. Even if the Tribunal was wrong on that and they did, the Tribunal was not convinced on the evidence before it that any alleged less favourable treatment (the claimant's dismissal) was because (of the perception that) he was disabled. Accordingly the claimant's direct discrimination claim is dismissed.

302. As regards the harassment claim under Section 26 of the EqA the claimant submitted that he suffered a campaign of harassment associated with false allegations of serious mental health conditions and aggressiveness without foundation. There were recurring themes of being "scary", "aggressive" and "paranoid".

303. The Tribunal did not find that there were allegations false or otherwise of serious mental health conditions. The claimant referred to "inappropriate statements" made by Mr Cattenach. The context in which these statements were made was not clear. The Tribunal was not satisfied that even if the statements were made by Mr Cattenach it was for the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. The Tribunal was not satisfied that it had that effect as the statements were not directed toward the claimant, it was not clear that Mr Cattenach was aware that the claimant heard them and the claimant did not indicate when the statements were made that he was upset by them.

304. As regards the comments made by the witnesses in their statements the Tribunal did not consider that these comments related to a disability but were the witnesses' recollection of events and how they perceived the claimant's behaviour in certain situations. These statements were provided as part of the investigation in a disciplinary process. While the

claimant said that he was offended by certain comments these statement were provided only to those involved in the disciplinary process. The Tribunal considered that the claimant openly expressed his opinions about work colleagues without regard to how they might feel on reading what he said. The Tribunal did not consider that it was reasonable for the witness statements to have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. Accordingly the Tribunal dismissed the harassment claim under Section 26 of the EqA.

305. In relation to the claimant's victimisation claim under Section 27 of the EqA he submitted his dismissal was linked to the Vodafone Proceedings against the respondent's commercial partner. The claimant referred to previous line managers with previous employers demonstrating an inappropriate knowledge and reference to medical referrals leading to the claimant's dismissal. The claimant said that these themes were evident and mirrored the claimant's employment with the respondent.

306. The Tribunal accepted that the Vodafone Proceedings were proceedings under the EqA. However the Tribunal was not satisfied that the respondent knew of the Vodafone Proceedings. There was no evidence that Mr Nicholson or Mr Feely were aware of the Vodafone Proceedings. There was no evidence that Mr Nicholson was aware that the claimant had or might make any allegations that he or his colleagues perceived the claimant to be disabled or raise proceedings against the respondent under the EqA of any allegations that the claimant. The Tribunal was not satisfied that the claimant had been victimised in terms of Section 27 of the EqA and therefore dismissed the claim.

Employment Judge: Shona MacLean
Date of Judgment: 12 January 2018
Entered in register: 16 January 2018
and copied to parties

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