EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		Respondent
MR MOHAMMED QASIM AHMED	**AND**	**BESWICK PARTNERSHIP LTD (R1)** **ROBERT ANTHONY BESWICK (R2)**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 20TH / 21ST / 22ND / 23RD / 24TH JULY 2020

EMPLOYMENT JUDGE MR P CADNEY (SITTING ALONE) **MEMBERS:**

APPEARANCES:-

FOR THE CLAIMANT:- **MR N BERRAGAN (COUNSEL) (APPEARING PRO BONO)**

FOR THE RESPONDENT:- **MR J BROMIGE (COUNSEL)**

JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claims of harassment (s26 Equality Act 2010) and direct discrimination (s13 Equality Act 2010) on the grounds of race and/or religious belief are dismissed on withdrawal.

2. The claimant's claims of harassment (s26 Equality Act 2010) and direct discrimination (s13 Equality Act 2010) and indirect discrimination (s19 Equality Act 2010) on the grounds of disability are dismissed.

3. The claimant's claim of breach of contract (arrears of pay) is adjourned for 28 days. The parties are directed to notify the tribunal no later than 4.00pm 21st

August 2020 whether the claim has been resolved and if not what issues remain outstanding. (Since the Judgment was promulgated the parties have complied with this direction and resolved this issue).

Reasons

Tribunal

1. With the written consent of both parties the case was heard by the Employment Judge sitting alone and without legal members.

Claims/Issues

2. By this claim the claimant brings primary claims of direct discrimination and harassment, both based on the protected characteristic of disability. He also seeks to bring a breach of contract claim relating to his pay during sickness absence which is discussed below. Claims of direct discrimination and/or harassment based upon the protected characteristics of race and/or religious belief were withdrawn at the start of the hearing; and in his final submissions Mr Berragan accepted that on the evidence before me there was no evidential basis for the claim of indirect disability discrimination.

3. The issues to be determined were identified at a Case Management hearing before EJ Livesey on 27 January 2020. Those that are still being pursued were identified as follows (The numbering is different but the issues are exactly as identified by EJ Livesey save that the claims for and references to race and religious belief have been removed. Paragraph number references relate to the original Particulars of Claim):-

Section 26: Harassment on grounds of disability.

1.1. Did the Respondent engage in unwanted conduct as set out in paragraph 14.1 below.

1.2. Was the conduct related to any of the Claimant's protected characteristics?

1.3. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him? If not, did the conduct have the effect of violating his dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him? In considering whether the conduct had that effect, the Tribunal will take into account the Claimant's

perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Section 13: Direct discrimination on grounds of disability.

1.4. Did the Respondents subject the Claimant to the following treatment falling within section 39 Equality Act on the grounds of the protected characteristics identified in brackets, namely:

1.4.1. *From 30 November 2017 (not 15 December 2017 as stated in the Claim Form), Mr Glenister and the Second Respondent disclosed personal information about the Claimant to staff at the First Respondent (paragraphs 4 and 5 of the Claim Form; disability);*

1.4.2. *From 30 November, the Second Respondent communicated with the Claimant aggressively and in a manner which was designed to (and did) humiliate him individually and/or in front of his colleagues (paragraphs 7 to 10; disability), including the examples;*
(a) *In paragraph 10;*
(b) *In paragraph 15;*
(c) *In paragraph 18;*
(d) *In paragraphs 20, 24 and 25;*
(e) *In paragraph 29;*
(f) *In paragraph 31 (relating to 22 February 2018);*
(g) *In paragraph 32;*

1.4.3. *(No longer relied on);*

1.4.4. *(No longer relied on)*

1.4.5. *The manner in which a complaint against the Claimant was dealt with from 16 February 2018 (paragraphs 18-27; disability);*

1.4.6. *The Claimant's denial of access to the grievance procedure, specifically by the Second Respondent (paragraphs 23, 28-30; disability);*

1.4.7. *The Claimant's dismissal; he alleges that the events of 19 February and the changes to his contract of employment indicated a clear intent for the Respondent's dismissal of him (paragraphs 25, 27 and 32; disability);*
1.4.8. *Failure to support the Claimant's return to work (paragraph 33; disability);*

1.4.9. *Failure to pay sick pay (paragraph 34; disability);*

1.4.10. *Commencement of the performance management process (paragraph 35; disability);*

1.4.11. *Suspending the Claimant for 30 days (paragraph 36; disability);*

1.4.12. *Any of the treatment not found to have been harassment.*

1.5. Did the Respondents treat the Claimant as alleged less favourably than it treated or would have treated the comparators? The Claimant relies upon the Senior Architectural Technician (the only one there at that time), who the Claimant can only name as 'David' as a comparator and/or hypothetical comparators who were not Asian, Muslim and/or disabled.

1.6. If so, are there primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?

1.7. *If so, what is the Respondents' explanation? Can they prove a non-discriminatory reason for any proven treatment?*

The Law

4. It is not necessary to set out the law in any greater detail as the statutory tests are set out in EJ Livesey's order as set out above; and as, for the reasons set out below the majority of the claims turn on a single finding of fact.

Facts

5. The first respondent is a firm of chartered architects, of which the second respondent is a director and majority shareholder. The other director is Mr Malcolm Glenister. Mr Mark White is a senior architect who has worked for the first respondent for over forty years. All three have given evidence before the tribunal. The claimant was interviewed in September 2017 and began work in October 2017 as a RIBA Part 2 Architectural Assistant. Mr Beswick's evidence, which I accept, is that Part 2 is the qualification achieved by architecture graduates on completion of the academic part of architectural training. Thereafter Part 2 assistants begin by assisting more experienced architects on projects until they are able to carry out projects on their own and attempt to achieve the Part 3 qualification at which point they are fully qualified architects. The claimant already had a degree of practical experience having worked in architecture practises around the world but had not yet achieved Part 3.

6. On 14th November 2017 the claimant was assessed by Dr Muthu, a Consultant Psychiatrist, who made a diagnosis of probable Bi-Polar Affective Disorder. At the hearing before EJ Livesey on 27th January 2020 he decided that the claimant had at all relevant times been a disabled person within the meaning of s6 Equality Act 2020 by reason of bi-polar affective disorder.

7. The claimant's evidence is that in the week commencing 27th November 2017 he asked Mr Glenister if he could meet to discuss personal matters. On 30th November 2017 shortly before 5 o'clock Mr Glenister was leaving and asked the claimant to

move his car so that Mr Glenister could get out. It is not in dispute that they had a conversation in a public area of the office for about fifteen minutes. Both agree that the claimant told Mr Glenister about family difficulties he had been suffering. The claimant also alleges that he told Mr Glenister about the diagnosis of bi-polar disorder. Mr Glenister says that he did not. This is the single most significant dispute of fact upon which much of this case rests and I will set out my conclusions and the parties' submissions in respect of it below.

8. On Friday 1st December 2017 Mr Glenister sent two emails. One timed at 9.17 am sent to Mr Beswick, Mr White and others read, " *Qasim asked to speak to me last night, and he told me that the reason he had not been very communicative, and been unwell on several occasions is because he has been going through an acrimonious separation from his wife of four plus years, and also not being able to see their two year old daughter. He has had to travel up to Leeds to see solicitors, barristers, children's court officials etc, and this has all been getting him down. But now this seems to be over as of yesterday, and he will be seeing his daughter this weekend. He also said he is really enjoying work here, so we may see a happier Qasim from now on.*" The second asked for that email to be more widely disseminated.

9. On 19th December 2017 the claimant had a performance appraisal which was generally good save that improvement was needed in respect of timekeeping; and on 2nd January 2018 it was formally confirmed that he had successfully completed his probationary period.

10. In late January 2018 the claimant was assisting Mr White in preparing drawings for a project for a client in Cheltenham. They first visited on 26th January when Mr White stayed briefly, and the claimant took measurements from which he subsequently made drawings. On the 1st February Mr White visited. During this visit the client told him that after he had left on 26th January that the claimant had been "*inappropriately familiar. He had told the client about his failed arranged marriage, his child in Leeds and his disillusionment with architecture.*" There was thereafter an exchange of emails between Mr White and the client which culminated on the 14th February with the client writing "*I have had a look at the second set of drawings you emailed to me. There are inaccuracies in the roof dimensions and in some of the measurements. Given that there have been two site visits to carry out a survey and to produce an accurate representation of the building I am disappointed that this has not been done properly. I also think the site has more potential than the ideas that have been presented. Under the circumstances I do not wish you to do any further work*." It is not in dispute that the errors in the measurements were contained in the claimant's original drawings which had been adopted and used by Mr White, nor that the ideas for the site were those of Mr White and not the claimant. For the sake of completeness on 17th February Mr White wrote agreeing to terminate their involvement in the project and waiving any fee for the work already done.

11. Prior to that on Friday the 16th February Mr White had gone to the office on what ordinarily would have been a non-working day specifically to speak to Mr Beswick and Mr Glenister about this.

12. On Saturday 17th February 2018 the respondents delayed Christmas meal took place. The claimant had been ill with flu that week and did not know whether he would attend. At 16.35 on the 17th he texted Mr Glenister saying he would be attending to which Mr Glenister replied, “see you later”. However, at 18.25 that day Mr Glenister texted saying “Qasim, it would be better if you did not come, as we have had a formal complaint about you from a client on Friday, and we need to consider what to do. Sorry”.

13. On 19th February 2020 the claimant was called to a meeting with Mr Beswick and Mr Glenister. There are no notes of the meeting but in a letter of 22nd February Mr Beswick summarised the discussion and conclusions in terms which are not broadly in dispute. They raised with the claimant a number of allegations which in the letter are divided in to “Conduct”, “Competence”, and “Timekeeping”. These were the “inappropriate conversation with the client; comments from other clients about the claimant being “over familiar, sometimes a bit pushy”; that he had attempted to con another professional in respect of a dispute with a planning officer over whether there was a nil fee for a non-material planning amendment; and his overly aggressive telephone manner (all said to be conduct allegations); the inability to complete an accurate survey; the conclusion that the work already undertaken should not be billed and the loss of the client; time taken to get accurate drawings on another project; and their opinion that he was nearer in level to a Part 1 than a Part 2 qualified assistant architect (all said to be competence allegations); and finally that he had been spoken to on a number of occasions about his timekeeping. The claimant does not accept in the most part that these are accurate or fair allegations. However, the respondent had concluded that the claimant would no longer be permitted to talk directly to clients, that any telephone or email dialogue with a client should be passed to the project architect; and that he was demoted with immediate effect to CAD technician with a reduction in salary. The letter further stated that he would revert to a one month probationary period and that the letter itself was giving one month’s notice of termination unless his conduct and performance improved.

14. At the conclusion of the meeting the claimant was invited to respond the following morning. In fact, no follow up meeting took place prior to the letter being sent by email on 22nd February. In the letter the respondent stated that the claimant had not responded. However by an email timed at 2.47 pm 21st February the claimant had said that he had a grievance with the content and methodology of the meeting; that he would like to clarify what was discussed; and would like the opportunity to raise these matters.

15. From the 22nd February 2018 until his resignation on 27th March 2018 the claimant was off sick with stress. His first fit note expired on the 8th March and he would have returned to work on the 9th March 2018. On 6th March the claimant emailed Mr Glenister (copied to Mr Beswick) saying “..*In our private discussion on 15th December at approximately 1700 I informed you that have been diagnosed as suffering from Bipolar affective disorder, a long term mental health condition and that I had been receiving suitable treatment through medication and counselling*.” He went on to ask for a return to work meeting to take place on 9th March. In fact, he did not return, receiving a fit note covering his absence from the 9th to the 30th March 2018.

16. Although it is not entirely clear when or what caused them to do so at some point between the 22nd February 2018 and 22nd March 2018 the respondent received advice from an HR consultancy. This resulted in a letter being sent on 22nd March which referred back to the claimant's email of 21st February and offering to resolve the claimant's grievance informally if possible. It went on to say that the grievance was upheld and "To this end please disregard my letter dated 22nd February 2018". It told the claimant of his right to raise a formal grievance and also that the underlying matters would be dealt with separately by a performance management process. It went on to say that prior to commencing any such process that the respondent would seek a medical report and the letter sets out in detail the process for obtaining the claimant's consent.

17. On 27th March 2018 the claimant submitted a grievance and by a separate letter resigned with immediate effect.

Conclusions

18. As is set out above the most significant factual dispute between the parties is whether the claimant did or did not tell Mr Glenister of the diagnosis of probable Bipolar affective disorder on 30th November 2017.

19. There is no pleaded case, and no submission before me, that the respondent could or should have been on notice of any mental health condition but for that disclosure (i.e. there is no claim of implied or constructive knowledge). The claimant's case is squarely that Mr Glenister had actual knowledge, and that if Mr Glenister knew then it is unthinkable that he had not told Mr Beswick; firstly because it was information Mr Beswick would have needed to know, and also because Mr Beswick's late wife suffered from the same condition and he therefore had significant personal knowledge of it. Mr Glenister acknowledged that had he been told he would have told Mr Beswick, which in my judgement is obviously correct. If therefore Mr Glenister knew it is a reasonable inference, and one that I would draw, that Mr Beswick knew. If Mr Glenister and Mr Beswick both knew from the 30th November 2017 then they have persistently and continuously lied about that fact throughout the whole process including this litigation.

20. In my judgement the fact of knowledge and the persistent denial of that knowledge would be sufficient to satisfy stage one of the Igen v Wong test and transfer the burden of proof if the claimant had suffered either unwanted conduct or less favourable treatment within the meaning of s26 and 13 Equality Act 2010.

21. In my judgement the instruction not to attend the Christmas party on 17th February 2018 , the demotion and reduction in pay on 19th February and the confirmation in writing on 22nd February 2018, and the failure to arrange a further meeting following the claimant's email on 21st February 2018 are all capable of amounting to unwanted conduct (s26) or less favourable treatment (s13). Although theoretically I could reject

the respondents' denial of knowledge and still find a non-discriminatory reason for the conduct in the circumstances of this case there is in my judgement no evidence from which I could conclude that they had satisfied the burden. Put simply it follows that if I accept the claimant's evidence it leads inexorably to the conclusion that he is bound to succeed in relation to at least those complaints set out above in relation to claims prior to 6th March 2018.

22. On the other hand, if I accept Mr Glenister's evidence then neither respondent had any actual knowledge (and as is set out above there is no allegation of constructive knowledge) prior to the 6th March email. It equally would follow automatically that any conduct, however unfair or unreasonable could not be either related to (s26) or because of (s13) the claimant's disability as there can necessarily be no causative link between a disability of which the respondents are unaware and their conduct. If therefore I accept Mr Glenister's evidence the respondents have a complete defence to all allegations prior to 6th March 2018.

23. For the reasons set out above the outcome in respect of the pre 6th March 2018 allegations turns on that one finding of fact. The claimant submits that I should accept his evidence and reject the respondent's for, in summary, the following reasons:-

a) There is a notebook entry for 30th November 2017, which he asserts is contemporaneous, in which he records having disclosed his condition to Mr Glenister. If this is genuine and accurate, which he says it is, it is necessarily very powerful evidence in support.

b) The fact that Mr Glenister did not refer to it in his email of 1st December is of no significance as Mr Glenister accepted in evidence that had he been told he would not have revealed confidential medical information in an email. Its absence therefore proves nothing.

c) By the 6th March 2018 the respondent knew that the claimant was asserting that he had told Mr Glenister about his condition on 15th December 2017. There was never any reply disputing that, as one would anticipate if it were not true.

d) The respondent is not above embellishing the truth or actively dissembling; examples of which are that it has consistently described receiving a formal complaint about the claimant's inappropriate behaviour when, even if it can be described as a complaint, it was certainly not formal and Mr White's evidence is that he did not tell either Mr Beswick or Mr Glenister that it was; and that when it sought information about the claimant from another architectural practice on 23rd February 2018 it described the claimant as an applicant for a position which was simply not true.

e) Moreover, he asserts that there are good reasons for rejecting at least some of the evidence given by Mr Beswick. At paragraph 7 of his witness statement Mr Beswick states that had he known of the claimant's diagnosis that he would have reacted sympathetically and been open to making any adjustments given his own personal understanding of the effect of the condition. However he did know at the latest from 6th March 2018, and at paragraph 2.32 of his witness statement for the grievance

investigation he states that in the light of this disclosure that the claimant's job description and position would have been refined, and that it suggested that he should not go on site, not speak to clients and not answer the phone which in turn suggested that he should not continue as an architectural assistant which would leave him as a CAD technician. The claimant submits that Mr Beswick's conclusions when he unquestionably did know of the condition belie any assertion that he would have reacted sympathetically had he known earlier. In addition, he points to the fact that Mr Beswick's conclusions as to the consequences for the claimant's role when he did know of the condition are identical to his conclusions at a point when he says he did not. As his conclusions were identical the obvious inference is that the information it was based on was identical and that Mr Beswick did know of the condition prior to the 19th February 2018 and that it was the reason why he drew those conclusions.

f) The withdrawal of the race and religious belief discrimination claims result from privileged discussions following the instruction of Mr Berragan and I cannot and should not draw any conclusions from their withdrawal.

24. The respondent submits that its evidence should be accepted and the claimant's rejected in summary for the following reasons:-

a) Until the first day of this hearing the claimant had made and maintained serious accusations of race and/or religious discrimination against specifically Mr Beswick and Mr White. These were only withdrawn at the door of the court and I should conclude that they were withdrawn because they were untrue and unsustainable which fatally undermines the claimant's credibility.

b) The claimant's notebook entry of 30th November 2017 should be regarded with extreme scepticism. At all points during his grievance and as set out in the ET1, the claimant had asserted that the conversation took place on the 15th December 2017. That only changed at the case management hearing on 27th January 2020 and only occurred after the claimant knew of the respondents pleaded case that Mr Glenister was not in the office on 15th December 2017. At no point has the claimant ever attempted to explain where the date of 15th December came from or how it appeared, if at all times he had a notebook entry for 30th November 2017, nor how he fortuitously discovered the notebook entry and when he did so.

c) The only unquestionably contemporaneous account is that of Mr Glenister in the email of 1st December 2017. That email presupposes that the information that the claimant has disclosed about his personal circumstances is a complete explanation for his withdrawn behaviour and is clearly written on the understanding that that the underlying issues had been resolved. It is inconceivable that the email could have been written in those terms if Mr Glenister knew that the claimant had a recently diagnosed serious underlying mental health condition which was not resolved.

d) The claimant's evidence before the tribunal calls his credibility into question. On two occasions in the early part of cross examination Mr Bromige put to the claimant that there were only two alleged disclosures of information as to his condition. The first

was the 30th November which was in dispute, and the second the 6th of March which was not. The claimant expressly confirmed that he was not alleging that he had made any other disclosure between those two dates. However, he subsequently gave evidence that he had told the respondent in the meeting of 19th February 2018. When asked to explain the discrepancy he claimed that in his earlier questions Mr Bromige had used the word "disclosed" or "disclosure" whereas in the meeting he had simply "told" the respondent and that he had not considered it a disclosure. Mr Bromige invites the tribunal to conclude that the conflict in the evidence itself and the explanation are simply not credible.

e) It is the claimant's case that the respondent knew from 30th November 2017 of the claimant's disability and contrived to pretend that they did not know whilst taking the opportunity to engineer his exit from the practice. However, they demonstrably did not do this. If they knew they could not have predicted when the claimant might make some formal disclosure or present some medical evidence. If they were conspiring to dismiss him before any such disclosure it would inevitably lead them to act promptly. The obvious opportunity was the end of the claimant's probationary period which would have provided the perfect occasion for concluding that the employment relationship was not working. However, they confirmed that the claimant had successfully passed his probationary period and took no action to the claimant's detriment for some two and a half months until the disclosure of the information by Mr White on the 16th February 2018. Whatever view the tribunal takes of the fairness or reasonableness of their reaction to it, the conclusion that it was prompted by information disclosed in November 2017 rather than the immediate concerns presented on 16th February 2018 is untenable.

25. As will be apparent from these summaries of the parties' submissions both counsel make some very powerful and persuasive points on their client's behalf which makes the question not easy to resolve. My conclusions are firstly that Mr Berragan is correct that I should draw no conclusions from the fact of the withdrawal of some of the claims for the reasons he gives. In my judgement the most persuasive pieces of evidence are firstly Mr Glenister's email of 1st December 2017. In my judgement, for the reasons given by Mr Bromige, it at least strongly suggests that he was not told by the claimant of his condition. Secondly the respondent's conduct after 30th November is equally strongly indicative of the fact that they did not know. On the balance of probabilities I have decided that I prefer the evidence of Mr Glenister and accordingly find as a fact that the claimant did not inform him of his condition on 30th November 2017. For the reasons given above it follows in my judgement that none of the allegations predating 6th March 2018 can be sustained as the respondent's actions cannot be related to or because of the disability.

26. That leaves the post 6th March 2018 allegations. The first is the failure to support his return to work. This relates to the respondent's failure between 6th and 8th March to make any arrangements, specifically for a return to work interview, for a return to work on the 9th March. However, as a matter of fact this did not affect the claimant's ability to return to work on 9th March as he was signed off as unfit on the 8th March by a fit note which did not suggest that he was fit to return with a phased return or adjusted duties. Thus, the reason he did not return to work on 9th March was

because he was not fit to do so, and not because of any failure on the part of the respondent. It equally follows that until the respondent received a fit note it could not make any arrangements. The question of what would happen on 9th March could only be answered in the light of the information the respondent had at the time. If for example the GP had confirmed that the claimant was fit to return without any adjustment or amendment to his duties there would have been little to discuss. If on the other hand the GP had declared him fit to return with adjustments they would have needed to have been discussed and possibly further medical advice received. In my judgement the failure to schedule a return to work meeting on the 9th March before the respondent knew what the situation would be on that day cannot be regarded as less favourable treatment for the purposes of s13 as any comparator was bound to have been treated identically. Even if it can be described as unwanted conduct within the meaning of s26 it could not reasonably be considered, taking into account all the matters set in s26(4), to have had the proscribed effect for the same reasons set out above. Unless and until the respondent had up to date information in the form of a fit note it could not make any preparations.

27. If however those conclusions are wrong, the first question is whether there is evidence from which I could conclude in the absence of an explanation from the respondent, that the less favourable treatment or unwanted conduct was because of or related to the claimant's disability (stage one of the Igen v Wong test). In my judgement there is nothing more than the bare fact that an arrangement had not been made prior to 8th March and that that is insufficient in and of itself to transfer the burden of proof. The claims would therefore also have failed on this basis in any event.

28. The second is the failure to pay sick pay. The evidence before me from Mr Beswick which I accept is that that wages are paid by a wages clerk in an independent company, and that Mr Beswick was not involved in any decision as to how much sick pay should be paid to the claimant. As far as Mr Beswick was aware the claimant was paid sick pay in accordance with his contract, which should have provided for three days contractual sick pay. However, it has emerged that, probably because of a typing error, the claimant's contract provides for statutory sick pay to be paid after thirteen rather than three days which is the respondent's standard contractual position. It may follow that in fact the claimant was not paid sick pay in accordance with his contractual entitlement but with the respondent's standard practice, and what was believed to be his contractual entitlement. There is, however, no evidence before me that Mr Glenister or Mr Beswick were involved in any decision as to the period or amount of sick pay, and I accept Mr Beswick's evidence that he was not. In those circumstances there is no evidence from which I could conclude that amount of any payment was because of or related to the claimant's disability.

29. The third is the commencement of the performance management process. In my judgement this is not factually made out. Although the letter of 22nd March does refer to the underlying concerns it explicitly states that the performance management process would only commence after and in the light of the medical evidence. Thus, as at the point of the claimant's resignation it had not in fact commenced and might

never have been commenced. Put simply the event of which the claimant complains had not yet occurred.

30. The final allegation is that the claimant was suspended for thirty days. As the claimant accepted in evidence, he was in fact absent through sickness and had not been suspended. It follows that this claim is also not factually well founded.

31. For the reasons set out above all of the claimant's various claims of disability discrimination are dismissed.

Breach of Contract

32. Since the judgment was given orally and the bare Judgment promulgated the parties have resolved this issue. For completeness sake I have set out the original Judgment as given orally below.

33. There is a dispute as to whether there is a breach of contract claim before the tribunal or not. The respondent points out the EJ Livesey explicitly points out that he has gone through the claim form and identified the claimants claims and that there are no claims other discrimination claims under the Equality Act 2010. The claimant points the fact that he has ticked the box "arrears of pay" in his ET1 and there is no suggestion that it has been withdrawn. Moreover, the issue of the payment of sick pay is before the tribunal, albeit in relation to a claim of discrimination.

34. In my judgement the claimant is right that that there is a live, albeit unparticularised claim for arrears of pay which has not been withdrawn, and evidence before me that here are arrears of pay given the terms of the claimants contract in relation to pay during sickness absence. In addition, given the terms of 22nd March letter the claimant should have been paid at his contractual rate until his resignation. There is however nothing before me which would allow me to make specific findings of fact or to give judgement in any specific amount.

35. In my judgement the best way of resolving this issue is to give the parties 28 days to attempt to reach agreement as to whether there are any arrears owing and if so how much.

EMPLOYMENT JUDGE CADNEY
Reasons dated: 1st September 2020