EMPLOYMENT TRIBUNALS

Claimant: MR A MASON

Respondent: EASTLEIGH BOROUGH COUNCIL

Heard at: Havant, by means of hybrid in person/ video hearing

On: 5, 6, 7, 8, 9, 12, 13 October 2020

Before: Employment Judge Dawson, Mr. Spry-Shute and Mr. Cross

Representation
Claimant: Representing himself
Respondent: Mr. Allsop, counsel

REASONS

JUDGMENT having been sent to the parties on 29 October 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

Summary

1. The claimant made protected disclosures within the meaning of section 43B Employment Rights Act 1996 by his disclosures of 18 October 2018 and 20 May 2019.

2. The making of those disclosures was not the reason why the respondent raised performance issues with the claimant in a meeting on 18 October 2018 or the reason for the suspensions of the claimant in December 2018 and 26 April 2019. The reasons for the claimant's treatment on those occasions arose out of his behaviour and capability.

3. The sole or principal reason for the claimant's dismissal was not the fact that he had made the qualifying disclosures referred to, but because his conduct led the respondent to conclude that the relationship between it and the claimant had irretrievably broken down.

4. Although the respondent had a provision criterion or practice which applied a timeframe of 10 working days to appeal a grievance outcome, the claimant has not proved that he was put at a substantial disadvantage by that provision and, in any event, the respondent made reasonable adjustments to it.

Full Reasons

Introduction and Procedural Background

1. By a claim form presented to the Employment Tribunal on 26 June 2019, the claimant presented claims of unfair dismissal on the ground of having made a protected disclosure and being subjected to a detriment by reason of making a protected disclosure. He also brought a claim of discrimination on grounds of disability by way of failure to make reasonable adjustments.

2. An application for interim relief was dismissed and matters came before Employment Judge Gray on 29 November 2019 when the issues were set out. Directions were given for the hearing.

3. The matter came back before Employment Judge Livesey for the purposes of case management on 12 March 2020 at which point the respondent conceded that the claimant is and was disabled due to having autism.

4. The case was then listed again before the same judge when the hearing length was shortened to 7 days and directions were given in relation to treating the hearing as being a hybrid video/in person hearing. At paragraphs 27-29 of the Case Summary, Employment Judge Livesey stated

> 27. The Judge reiterated that the case management and disclosure process was designed to prevent 'trial by ambush'. Parties had to reveal their hands before the hearing in order for the trial to be fair to both sides. Late disclosure could cause a postponement and, in the current climate, a significant delay. Applications for costs could also follow in such circumstances.
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> 28. Although the Respondent considered that the recording may not have been directly relevant (it was a recording of a meeting dated 28 November 2018), Mr. Dobbin accepted that it may have been indirectly relevant insofar as the drawing of inferences may be concerned. It will be a matter for the Tribunal hearing the case, having heard the recording, to determine its relevance.
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> 29. The Judge explained that the Claimant would need to bring the where with all to play the recording. He would also need to provide a copy to the Tribunal (see the Order above).

5. The parties prepared a bundle running to 468 pages and witness statements were exchanged in accordance with the directions.

6. We heard evidence from the claimant and, on behalf of the respondent from Catherine Granville, Head of Human Resources; Lisa Eales, Team Leader for Housing, Environmental Health and Planning, the claimant's line manager; Louise O'Driscoll, Head of Operations for Specialist Services; Karen Hunter, Case Services Manager and manager of Lisa Eales from February 2019; Paul Naylor, Direct Service Manager who heard a grievance which was brought by the claimant and Andrew Trayer, Corporate Director for Service Delivery who describes himself as being ultimately responsible for the housing team in which the claimant was employed.

Conduct of the Hearing

7. We were provided with a concise and well prepared bundle and both parties conducted the case with great care and courtesy. We were grateful to the claimant and Mr. Allsop for their conduct of the case.

8. All of the parties and witnesses attended in person. Initially the case had been listed as a hybrid hearing to allow witnesses to attend and give their evidence by video. On that basis it was also listed to be heard by way of Cloud Video Platform (CVP). In the event, because the tribunal room could only safely accommodate 7 people including the panel (due to coronavirus), CVP was used to transmit the hearing to another court room where waiting witnesses and any members of the public could view the proceedings. People were also able to join the hearing remotely via CVP. At the request of both parties, judgment was given remotely over CVP.

9. At times during his cross examination of the respondent's witnesses, the claimant had to be reminded of the need to allow the witness to answer his questions and also that it was unnecessary to repeatedly ask the same question. The claimant identified those matters as being an effect of his autism and we took that into account in attempting to assist the claimant to present his case and when evaluating the evidence

10. At the outset of the hearing, the claimant was asked whether any adjustments needed to be made to the hearing because of the fact that he has autism. He said that he may need breaks. We asked whether the claimant would prefer to have regular breaks scheduled or for him to ask if he needed one and he indicated the latter. In fact there were a significant number of breaks during the course of the hearing as, after each witness, it was necessary for a clean down to be done. The claimant was given breaks whenever he asked.

11. Both parties applied to adduce new documents to the bundle, which was dealt with by consent and those documents appear at pages 469 to 484. In addition, during the course of the hearing, the claimant sought to rely upon an additional document which was emailed to the tribunal which was not disputed by the respondent. That document is entitled appendix 3 and contains highlighted comments by the claimant.

12. A timetable was agreed for the cross-examination of witnesses which the parties stuck to - counsel for the respondent had to ask for extra time in relation to cross examination of the claimant but only because his cross examination started later than had been anticipated; the claimant finished all of his cross examinations before the time he had estimated. The tribunal was grateful for their cooperation.

13. During cross-examination of Catherine Granville the claimant revealed, for the first time, that he had covertly recorded not only a meeting on 28th November 2018 but also one which took place on 29th of November 2018 with Catherine Granville. The claimant had not disclosed that recording to the respondent and was directed to do so by the tribunal. Moreover, the claimant was told that if he was seeking to rely upon that recording he would need to apply to the tribunal for permission to do so and the relevant extracts must be played to Ms. Granville for her comment. The claimant asked if he could take lunchtime to consider his position. Having done so he did not apply to play the recording to the tribunal.

14. The tribunal did, however, listen to the entirety of the recording of the meeting on 28 November 2018 which had been provided to the tribunal by the claimant.

The Issues

15. Time was spent at the outset of the hearing going through the List of Issues which had been identified Employment Judge Gray . The claimant expressly confirmed that he did not want to make any amendments to the list of issues (including detriment complaints) except in relation to his disability discrimination claim. In respect of his disability discrimination complaint, the claimant sought to add a new paragraph 10.3.5 to the list of issues on the basis that he alleged that the respondent should have had a meeting with him specifically to assess his level of autism and discuss reasonable adjustments, rather than tagging those discussions onto the performance/ conduct review meetings that took place. The respondent did not object to that application and the tribunal permitted an amendment to the list of issues to that effect (and, to the extent necessary, an amendment to the Claim).

Application to Amend the Claim Form

16. During his closing submissions the claimant sought to assert that he was subjected to a detriment not only by being suspended but also by the manner of the suspension and that he had been harassed when letters had been hand-delivered to his caravan. When asked if he was making an application to amend his Claim, the claimant said that he was.

17. Mr. Allsop, for the respondent, objected to that amendment stating that there had been 3 case management hearings when these points had not been raised, that the issues had been discussed in detail at the outset of the hearing and it was too late now to raise those matters. We reserved the decision on that application to be decided at the same time as our decision generally. The decision and the reasons for it is set out here.

The Law on Amendment

18. In considering the application to amend the starting point is the overriding objective which requires:

> **Overriding objective**
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> **2.** The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—
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> (a) ensuring that the parties are on an equal footing;
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> (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
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> (c) avoiding unnecessary formality and seeking flexibility in the proceedings;

(d) avoiding delay, so far as compatible with proper consideration of the issues; and

(e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

19. It is also important to note the Presidential Guidance on General Case Management and in particular Guidance Note 1. The guidance note requires that tribunals must carry out a careful balancing exercise of all the relevant factors having regard to the interests of justice and the relative hardship that will be caused to the parties by granting or refusing the application.

20. We considered *Selkent v Moore [1996] ICR 836, 843F in which the EAT stated "*It is impossible and undesirable to attempt to list them exhaustively, but the following are certainly relevant.

    a. *The nature of the amendment.* Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the addition of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded to, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The tribunal have to decide whether the amendment sought is one of the minor matters or is a substantial alteration pleading a new cause of action.

    b. *The applicability of time limits.* If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions, e.g., in the case of unfair dismissal, section 67 of the Employment Protection (Consolidation) Act 1978.

    c. *The timing and manner of the application.* An application should not be refused solely because there has been a delay in making it. There are no time limits laid down in the Regulations of 1993 for the making of amendments. The amendments may be made at any time — before, at, even after the hearing of the case. Delay in making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made: for example, the discovery of new facts or new information appearing from documents disclosed on discovery. Whenever taking any factors into account, the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment. Questions of delay, as a result of adjournments, and additional costs, particularly if they are unlikely

to be recovered by the successful party, are relevant in reaching a decision.

Decision on amendment

21. The claim form, in respect of suspension, states "I have twice been suspended from work on both occasions have been unlawful Acts." It does not make reference to the manner of suspension.

22. When the issues were identified in the order of 29 November 2019, issues number 8.4.2 and 8.4.3, only stated that "he was suspended". When the issues were discussed at the outset of this hearing the claimant did not indicate that he was complaining about the manner of his suspension.

23. We have concluded that when the claimant identified the issue in relation to his suspension as being that "he was suspended", he was not indicating that he was complaining about the manner of his suspension. The respondent, in our judgment reasonably, did not come to the tribunal understanding that that was the case it had to meet.

24. In respect of the new harassment claim, there is no reference to banging on caravan door in either the list of issues or the claim form and the claimant did not identify that as being a claim when we identified the issues at the outset of the hearing.

25. Applying the principles in *Selkent* the applications to amend are to add new factual allegations even though, in relation to the application to allege that the manner of suspension was an act of detriment, the allegation falls within existing heads of claim. The allegation of harassment is a new claim. If an amendment was permitted as at the date of the application, the claims would be very substantially out of time.

26. The most significant reason why the amendments cannot be permitted is that to give such permission would be to the significant prejudice of the respondent who has not called evidence on the matters which form the subject matter of the amendments. It would be unfair to the respondent to decide the amended case on the evidence which we have heard and without the respondent being given an opportunity to call evidence on the new issues. That, however, would require the case to be re-opened and further hearing time to be devoted to it. There would be a need for further witness statements and, possibly, further disclosure. Different witnesses would have to be called. There would be a significant increase in cost both for the respondent and to the tribunal. There would be delay in dealing with this case and a knock-on effect to other litigants.

27. For those reasons we do not consider that it is in the interests of justice to allow the amendments at the late stage at which it is made. However, in case we were wrong to refuse to allow the amendment in relation to the manner of suspension, we have set out below our findings and conclusions to the extent that we can on the basis of the evidence which the claimant has given. As we have set out below, even on the basis of the claimant's own evidence he would not have satisfied us that there was anything wrong with the manner of his suspensions.

The Law on Protected Disclosures

28. The law is found in different sections according to whether a person is asserting that they have been subjected to a detriment or unfairly dismissed. S.103A Employment Rights Act 1996 provides that

    a. An employee who is dismissed shall be regarded for the purpose of this Par as unfairly dismissed if the reason (or, if more than one, the principal reason) is that the employee made a protected disclosure

29. S.47B Employment Rights Act 1996 deals with detriments on grounds of making protected disclosures and provides that:

    a. A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure

        (1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

            (a) by another worker of W's employer in the course of that other worker's employment, or

            (b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.

        (1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

        (1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

30. Under section 43A of the Act a protected disclosure is a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

31. Section 43B(1) 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 show 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 is likely to be deliberately concealed.

32. Under Section 43C(1) a qualifying disclosure becomes a protected disclosure if it is made in accordance with this section if the worker makes the disclosure – (a) to his employer, or (b) where the worker reasonably

believes that the relevant failure relates solely or mainly to – (i) the conduct of a person other than his employer, or (ii) any other matter for which a person other than his employer has legal responsibility, to that other person.

33. Under section 48(2) of the Act, on a complaint to an employment tribunal it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

Disclosure of Information

34. in *Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436*. The Court of Appeal held "The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a "disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the [matters set out in sub-paragraphs (a) to (f)]". Grammatically, the word "information" has to be read with the qualifying phrase, "which tends to show [etc]" (as, for example, in the present case, information which tends to show "that a person has failed or is likely to fail to comply with any legal obligation to which he is subject"). In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1). The statements in the solicitors' letter in *Cavendish Munro* did not meet that standard" (para 35).

Reasonable Belief

35. That test on belief in the public interest was set out the case of *Chesterton Global v Nuromohamed* where it was reiterated that the tribunal must ask

    a. whether the worker believed at the time he was making the disclosure that it was in the public interest and,

    b. if so, whether that belief was reasonable.

36. More than one view may be reasonable as to whether something is in the public interest

37. Moreover an employee can attempt to justify the belief after the event by reference to matters which were not in his head at the time as long as he had a genuine belief at the time that the disclosure was in the public interest. Moreover that belief does not have to be the predominant motor.

38. The tribunal could find that the particular reasons why the worker believed the disclosure to be in the public interest did not justify his belief but nevertheless find it have been reasonable for different reasons. All that matters is that the subjective belief was objectively reasonable (*Nuromohamed* paragraph 29)

39. In considering whether the belief was reasonable factors include

    a. the numbers in the group whose interests the disclosure served

    b. the nature of the interests affected

c. the extent to which they are affected by the wrongdoing.

d. the nature of the wrongdoing

e. the identity of the wrongdoing

40. *Babula v Waltham Forest College* held that provided a whistle-blower's subjective belief that a criminal offence had been committed is held to be objectively reasonable neither the fact that the belief turns out to be wrong, nor the fact that the information which the claimant believed to be true does not amount to a criminal offence is sufficient to deprive protection.

Detriment due to Protected Disclosure

41. In respect of a claim of detriment, Harvey on Industrial Relations states "The term 'detriment' is not defined in the ERA 1996 but it is a concept that is familiar throughout discrimination law … and it is submitted that the term should be construed in a consistent fashion. If this is the case then a detriment will be established if a reasonable worker would or might take the view that the treatment accorded to them had in all the circumstances been to their detriment. In order to establish a detriment it is not necessary for the worker to show that there was some physical or economic consequence flowing from the matters complained of"

42. In *Fecitt v NHS Manchester* [2012] ICR 372, the Court of Appeal held that the test of whether an employee has been subjected to a detriment on the ground that he had made a protected disclosure is satisfied if, "the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower"

43. In *Martin v Devonshires Solicitors [2011] ICR 352*, the EAT held, at paragraph 22 that

> "In our view there will in principle be cases where an employer has dismissed an employee (or subjected him to some other detriment) in response to the doing of a protected act (say, a complaint of discrimination) but where he can, as a matter of common sense and common justice, say that the reason for the dismissal was not the complaint as such but some feature of it which can properly be treated as separable. The most straightforward example is where the reason relied on is the *manner* of the complaint. Take the case of an employee who makes, in good faith, a complaint of discrimination but couches it in terms of violent racial abuse of the manager alleged to be responsible; or who accompanies a genuine complaint with threats of violence; or who insists on making it by ringing the managing director at home at 3 a m. In such cases it is neither artificial nor contrary to the policy of the anti-victimisation provisions for the employer to say "I am taking action against you not because you have complained of discrimination but because of the way in which you did it". Indeed it would be extraordinary if those provisions gave employees absolute immunity in respect of anything said or

> done in the context of a protected complaint.... Of course such a line of argument is capable of abuse. Employees who bring complaints often do so in ways that are, viewed objectively, unreasonable. It would certainly be contrary to the policy of the anti-victimisation provisions if employers were able to take steps against employees simply because in making a complaint they had, say, used intemperate language or made inaccurate statements. An employer who purports to object to "ordinary" unreasonable behaviour of that kind should be treated as objecting to the complaint itself, and we would expect tribunals to be slow to recognise a distinction between the complaint and the way it is made save in clear cases. But the fact that the distinction may be illegitimately made in some cases does not mean that it is wrong in principle.

44. In *Panayiotou v Kernaghan [2014] IRLR 500*, at para 49 and 52 the EAT held:

> "[49] There is, in principle, a distinction between the disclosure of information and the manner or way in which the information is disclosed. An example would be the disclosing of information by using racist or otherwise abusive language. Depending on the circumstances, it may be permissible to distinguish between the disclosure of the information and the manner or way in which it was disclosed. An employer may be able to say that the fact that the employee disclosed particular information played no part in a decision to subject the employee to the detriment but the offensive or abusive way in which the employee conveyed the information was considered to be unacceptable. Similarly, it is also possible, depending on the circumstances, for a distinction to be drawn between the disclosure of the information and the steps taken by the employee in relation to the information disclosed.'
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> …
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> [52] Those authorities demonstrate that, in certain circumstances, it will be permissible to separate out factors or consequences following from the making of a protected disclosure from the making of the protected disclosure itself. The employment tribunal will, however, need to ensure that the factors relied upon are genuinely separable from the fact of making the protected disclosure and are in fact the reasons why the employer acted as it did.'

The Law on Reasonable Adjustments

45. Section 20 of the Equality Act 2010 provides in respect of the duty to make reasonable adjustments as follows:

"(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

46. Section 21(1) provides that a failure to comply with the first requirement is a failure to comply with the duty to make reasonable adjustments

47. In *Environment Agency v Rowan* [2008] IRLR 20, the EAT gave guidance on how an employment tribunal should act when considering a claim of failure to make reasonable adjustments. The tribunal must identify:

> "(*a*) the provision, criterion or practice applied by or on behalf of an employer, or;
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> (*b*) the physical feature of premises occupied by the employer;
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> (*c*) the identity of non-disabled comparators (where appropriate); and
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> (*d*) the nature and extent of the substantial disadvantage suffered by the claimant'.'

48. The Equality Act 2010 provides that a substantial disadvantage is one which is more than minor or trivial: see s 212(1).

49. In *Tarbuck v Sainsbury Supermarkets Ltd* [2006] IRLR 664, the EAT held "the only question is, objectively, whether the employer has complied with his obligations or not. That seems to us to be entirely in accordance with the decision of the House of Lords in Archibald v Fife Council [2004] IRLR 651. If he does what is required of him, then the fact that he failed to consult about it or did not know that the obligation existed is irrelevant. It may be an entirely fortuitous and unconsidered compliance: but that is enough. Conversely, if he fails to do what is reasonably required, it avails him nothing that he has consulted the employee." (para 71)

Findings of Fact

50. The claimant was initially engaged by the council as a Case Management Officer via an agency. He worked in the Case Management team dealing with applications for temporary accommodation and assisting clients who were either homeless or facing homelessness. We find (and it is not disputed) that he was particularly good at interactions with clients and he was able to build a good rapport with them.

51. In June 2018 the respondent advertised for directly employed Case Management Officers on a 12 month fixed term contract. The claimant applied for that role and was given an offer of employment on 20 July 2018.

52. However, although the claimant was good at working with clients there were concerns about his performance in other areas. On 26 July 2019, a meeting took place between Lisa Eales, Ivy Woolridge and the claimant. Ms.

Woolridge was a housing specialist who did not have a specific line management responsibility towards the claimant but was described as being in a functional management role. The minutes of the meeting at page 79 of the bundle refer to concerns around the claimant's caseload and not progressing cases through H-Click (a software system) and concern around the claimant seeming distracted. The claimant explained that he was feeling exhausted due to domestic issues and said that he would make every effort to make improvements. Ms. Eales suggested that the claimant should reduce his to-do list and do shorter lists with actions for the day and she would monitor that. She was also to monitor that PHP's were being done correctly and a review meeting was to be arranged for 2 weeks' time.

53. A further meeting took place on 9 August 2018 when both positive matters and areas of concern were raised. Those areas of concern included that on 31 July only one item on the to-do list was completed, the claimant appeared distracted and kept walking away from his desk and things were not always done to a high standard. The claimant was told that, having consulted with HR, a decision had been made to put his employment offer on hold until the end of August at which time, unless significant improvements had been made, the offer would be rescinded. There was discussion of the claimant's autism and the claimant was asked if there was any other support which could be offered. He responded by saying that he felt the respondent had been very supportive and he really enjoyed working there (page 82).

54. A report from Occupational Health was obtained on 23 August 2018 which stated that whilst the claimant had struggled in school he did not see his autism as forming a barrier of any kind. The report stated that in periods of stress it was possible the situations would appear magnified in the claimant's mind and that due to his autism he was more likely to provide abrupt responses to questions which could be perceived as blunt or rude. It did not refer to any difficulties in respect of meeting deadlines.

55. A review meeting took place on 30 August 2018 with Lisa Eales and Ivy where it was felt that there had been a considerable improvement in the claimant's behaviour, although there were still some areas where some improvement was required. The Occupational Health report was discussed and it was decided to reinstate the claimant's employment offer. The claimant was told that he would be on probation for 6 months.

56. On 30 August 2018, the claimant received an email from the mother of a client stating that her daughter's mental health was being impacted due to men knocking on her door and offering crack for sale at her accommodation in a guest house in Southampton. A request was made for more suitable accommodation (page 89). The claimant says that he forwarded that email to Ms. Woolridge.

57. On 1 October 2018 the claimant received another email, which was copied to Ivy Woolridge referring to another client feeling threatened at the same premises by other residents. The service user was looking for a "temp nomination"(page 106).

58. Sometime before 8 October 2018, the respondent received a complaint from the claimant's (former) landlord. It appears that the claimant had not been given a return of his deposit to which he was entitled and he had

contacted the landlord about that matter, using his work email account. The landlord complained that the claimant was representing the respondent and using his position of power as a threat. The claimant was asked to attend an investigation meeting on 8 October 2018 where the matter was discussed in the context of the respondent's IT Internet and Email Usage Policy. The claimant was told that the letter he had sent, showing the council's telephone number and the council's email account, could be considered as bringing the council into disrepute. He was told that the matter would be passed to Ms. Eales to discuss via probationary review. (Page 107)

59. On the next day a probation review meeting was fixed for 18 October 2018 (page 108)

60. On 15 October 2018, the claimant entered into an email exchange with one of the clients referred to above, who wanted a Discretionary Housing Payment. He stated "I can now confirm payment of the DHP has been agreed will be paid directly to VIVID, Yeah!… If you would take a few moments to do the Alma Lodge thing I would be very grateful. I am pestering about this because I do not want to place another young and pregnant person in there if there are issues." (Page 112)

61. The last sentence was a reference to asking the client to set out her concerns about the property in question. The claimant said that he had been asked to do that by Ivy Woolridge. The client replied on 17 October 2018 setting out the issues and the claimant forwarded the email to Ivy Woolridge on 18 October 2018 stating "it has been brought to my attention that there has been a number of issues relating to drugs and poor standards… I think the contents of [the client's] email raise serious issues about the continued use of this establishment, particularly with regard to vulnerable customers. It would certainly wrestle with my conscience if the expectation was to place certain customers at [the premises]. At this point I feel that we are fortunate that something disastrous has not occurred. The consequences of a serious incident could be far-reaching." (Page 111).

62. The respondent accepts that email was a protected disclosure.

63. On the same day the claimant had his performance review meeting in the afternoon. The minutes appear at page 122 of the bundle and show that various concerns were raised with the claimant. Firstly, there was the issue of the letter which the claimant had sent to his landlord. Secondly, there were concerns about the claimant's performance standards and work output. Reference is made to a letter which had been sent to a resident without the template features having been tailored to the individual circumstances and his lack of productivity. The claimant was also shown the email of 15 October 2018 that he had sent in relation to the DHP to the client. Shirley Robbins, HR specialist who was at the meeting, said to the claimant that it was important that regardless of the situation any communication sent to someone outside the council was an official document and needed to maintain a professional image.

64. The claimant says that the matters which were raised with him in that meeting amounted to bullying as a consequence of having made a protected disclosure earlier in the morning.

65. Ms. Eales says that she was not aware of the email which amounted to a protected disclosure when she saw the claimant and points out that the meeting had been fixed on 11 October 2018.

66. We find there was nothing wrong with raising, with the claimant, his decision to send his landlord a complaint about the deposit using the respondent's email account. It could well be seen that the claimant was seeking to take advantage of his position and it was unwise of him to do so. We also find that there was nothing wrong with raising, with the claimant, the ongoing performance concerns which we accept existed.

67. We agree, however, with the claimant that it is difficult to see what was wrong with him using the words which he did in the email of 15 October 2018. We are somewhat surprised that those matters were raised. Nevertheless it appears that in context, when they were raised, they were not raised as a significant point and they have assumed greater significance in the mind of the claimant with the benefit of hindsight. We also note that it was not Ms. Eales who raised the point but Shirley Robins. There is no suggestion that Ms. Robbins was aware of the claimant's whistleblowing email and we accept that Ms. Eales was not aware of it either. There is no evidence that the matter was raised with the claimant because he had made a protected disclosure that morning, indeed as we go on to set out, the respondent has responded entirely appropriately to the claimant's disclosure.

68. The claimant was asked, in the meeting, what he thought had led to his dip in performance and he said that it was largely due to his personal issues and he was reminded of the employee support line. Earlier in the meeting there had been a discussion about the claimant's autism and he was asked what measures he put in place to do tasks and whether any action was required in the light of that. He said that he found checklists helpful which he was writing in conjunction with Emma.

69. The outcome of the meeting was sent to the claimant on 25 October 2018 and on, 28 October 2018, he replied stating that he was embarrassed to be in that position, that he recognised that he had been facing lots of issues some of which were life changing and "I recognise that I have placed myself in an unfortunate position and want to give you my cast iron reassurance about my performance going forwards and can only say you will see a dramatic improvement. I acknowledge and want to genuinely thank you for the support and patience you have given to me." (Page 126)

70. On 29 October 2018, Ms. Eales wrote to the claimant again, following a meeting which had taken place on that day. During that meeting Ms. Eales had raised with the claimant that a discussion that he had had on the telephone, of a personal nature, was deemed not to be appropriate in the workplace. During the hearing, the claimant contended that the complaint in that respect was without foundation. He said that he had made a short humorous comment to someone that he knew to the effect not having had sex since his son was born. The claimant was put on a 2 week monitoring period.

71. That email records that the claimant had been reminded about the employee assistance program and a discussion has taken place about his

autism. The claimant had mentioned that stress could aggravate his condition but confirmed there was no other support which could be provided, but he had taken on board the actions of putting a checklist together and using quieter days to focus on admin and working in a quiet space.

72. A further meeting took place on 20 November 2018, following the two-week period of closer monitoring. Ms. Eales wrote after that meeting (page 136) stating that there had been a marked improvement in the claimant's performance but drawing to his attention some matters of concern. One related to a gentleman who had escaped from a secure unit, one related to an email to Vivid the tone of which was very "them and us" and one was in relation to suggesting in a meeting that a colleague should be performance managed. There was also an issue about whether the respondent gave people with mental health priority need - which it was suggested showed a lack of understanding of how the banding system worked at Eastleigh. Going forward the claimant was to be managed and reviewed informally during one-to-ones as per normal procedure and the probationary period would be reviewed at 3 and 6 months.

73. In respect of the email to Vivid, we were told that it was the email which appears at page 130 of the bundle. That does not appear to be an email to Vivid but, if that is the correct email, we can see nothing wrong with the terms of it and, again, we are somewhat surprised that it was raised. However we accept that this was an issue of management of the claimant and the fact that we can see nothing wrong with it does not automatically mean that it was raised in bad faith. This is not an act of detriment about which the claimant complains, however we do take account of the respondent's actions in raising it when, later in these reasons, we consider whether the reason for the claimant's suspensions were because he had made disclosures.

74. Apart from the fact that we see no reason to raise with the claimant any concerns about that email, we consider the other matters which were raised with the claimant to be normal management matters to which no objection could be taken.

75. On 20 November 2018, the claimant wrote to Mr. Trayer stating that he had serious concerns around safeguarding issues and use of the whistleblowing policy. Mr. Trayer replied to encourage him to raise his concerns using the Council's Whistleblowing Policy which was available on staff hub. (Page 131a)

76. On 21 November 2018 the claimant wrote to Shirley Robins stating that he wanted to use the whistleblowing policy due to serious concerns involving safeguarding and said that there was an overlapping issue because he felt that he was a victim of bullying and harassment with possible discrimination towards his autism or gender identity (page 132).

77. On the same day Shirley Robins sent a copy of the dignity at work policy and asked the claimant to let her know if he wished to speak to her initially or if he was happy to raise the matter with his line manager (page 133). Ms. Robins said that she was happy to meet with the claimant if he wished to do so.

78. Later, on 21 November 2018, the claimant set out concerns to Shirley Robins stating that they represented a huge failing on the part of management (page 134).

79. On 23 November 2018 an allegation was made that somebody had been sexually assaulted at the premises in relation to which the claimant had made a disclosure.

80. On 26 November 2018, the claimant wrote a lengthy letter to Mr. Trayer setting out his concerns about his treatment and stating that, in respect of his concerns about the premises, a meeting was required of the utmost urgency as the risks were huge and there was a lack of adequate response from the claimant's immediate management. He stated "I remain in trust but that can't last much longer under these conditions." Page 141 – 142.

81. Mr. Trayer replied on the next day stating that there were 2 separate issues, firstly victimisation under the council's whistleblowing policy and secondly concerns about the council placing vulnerable people at the Alma Guest House.

82. In relation to the first point Mr. Trayer had spoken to Catherine Granville who was going to personally review the case to ascertain all of the facts and, in relation to the safeguarding point, Mr. Trayer pointed out that the meeting of the Council's Safeguarding Board would discuss the issue the next day. He stated that he was aware the claimant would be in attendance at that meeting to articulate his concerns and to ensure that there was an open honest and frank debate.

83. The claimant had been asked, at short notice (most likely on 26 November 2018 but not before then) to prepare a report for the safeguarding meeting. That report appears at page 165 of the bundle and is a 3 page report together with appendices. The claimant states that he wrote it on the morning of the meeting. As part of the report the claimant makes particular criticism of his "manager" stating that the manager was aware of all the grave concerns in relation to the property which had been raised over a six-month period and "from my view point I have to question the competence of the manager at what looks like a complete and wilful neglect of duties." (Page 167)

84. We have listened to the recording of the meeting on 28 November 2018 which the claimant made secretly. It is clear to us that there was no attempt at the meeting to sweep the claimant's concerns under the carpet, indeed quite the opposite. The concerns were taken seriously and the claimant was listened to. Early on in the meeting the participants seemed to be leaning towards stopping the placement of women at the property. However as a result of representations made by the claimant the decision went further and the council decided, until the matter could be investigated further, to place no vulnerable people at the property whether male or female, except in the case of the Severe Weather Emergency Protocol being engaged.

85. The claimant spent a large amount of the hearing seeking to persuade us that the actions of Ivy Woolridge at that meeting were dishonest or disingenuous and an attempt to cover matters up. We have attempted to explain to the claimant that our function is not to conduct a review of the

council's safeguarding procedures or to conduct an enquiry into how those procedures were applied in any particular case. Our role is simply to decide whether the claimant made protected disclosures and, if he did, whether he was subjected to a detriment or dismissed as a result. We must also consider whether there was a failure to make reasonable adjustments in relation to his autism in relation to a 10 day appeal period to which we will return. The claimant has a fixed view that his immediate manager and other members of the respondent's housing team did not deal with the situation as he would want them to. That is not an issue in which we can or should engage. We have not heard from Ivy Woolridge to hear her side of events, nor should we have done. We note that as a result of the claimant's concerns an internal investigation took place which found that there was no inappropriate behaviour by her. Moreover, Southampton City Council were also involved in considering the use of the Alma Road guesthouse and as we understand it found that it was appropriate to continue using the Alma Road property, at least in some circumstances.

86. As a result of the claimant's concerns about being victimised it was agreed that whilst Lisa Eales would continue with day-to-day management of the claimant, her manager Louise O'Driscoll would take over the management of the performance, behaviour and conduct issues.

87. Following the meeting on 28 November 2018, Melvin Hartley was tasked with investigating Mr. Mason's complaint about poor decisions being made in the use of the Alma Road Guesthouse. He was, we are told, a safeguarding expert as well as being a former policeman. Although he works for the respondent he appears to have been independent of the matters about which the claimant was complaining. As part of his investigations he sought and obtained permission to consider the emails between the claimant and Ivy Woolridge. In the claimant's sent box he discovered that the claimant had sent, to his own personal email address (a Hotmail account), a housing case file of a client who had been placed in temporary accommodation which contained sensitive personal data such as medical history, passport copy and other personal sensitive information. He had also sent her address to himself.

88. As a result of that discovery, a meeting took place on the 4 December 2018 between the legal services manager of the respondent, who was also the data protection officer, the deputy data protection officer, Ms. Granville the HR lead specialist, Mr. Hartley and the chief internal auditor. It was decided that there was a potential data security breach and the breach was likely to be motivated by the claimant seeking to gather evidence for his case in the context of him having raised a complaint under the whistleblowing policy and claiming that he was being victimised and bullied as a result. The meeting decided that there was a potentially serious breach of GDPR legislation and that matters needed to be investigated. It was acknowledged that suspension was a last resort however it was felt that the claimant presented a continued risk to the council because he would have continued access to personal sensitive data in the course of his role, both electronic and physical. The minutes of meeting referred to the claimant's behaviour indicating that he was a disgruntled employee and stated that the seriousness of the actions, should they prove to be founded, would have diminished the trust the respondent had in him. In circumstances it was decided to suspend the claimant.

89. We accept that the fact of suspension in this case would have been upsetting for the claimant and was not a neutral act. It would amount to a detriment.

90. Having regard to the references to the claimant having made a complaint under the whistleblowing policy and the fact that the claimant was regarded as a disgruntled employee we have given anxious consideration to the question of whether the suspension was because the claimant had made a protected disclosure or whether the making of the protected disclosure had more than a trivial influence on the decision to suspend him.

91. We have come to the conclusion that the making of the protected disclosure did not influence in any significant way, indeed in any way at all, the decision to suspend the claimant. In particular, in reaching that conclusion we have noted the following matters.

    a. The respondent had been responsive to the claimant's whistleblowing as is clear both from the meeting of 28 November 2018 and the fact that Mr. Hartley had been tasked to investigate the claimant's concerns.

    b. The people who were involved in the decision to suspend the claimant were not the claimant's immediate managers or the colleagues about whom he had complained but were senior members of the respondent's management who were largely independent of the allegations which had been made.

    c. The decision by the claimant to send a client's personal file to his personal email address was potentially a very serious breach of data protection regulations. The claimant has sought to persuade us that, in fact, his actions were entirely justified because he was investigating a whistleblowing matter and that, in those circumstances, the greater good outweighs anything else. We have serious doubts as to whether that is an accurate statement of the law, but it does not matter whether the claimant would have an ultimate defence to the concerns of the respondent. The respondent, in the situation it found itself in, was entitled to suspend the claimant whilst it investigated what had happened. The claimant would then have his opportunity to explain his motivation.

    d. The information Commissioner's office has said, in writing, that the respondent was correct to treat what had happened as a potentially serious data breach (page 181).

    e. The claimant was only suspended for 3 days while the matter was resolved.

    f. In fact, the claimant received only a very minor sanction in relation to what he had done -namely being given a management warning rather than any formal warning. Other employers may well have dismissed the claimant in the circumstances.

92. We are entirely satisfied that the decision to suspend the claimant was nothing to do with the fact that he had made a protected interest disclosure but because he had sent confidential information to himself outside of the

security systems which the respondent has. Although reference is made to the claimant being a disgruntled employee, we find that was a reference to his ongoing complaints about his immediate managers and colleagues who he regarded as dealing with matters incompetently. Those complaints, and the dissatisfaction that they represented, can be properly distinguished from the public interest disclosure which the claimant made.

93. As we have indicated above, the claimant now complains about the manner of his suspension on the day and seeks to amend his claim accordingly. It is difficult to make any findings of fact as to the manner of the claimant's suspension. In the claimant's witness statement he only deals with that matter in paragraphs 51-52 and 69. He does not give any particulars of why he says the manner of the suspension on that day was distressing for him. The suspension was carried out by Catherine Granville who, understandably, gives no evidence on the point, since it was not identified as an issue. In cross examination of Ms. Granville the claimant challenged the way in which his 2nd suspension took place but not this one. In those circumstances we simply are unable to make any findings as to the manner of this, the first, suspension. Thus, even if we had permitted an amendment in this respect, the claimant has not produced sufficient evidence to satisfy us that there was anything inappropriate about the manner of his suspension.

94. On 13 December 2018 the claimant raised a formal complaint about 4 seniors who he said he was being victimised by, being Ivy Woolridge, Emma Boyce, Lisa Eales and Janine Pickering. (Page 193).

95. On 20 December 2018 Mr. Hartley provided his report into the use of the Alma Road Guest House. He concluded that the respondent's response to the complaints received throughout the period had been fair, reasonable and proportionate based on available information at the time of the decision-making. He made various recommendations.

96. The claimant saw the report before it was circulated to the board and was unhappy with it, he therefore sent comments to Catherine Granville which appear at pages 204 and 207 of the bundle. Within the 2nd of those documents the claimant repeated strong allegations against Ms. Woolridge, describing her as giving false and misleading information and referring again to wilful neglect of the duty of care by the respondent or its employees.

97. On 7 January 2019 Ms. Granville forwarded those to Mr. Hartley asking him to review them (page 209).

98. Mr. Hartley's report was then sent to the Council's Safeguarding Board and reviewed by it and Mr. Trayer. On 18 January 2019, Mr. Trayer wrote to the claimant stating that the findings and conclusion of the report were accepted and that there was no requirement to refer the matter on or take any further action. He stated "I am also satisfied that there is no foundation to the particular concerns you raise regarding the Homelessness Prevention Specialist who has my full confidence." That was a reference to Ivy Woolridge. He went on to state "I now consider this matter closed and the Council will not enter into further discussion or correspondence on the disclosure. If you are not satisfied with the Council's response you have the option to take the disclosure outside of the Council to an appropriate body;

there is a list of organisations within the Whistleblowing policy as guidance." (Page 213)

99. On the 21 January 2019 a meeting took place between the claimant and his representative and Jo Cassar who was investigating his allegations of bullying and harassment.

100. On 23 January 2019 the claimant returned to work after some sickness absence, he had a meeting with Louise O'Driscoll who discussed his workload. She pointed out to him that he had 16 cases that were over 57 days old and stated that he would need to give a plan on how this would be addressed. There are certain statutory time limits in relation to the conduct of homelessness work and the respondent was concerned that where cases are over 57 days old funding may be at risk.

101. Although the claimant told us that everyone had difficulties with closing cases because of difficulties with the H – Click system, that is not consistent with the email dated 25 January 2019 from Lisa Eales to Jo Cassar. That shows that the claimant had 16 cases which were older than 57 days whereas other officers shown only had 2, 9, 6 and 3 cases respectively. (Page 226)

102. On 6 March 2019 the claimant had a review in respect of his probationary period with Louise O'Driscoll. It was noted that there were still issues around updating case notes accurately and comprehensively and incomplete paperwork. It was noted that improvement was required with completing cases within the 56 day statutory timescales. Positive matters were also noted such as the claimant's good rapport with customers and that the relationships of most of his colleagues were working although there was still tension with others. The probationary period was extended for a further 3 months. The claimant did not challenge Ms. O'Driscoll about those matters (either at the time or when she gave evidence) and he accepted in his closing submissions that he did have performance issues. (Page 237)

103. On 8 March 2019 Jo Cassar reported on the claimant's complaints about victimisation and bullying. The investigation was thorough and found no evidence that the 4 named officers bullied, victimised or harassed the claimant. The report was sent to the claimant by Catherine Granville on 11 March 2019 and she stated that he had the right to a formal hearing under the council's grievance procedure and that Ms. Granville would like to support him and the colleagues identified in the allegation in fostering positive working relationships (page 267)

104. On 18 March 2019 Councillor Rich wrote to the claimant raising concerns about a client at a different guesthouse. (Page 268). On 5 April 2019 Emma Boyes, a colleague of the claimant, sent him an email setting out a course of action in relation to that client. The claimant forwarded that email to Councillor Rich stating "please see comments from the email chain relating to issues around [illegible] and the response from management. I have sought their views on delicate matter but having looked at the picture of the child who has been severely bitten I think it entirely reasonable to return the property without a guarantee that the infestation of rats and fleas had been fully resolved." That email appears to say that the claimant disagrees with his managers (page 269). A more obvious criticism by the

claimant is in a subsequent email that the claimant wrote on 11 April 2019 where, forwarding on an email from Janine Pickering about the Alma Road property and the fact that it would now be used in certain circumstances, the claimant wrote to Councillor Rich stating "I have highlighted my concerns around safeguarding and other poor practice here. I await to see the response but the words Sh*t & fan spring to mind. This is about keeping safe and protected. It is about preventing future victims and I will not rest until this is all effectively challenged." (Page 279).

105. Meanwhile on 5 April 2019 a probationary review meeting had taken place between the claimant and Karen Hunter. Ms. Hunter had joined the respondent in February 2019 as a line manager to Lisa Eales. Given the ongoing difficulties it was decided that Ms. Hunter would take over the performance management of the claimant. Having reviewed the claimant's case files she went through various matters with him. She set out the positives in relation to the claimant's work and also the areas still requiring improvement including noting that of 8 randomly selected cases, 4 were incorrect, there were not notes for every case and in 4 of 8 cases checked letter templates had errors due to incorrectly selecting or deleting appropriate sentences. There were also issues in relation to sending attachments to emails. A further review meeting was planned. (Page 272)

106. On 10 April 2019 the claimant raised a formal grievance and was invited to a grievance hearing on 7 May 2019 with Paul Naylor.

107. On 23 April 2019 a copy of Ivy Woolridge's report to the safeguarding board on 28th November 2018 was found in a communal space. It contains the claimant's annotated notes which included critical remarks of Ms. Woolridge (page 287). The respondent regarded this as another potentially serious breach of data protection. It also discovered the emails to Councillor Rich

108. On 26 April 2019 the claimant was again suspended. In this respect there is dispute between the parties as to what happened. The claimant says that he returned to work after a period of absence and set up his computer in the workplace. He was then approached and asked to go to a separate room where he was told that he was being suspended to allow for investigation of those matters. He then had to pack his computer away and leave. He was given a letter dated 26 April 2019 (page 285). The respondent states that Ms. Hunter approached the claimant upon his arrival at his locker and asked him to come into a private meeting room and was then told that he was suspended. The claimant did not challenge Ms. Hunter's statement in this respect and although the claimant's position was not explored when he was cross-examined that is understandable having regard to the issues as they had been identified .

109. The decision to suspend the claimant was that of Karen Hunter. There is no evidence to suggest that the decision to suspend the claimant was motivated by anything other than another potential data protection breach having occurred as well as the emails sent to a councillor criticising his colleagues and managers. We find that the reason for the suspension was those things and whether the suspension was justified or not (and we considered that it probably was) it was not motivated by the claimant's disclosure. Ms. Hunter had joined the respondent after the claimant had

raised his concerns and there is no evidence upon which an assertion could be founded that she was motivated by the fact that he had been a whistleblower. Leaving a confidential report lying in a communal area is a potential data breach and the emails which had been sent to the councillor might have amounted to acts of misconduct; there was ample reason to suspend the claimant. Having heard the evidence of Ms. Hunter we accept her evidence.

110. Even if the claimant's description of the suspension is correct, we find that there was nothing wrong in asking the claimant to come to a meeting after he had set up his computer, but again and more to the point, even if there was something wrong with the manner of suspension we accept that the respondent was motivated only by the potential data protection breach and the emails to Councillor Rich and not by the previous disclosure (or indeed any of the other documents which might possibly amount to protected disclosures even though they have not been pleaded as such).

111. The letter of 26 April 2019 dealt not only with the claimant's suspension from work but also invited him to a probationary review meeting on 30th April. The purpose of the meeting was to discuss the concerns that had been brought to Ms. Hunter's attention and the claimant had the right to be accompanied. The meeting was to take place on 30th of April 2019.

112. On 30 April 2019 the claimant left a voicemail stating that he was unable to attend the meeting due to feeling unwell. On the same day the claimant sent a letter to Ms. Hunter raising additional grievances in respect of his suspension. He made reference to various case law and stated "in the event these matters escalate to the Employment Tribunal, which it appears is highly probable, I will be sure to outline in my claims to the Employment Tribunal how my employer has engendered on a fishing expedition with an ulterior motive to give me the boot by reason that I have done protected acts on protected grounds." (para 14, page 290).

113. The claimants grievance hearing took place on 7 May 2019 and the claimant set out a written opening and closing statement (pages 296 & 297).

114. On 14 May 2019 the claimant set out a document headed "Response to Melvin Hartley's Whistleblowing report." In relation to "Case 5" the claimant writes "this represents a catalogue of malpractice and lies. The reports to IW were highly serious issues made in good faith… I provided further information to the Whistleblowing process which have been ignored and taken out of context." He went on to state "MH report findings are based upon lies, misleading information and critically omitted to involve me which in doing so he has produced the weakest of reports…". (Page 337). To the extent that the claimant complains that he had not been involved, it is correct that he was not interviewed as part of Mr. Hartley's investigation but the allegations which he had made were well recorded and the written comments which he made afterwards had been forwarded on to Mr. Hartley.

115. On 16th May 2019 a detailed grievance hearing outcome was sent to the claimant (page 340). The grievance concluded that there was no evidence of the claimant having been singled out for different treatment as

a result of his raising concerns regarding the Alma Road property or that the investigation conducted by Jo Cassar was flawed.

116. The letter concluded "should you wish to appeal against this decision you have the right to appeal to Stage 2 of the Council's Grievance Policy. If you wish to pursue this you should put your reasons in writing to me within 10 working days of the receipt of this letter". This is the PCP which forms the claimant's complaint of failure to make reasonable adjustments. The respondent admits that PCP existed. We have not been taken to the relevant policy, both parties accepting that the PCP which we must consider is as it was set out in this letter.

117. On 20 May 2019 the claimant sent a lengthy letter to Mr. Naylor alleging various breaches of the Equality Act 2010. The letter refers to the relevant PCP and paragraph 8 states that the time frame applies a discriminatory effect on protected grounds of the claimant's disability. At paragraph 28 the claimant states "in accordance to the aforementioned grievances, I am also blowing the whistle in accordance with section 43A, 34B…" He goes on "put short, the respective omissions by yourself to make reasonable adjustments to the grievance procedures and furthermore, arbitrarily ignoring the Council's public sector equality duty puts me and puts persons who share my disability at a substantial disadvantage in comparison to nondisabled persons. Therefore, these matters are in the public interest. It is in the interests of all Council employees to know that a senior manager like yourself has failed, is failing, and is likely going to continue to fail to comply with the Statutory Acts." (Paragraph 31)

118. We must decide whether that letter amounts to a protected disclosure. In our view whilst a large amount of the letter reads as an allegation, there is a sufficient disclosure of information for it to be said that there has been a disclosure of information. The claimant has referred to the letter which he complains about and what is within the letter, namely the relevant PCP. The claimant refers to the council having imputed knowledge of his autism and states that the timeframe does not take into account the substantial adverse effect which the cumulative effects of his disability has on his day-to-day activities, especially when put under stress, distress or excessive pressure. Thus we conclude there was a disclosure of information.

119. Moreover we consider that the claimant genuinely believed that the information tended to show a breach of the Equality Act 2010. The letter was not drafted by the claimant but on his behalf by somebody who, he says, has knowledge of law. Thus although the initial knowledge as to the breach of the legal obligation was not the claimant's (as the respondent submitted), once the letter had been read by the claimant, he did, at that point, believe that the information within it tended to show that the respondent had failed to comply with a legal obligation to which it was subject.

120. The question of whether or not that belief was objectively reasonable is more difficult. The simple fact of a PCP being in existence is not a breach of the Equality Act. The breach occurs if reasonable adjustments are not made. Nevertheless, it was reasonable for the claimant to believe that a

PCP was, in itself, unlawful and/or that the R not making adjustments to it was unlawful.

121. We also accept that the claimant genuinely believed that it was in the public interest to complain about the 10 working day limit because it would put other disabled people at a disadvantage. The question of whether the claimant reasonably believed that is more difficult; if the respondent was routinely making allowances for people with disabilities by extending the time limit or otherwise, then the information which the claimant disclosed could not reasonably be believed to be in the public interest. We are prepared to accept that the claimant's belief was, however, reasonable insofar as the respondent is a large employer that is likely to employ disabled persons and has a strict time limit for an appeal. In that context we note that the letter from Mr. Naylor did not suggest that there could be any exceptions in relation to the time limit.

122. Thus we accept that the letter amounted to a protected disclosure.

123. At paragraph 18 of the letter the claimant stated "to this end, I will furnish my appeal on or about 14.6.19. This timeframe does not prejudice either party's legal positions." At paragraph 20 the claimant stated "these matters are now the last act or final straw – Lewis v Motorworld Garages Ltd [1986] ICR 157"

124. On 29 May 2019, Ms. Hunter wrote to the claimant stating that the probationary review meeting would be rescheduled to take place on 20th June 2019. The letter stated "the purpose of this meeting is to discuss a number of serious concerns that have been brought to my attention that I need to consider, together with the ongoing concerns regarding your performance that we have already discussed." The claimant was told that he had the right to be accompanied and told that if Ms. Hunter considered his performance or conduct was unlikely to meet the required standards expected for the role, a potential outcome would be termination of the employment. The claimant was invited to submit written evidence by 18 June 2019 to Catherine Grantham. The letter also stated that on the basis that the meeting had been postponed a number of times there would be no further postponements except in exceptional circumstances. (Page 356).

125. On 29 May 2019 the claimant was invited to attend a grievance appeal hearing to take place on 18th June. The letter stated that the claimant had the right to present any documents that he felt were relevant to his appeal and asked that they should be submitted by no later than Thursday, 13 June 2019.

126. In the meantime the respondent had asked Astrid Patil to review the investigation by Mr. Hartley. She was asked to consider 2 questions, firstly did the respondent follow the correct procedure under the whistleblowing policy and secondly was it reasonable for Mr. Hartley to conclude there had been no misconduct or malpractice within the council and that the claimant's allegations were unfounded. Ms. Patil is a solicitor within the respondent's organisation. She reported on 12 June 2019 and concluded that the investigation had been properly conducted (page 359a).

127. On the same day Ms. Patil also wrote to Mr. Mason. It is not entirely clear to us how she came to be involved in this respect but she wrote to him about his letter of 20 May 2019. The obvious inference is that she was asked to review it by the respondent. She considered the allegation that the council had failed to make reasonable adjustments. Within the letter she referred to an email from Catherine Glanville on 21 May 2019 in which Ms. Glanville stated "the council will agree to your request for additional time in which to prepare your submissions for the Appeal Hearing as a reasonable adjustment and I will schedule an appeal hearing for the week beginning on 17th June."

128. Ms. Patil concluded that the council's grievance policy complied with the Equality Act 2010 on the basis that a timescale of 10 working days to appeal against a grievance was reasonable but the period of time can be extended where reasonable adjustments were appropriate. She noted that the council had given extra time (page 360).

129. On 13 June 2019 Catherine Granville forwarded to the claimant the review by Ms. Patil of Mr. Hartley's investigation. We find that in so doing the council went beyond what was required of it but clearly showed that it was taking the claimant's concerns seriously and not, in any way, trying to hide them.

130. On the same day, in relation to the concern about the timeframe to appeal, the claimant wrote to Ms. Patil stating "I think that is all a little too late on all accounts don't you?" (Page 367). He also wrote to Ms. Granville stating "I'd rather leave that little matter to the Judge at the employment tribunal. I relish and cherish beautiful thoughts for that week." (Page 365).

131. On 17 June 2019 the claimant set out a lengthy and detailed response to the summary of Mr. Naylor (page 369) and also wrote a lengthy letter to Ms. Patil (page 381).

132. Within his Response to the Grievance Hearing Summary, the claimant stated "please note, there are many employees of Eastleigh Borough Council who were guilty of disregarding very serious safeguarding reports. The list of people involved in this from a pro Eastleigh Borough Council point of view is below". The claimant then lists 25 people from the chief executive to 2 councillors.

133. Within the letter to Ms. Patil the claimant stated to her that "… It is my reasonable belief that you have (and are) *aiding* the Council in accordance with s112(1) EqA 2010 to "deliberately conceal" a "miscarriage of justice"…" The claimant then set out extracts from the code of ethics and stated that Ms. Patil had acted in contravention of the Solicitor's Regulatory Authorities code of ethics. (Page 381, italics original)

134. The grievance appeal took place on 18 June 2019 when the claimant was able to attend and in the course of that meeting the claimant stated that Emma Boyes had contaminated evidence and fed lies into a fabricated investigation. (Page 394).

135. On 19 June 2019 Ms. Granville wrote to the claimant stating that she wanted to check he was still able to attend the meeting scheduled for the

next day. She stated that the outcome letter of the appeal hearing would also be provided. He replied asking Ms. Granville to email him a copy of the letter and stated "as for tomorrow's meeting I give you notice that I am unwell and therefore unable to attend." (Page 396). Ms. Granville replied to ask him to call her in the morning to discuss a potential revised date for the meeting.

136. On 20 June 2019 the claimant was sent the outcome of his appeal which was contained in a detailed letter from Natalie Whitman, Corporate Director (page 398).

137. The claimant did not attend at the probationary review meeting and we have heard from both Ms. Granville and Ms. Hunter about the decision made in that respect. At the time when Ms. Hunter wrote the letter dated 29th May she had been inclined to terminate the claimant's employment because she felt his performance was not of the required standard and the claimant was still making the same mistakes. She remained concerned about the 2nd data breach and had noted that the contract was for a fixed period of 12 months and there was no prospect of extending the term. She had noted that the probability was extremely low that the claimant would be able to improve prior to the end of his contract.

138. The claimant says that he understood that, although the original contract was for 12 months, he would be given a permanent position at the end of it. We note from the job advert that it does state "as this role evolves there may be permanent opportunities for the right candidate in due course." We anticipate that the claimant may well have been told something similar at interview. However we do not accept the claimant's assertion that he was told that he would definitely be given a permanent contract at the end of the 12 month period. Even if the claimant had been told that, it would clearly have been subject to the requirement that the claimant had proved himself suitable for appointment to a permanent post.

139. The decision in relation to the claimant's termination of employment was, however, made by Ms. Granville. She told us, and we accept, that in the grievance hearing and the appeal the claimant had indicated that he did not believe it would be possible for him to return to work. She noted that the claimant seemed intent on pursuing a tribunal claim rather than resolving the matter and that he had consistently refused to accept what the Council had done about the concerns he had raised about the Alma Road guesthouse. He refused to accept the investigation into bullying and harassment claims and had consistently linked both his performance process in any disciplinary issues with his whistleblowing complaints. She states "it was clear the claimant was never going to accept anything the Council did in relation to any of these matters. This, together with the increasingly extreme language, indicated to me that the relationship had truly broken down and there was very little prospect of anything being resolved outside of an Employment Tribunal which the claimant had already indicated that he wished to pursue. Taking all this into account, together with the fact that the claimant had only ever been employed on the basis of a fixed term contract for 12 months and that there was only 2 months left to run on the contract… I couldn't see any other option other than to pay out the balance of the contract and bring the contract to an end." That is what she did.

140. We are entirely satisfied that the explanation given by Ms. Granville was true. We are also entirely satisfied that neither she nor Ms. Hunter were influenced at all by the fact that the claimant had made protected disclosures. As we have already said, the council, in fact, did everything it could in relation to the earlier disclosure in terms of investigating it and also responded fully to the second disclosure (as well as extending the time for appeal). The claimant was never going to accept the respondent's decisions but, moreover, it is clear from the evidence that we have seen that he was going to continue to make allegations about his colleagues and the management, including to councillors. It is abundantly clear to us that the relationship between the respondent and the claimant had broken down irretrievably.

Conclusions

141. We state our conclusions by reference to the list of issues. Many of the conclusions will be apparent from the findings of fact we have set out above.

142. In relation to issue 8.1.2, for the reasons we have given above, we accept that the email of 20th May 2019 disclosed information. In relation to issue 8.2 we accept that the information disclosed in the letter was information which in the claimant's reasonable belief tended to show that the respondent was in breach of the Equality Act. In relation to issue 8.3, we accept that the claimant reasonably believed that the disclosure was made in the public interest because of his understanding of the impact that it would have on other disabled persons.

143. In relation to issue 8.4.1, whilst we are somewhat surprised that the respondent raised the claimant's comments that were made in the email of 15 October 2018 in the meeting of 18 October 2018, we find there was nothing surprising about the respondent raising the other matters with the claimant. Moreover in relation to all of the issues raised (including those in relation to 15 October 2018 email) we do not find that the raising of them was a detriment. All employees expect to receive feedback from their managers as to how they are doing. It is not to their detriment for them to do so. Often it is to their advantage, particularly in a probationary period. Most employees would want to know how their behaviour and conduct was being assessed, so as to know whether anything must be changed in order to pass the probationary period. It is not suggested that the meeting was carried out in an unpleasant or aggressive fashion and, therefore, we do not find that what happened in this meeting was to the claimant's detriment. The claimant may not agree with the points which were raised and we may not agree with all of them, but that does not mean that the raising of them was to the claimant's detriment.

144. However, even if we are wrong in that respect, we are entirely satisfied that the reason for the claimant's treatment was not in any way influenced by the disclosure made on the morning of 18 October 2018, the respondent was only responding to the shortcomings that it perceived existed in the claimant's performance.

145. In relation to the suspension in December 2018 (issue 8.4.2) we accept that being suspended was to the claimant's detriment. However, we

are entirely satisfied that the only reason that the claimant was suspended was because of his behaviour in emailing confidential documents to himself. The reason for the suspension was not influenced at all by the disclosure of 18 October 2018.

146. We are conscious that the claimant had sent other documents to the respondent which might be said to amount to disclosures, even though the claimant has not identified them as such in these proceedings, for the purposes of clarity, we do not find that any disclosures of information to the claimant's employer was the reason for the claimant's treatment. It was purely his conduct.

147. The same can be said in relation to the suspension on 26 April 2019 (issue 8.4.3). We find that the only matters motivating those who suspended the claimant were the potential data breach when it appeared that the claimant had left an annotated report from Ivy Wooldridge in a public place and, to a lesser extent, the emails which the claimant had sent to Councillor Rich. Having regard to the witness statement of Ms. Hunter we think it was primarily the potential data breach which led to the suspension. Again, we are satisfied that it was not any disclosure of information by the claimant.

148. In relation to the claimant's claim of unfair dismissal, we find that the sole or principal reason for his dismissal was not the disclosure of information by him, whether on 18 October 2018 or 20th May 2019 or any other time. The reason for the dismissal was a combination of the fact that the claimant was failing his probationary period due to performance concerns, had only 2 months left to run on his fixed term contract in any event and he had shown himself unwilling to stop criticising colleagues or managers in relation to shortcomings which he perceived existed.

149. In relation to the claim of disability discrimination, the claimant's autism is admitted. It is admitted that it amounted to a disability. Thus we only need to consider issues 10.1 to 10.5 (as added).

150. We find, in relation to issue 10.1, that a PCP was initially applied. The precise PCP is that which appears in Mr. Naylor's letter of 16 May 2019 - that if the claimant wished to appeal to stage 2 of the grievance process he must put his reasons in writing within 10 working days.

151. In relation to issue 10.2, we do not accept that the claimant was put at a substantial disadvantage compared with nondisabled persons. The claimant has shown himself able to compile documents at speed, not least in relation to his submission to the Safeguarding meeting on 28 November 2019. Further, within 4 days of the letter of 16 May 2019 the claimant was able to submit his letter dated 20th May 2019 and which ran to 10 pages. Although the claimant says somebody helped him to draft that letter, it is clear that the claimant was able to marshal matters sufficiently to enable it to be drafted.

152. In any event, it is clear that the respondent did not, in the event, apply the PCP in the claimant's case. The claimant submitted his reasons for appeal on 17 June 2019, outside the 10 day time limit, and those reasons were considered by the respondent. The claimant was given an appeal which was full and comprehensive. In those circumstances we find that

even if there was a PCP which put the claimant at a disadvantage, issue 10.3 is answered in favour of the respondent. The respondent did take such steps as were reasonable to avoid the disadvantage because it extended the time limit and gave the claimant an appeal.

153. If we were wrong on both of those points, we would have answered issue 10.4 in favour of the respondent. The respondent had repeatedly asked the claimant whether he needed any assistance because of his autism and, at no point, was there any suggestion made that the claimant could not meet particular deadlines. Although the claimant says that the respondent should have had a meeting with him specifically to discuss his autism, we do not find that was necessary in this case. In various meetings the respondent had made clear that it was interested in knowing what adjustments could be made for the claimant and the claimant could have raised those matters.

154. In respect of issue 10.5, having regard to the decision in Tarbuck, simply failing to consult with the claimant would not amount to a failure to make reasonable adjustments.

155. However, in any event, we find that the respondent did consult with the claimant sufficiently as we have set out above.

156. In those circumstances we do not need to address issues 11 and 12 and the claimant's claims fail.

Employment Judge Dawson

26 November 2020

REASONS SENT TO THE PARTIES ON

.....27 November 2020.....

....

FOR THE TRIBUNAL OFFICE

EMPLOYMENT TRIBUNALS

Claimant: MR A MASON

Respondent: EASTLEIGH BOROUGH COUNCIL

Heard at: Havant, by means of hybrid in person/ video hearing

On: 5, 6, 7, 8, 9, 12, 13 October 2020

Before: Employment Judge Dawson, Mr. Spry-Shute and Mr. Cross

Representation
Claimant: Representing himself
Respondent: Mr. Allsop, counsel

REASONS

JUDGMENT having been sent to the parties on 29 October 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

Summary

1. The claimant made protected disclosures within the meaning of section 43B Employment Rights Act 1996 by his disclosures of 18 October 2018 and 20 May 2019.

2. The making of those disclosures was not the reason why the respondent raised performance issues with the claimant in a meeting on 18 October 2018 or the reason for the suspensions of the claimant in December 2018 and 26 April 2019. The reasons for the claimant's treatment on those occasions arose out of his behaviour and capability.

3. The sole or principal reason for the claimant's dismissal was not the fact that he had made the qualifying disclosures referred to, but because his conduct led the respondent to conclude that the relationship between it and the claimant had irretrievably broken down.

4. Although the respondent had a provision criterion or practice which applied a timeframe of 10 working days to appeal a grievance outcome, the claimant has not proved that he was put at a substantial disadvantage by that provision and, in any event, the respondent made reasonable adjustments to it.

Full Reasons

Introduction and Procedural Background

1. By a claim form presented to the Employment Tribunal on 26 June 2019, the claimant presented claims of unfair dismissal on the ground of having made a protected disclosure and being subjected to a detriment by reason of making a protected disclosure. He also brought a claim of discrimination on grounds of disability by way of failure to make reasonable adjustments.

2. An application for interim relief was dismissed and matters came before Employment Judge Gray on 29 November 2019 when the issues were set out. Directions were given for the hearing.

3. The matter came back before Employment Judge Livesey for the purposes of case management on 12 March 2020 at which point the respondent conceded that the claimant is and was disabled due to having autism.

4. The case was then listed again before the same judge when the hearing length was shortened to 7 days and directions were given in relation to treating the hearing as being a hybrid video/in person hearing. At paragraphs 27-29 of the Case Summary, Employment Judge Livesey stated

> 27. The Judge reiterated that the case management and disclosure process was designed to prevent 'trial by ambush'. Parties had to reveal their hands before the hearing in order for the trial to be fair to both sides. Late disclosure could cause a postponement and, in the current climate, a significant delay. Applications for costs could also follow in such circumstances.
>
> 28. Although the Respondent considered that the recording may not have been directly relevant (it was a recording of a meeting dated 28 November 2018), Mr. Dobbin accepted that it may have been indirectly relevant insofar as the drawing of inferences may be concerned. It will be a matter for the Tribunal hearing the case, having heard the recording, to determine its relevance.
>
> 29. The Judge explained that the Claimant would need to bring the where with all to play the recording. He would also need to provide a copy to the Tribunal (see the Order above).

5. The parties prepared a bundle running to 468 pages and witness statements were exchanged in accordance with the directions.

6. We heard evidence from the claimant and, on behalf of the respondent from Catherine Granville, Head of Human Resources; Lisa Eales, Team Leader for Housing, Environmental Health and Planning, the claimant's line manager; Louise O'Driscoll, Head of Operations for Specialist Services; Karen Hunter, Case Services Manager and manager of Lisa Eales from February 2019; Paul Naylor, Direct Service Manager who heard a grievance which was brought by the claimant and Andrew Trayer, Corporate Director for Service Delivery who describes himself as being ultimately responsible for the housing team in which the claimant was employed.

Conduct of the Hearing

7. We were provided with a concise and well prepared bundle and both parties conducted the case with great care and courtesy. We were grateful to the claimant and Mr. Allsop for their conduct of the case.

8. All of the parties and witnesses attended in person. Initially the case had been listed as a hybrid hearing to allow witnesses to attend and give their evidence by video. On that basis it was also listed to be heard by way of Cloud Video Platform (CVP). In the event, because the tribunal room could only safely accommodate 7 people including the panel (due to coronavirus), CVP was used to transmit the hearing to another court room where waiting witnesses and any members of the public could view the proceedings. People were also able to join the hearing remotely via CVP. At the request of both parties, judgment was given remotely over CVP.

9. At times during his cross examination of the respondent's witnesses, the claimant had to be reminded of the need to allow the witness to answer his questions and also that it was unnecessary to repeatedly ask the same question. The claimant identified those matters as being an effect of his autism and we took that into account in attempting to assist the claimant to present his case and when evaluating the evidence

10. At the outset of the hearing, the claimant was asked whether any adjustments needed to be made to the hearing because of the fact that he has autism. He said that he may need breaks. We asked whether the claimant would prefer to have regular breaks scheduled or for him to ask if he needed one and he indicated the latter. In fact there were a significant number of breaks during the course of the hearing as, after each witness, it was necessary for a clean down to be done. The claimant was given breaks whenever he asked.

11. Both parties applied to adduce new documents to the bundle, which was dealt with by consent and those documents appear at pages 469 to 484. In addition, during the course of the hearing, the claimant sought to rely upon an additional document which was emailed to the tribunal which was not disputed by the respondent. That document is entitled appendix 3 and contains highlighted comments by the claimant.

12. A timetable was agreed for the cross-examination of witnesses which the parties stuck to - counsel for the respondent had to ask for extra time in relation to cross examination of the claimant but only because his cross examination started later than had been anticipated; the claimant finished all of his cross examinations before the time he had estimated. The tribunal was grateful for their cooperation.

13. During cross-examination of Catherine Granville the claimant revealed, for the first time, that he had covertly recorded not only a meeting on 28th November 2018 but also one which took place on 29th of November 2018 with Catherine Granville. The claimant had not disclosed that recording to the respondent and was directed to do so by the tribunal. Moreover, the claimant was told that if he was seeking to rely upon that recording he would need to apply to the tribunal for permission to do so and the relevant extracts must be played to Ms. Granville for her comment. The claimant asked if he could take lunchtime to consider his position. Having done so he did not apply to play the recording to the tribunal.

14. The tribunal did, however, listen to the entirety of the recording of the meeting on 28 November 2018 which had been provided to the tribunal by the claimant.

The Issues

15. Time was spent at the outset of the hearing going through the List of Issues which had been identified Employment Judge Gray . The claimant expressly confirmed that he did not want to make any amendments to the list of issues (including detriment complaints) except in relation to his disability discrimination claim. In respect of his disability discrimination complaint, the claimant sought to add a new paragraph 10.3.5 to the list of issues on the basis that he alleged that the respondent should have had a meeting with him specifically to assess his level of autism and discuss reasonable adjustments, rather than tagging those discussions onto the performance/ conduct review meetings that took place. The respondent did not object to that application and the tribunal permitted an amendment to the list of issues to that effect (and, to the extent necessary, an amendment to the Claim).

Application to Amend the Claim Form

16. During his closing submissions the claimant sought to assert that he was subjected to a detriment not only by being suspended but also by the manner of the suspension and that he had been harassed when letters had been hand-delivered to his caravan. When asked if he was making an application to amend his Claim, the claimant said that he was.

17. Mr. Allsop, for the respondent, objected to that amendment stating that there had been 3 case management hearings when these points had not been raised, that the issues had been discussed in detail at the outset of the hearing and it was too late now to raise those matters. We reserved the decision on that application to be decided at the same time as our decision generally. The decision and the reasons for it is set out here.

The Law on Amendment

18. In considering the application to amend the starting point is the overriding objective which requires:

> **Overriding objective**
>
> **2.** The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—
>
> (a) ensuring that the parties are on an equal footing;
>
> (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
>
> (c) avoiding unnecessary formality and seeking flexibility in the proceedings;

(d) avoiding delay, so far as compatible with proper consideration of the issues; and

(e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

19. It is also important to note the Presidential Guidance on General Case Management and in particular Guidance Note 1. The guidance note requires that tribunals must carry out a careful balancing exercise of all the relevant factors having regard to the interests of justice and the relative hardship that will be caused to the parties by granting or refusing the application.

20. We considered *Selkent v Moore [1996] ICR 836, 843F in which the EAT stated "*It is impossible and undesirable to attempt to list them exhaustively, but the following are certainly relevant.

    a. *The nature of the amendment.* Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the addition of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded to, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The tribunal have to decide whether the amendment sought is one of the minor matters or is a substantial alteration pleading a new cause of action.

    b. *The applicability of time limits.* If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions, e.g., in the case of unfair dismissal, section 67 of the Employment Protection (Consolidation) Act 1978.

    c. *The timing and manner of the application.* An application should not be refused solely because there has been a delay in making it. There are no time limits laid down in the Regulations of 1993 for the making of amendments. The amendments may be made at any time — before, at, even after the hearing of the case. Delay in making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made: for example, the discovery of new facts or new information appearing from documents disclosed on discovery. Whenever taking any factors into account, the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment. Questions of delay, as a result of adjournments, and additional costs, particularly if they are unlikely

to be recovered by the successful party, are relevant in reaching a decision.

Decision on amendment

21. The claim form, in respect of suspension, states "I have twice been suspended from work on both occasions have been unlawful Acts." It does not make reference to the manner of suspension.

22. When the issues were identified in the order of 29 November 2019, issues number 8.4.2 and 8.4.3, only stated that "he was suspended". When the issues were discussed at the outset of this hearing the claimant did not indicate that he was complaining about the manner of his suspension.

23. We have concluded that when the claimant identified the issue in relation to his suspension as being that "he was suspended", he was not indicating that he was complaining about the manner of his suspension. The respondent, in our judgment reasonably, did not come to the tribunal understanding that that was the case it had to meet.

24. In respect of the new harassment claim, there is no reference to banging on caravan door in either the list of issues or the claim form and the claimant did not identify that as being a claim when we identified the issues at the outset of the hearing.

25. Applying the principles in *Selkent* the applications to amend are to add new factual allegations even though, in relation to the application to allege that the manner of suspension was an act of detriment, the allegation falls within existing heads of claim. The allegation of harassment is a new claim. If an amendment was permitted as at the date of the application, the claims would be very substantially out of time.

26. The most significant reason why the amendments cannot be permitted is that to give such permission would be to the significant prejudice of the respondent who has not called evidence on the matters which form the subject matter of the amendments. It would be unfair to the respondent to decide the amended case on the evidence which we have heard and without the respondent being given an opportunity to call evidence on the new issues. That, however, would require the case to be re-opened and further hearing time to be devoted to it. There would be a need for further witness statements and, possibly, further disclosure. Different witnesses would have to be called. There would be a significant increase in cost both for the respondent and to the tribunal. There would be delay in dealing with this case and a knock-on effect to other litigants.

27. For those reasons we do not consider that it is in the interests of justice to allow the amendments at the late stage at which it is made. However, in case we were wrong to refuse to allow the amendment in relation to the manner of suspension, we have set out below our findings and conclusions to the extent that we can on the basis of the evidence which the claimant has given. As we have set out below, even on the basis of the claimant's own evidence he would not have satisfied us that there was anything wrong with the manner of his suspensions.

The Law on Protected Disclosures

28. The law is found in different sections according to whether a person is asserting that they have been subjected to a detriment or unfairly dismissed. S.103A Employment Rights Act 1996 provides that

    a. An employee who is dismissed shall be regarded for the purpose of this Par as unfairly dismissed if the reason (or, if more than one, the principal reason) is that the employee made a protected disclosure

29. S.47B Employment Rights Act 1996 deals with detriments on grounds of making protected disclosures and provides that:

    a. A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure

        (1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

            (a) by another worker of W's employer in the course of that other worker's employment, or

            (b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.

        (1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

        (1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

30. Under section 43A of the Act a protected disclosure is a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

31. Section 43B(1) 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 show 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 is likely to be deliberately concealed.

32. Under Section 43C(1) a qualifying disclosure becomes a protected disclosure if it is made in accordance with this section if the worker makes the disclosure – (a) to his employer, or (b) where the worker reasonably

believes that the relevant failure relates solely or mainly to – (i) the conduct of a person other than his employer, or (ii) any other matter for which a person other than his employer has legal responsibility, to that other person.

33. Under section 48(2) of the Act, on a complaint to an employment tribunal it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

Disclosure of Information

34. in *Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436*. The Court of Appeal held "The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a "disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the [matters set out in sub-paragraphs (a) to (f)]". Grammatically, the word "information" has to be read with the qualifying phrase, "which tends to show [etc]" (as, for example, in the present case, information which tends to show "that a person has failed or is likely to fail to comply with any legal obligation to which he is subject"). In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1). The statements in the solicitors' letter in *Cavendish Munro* did not meet that standard" (para 35).

Reasonable Belief

35. That test on belief in the public interest was set out the case of *Chesterton Global v Nuromohamed* where it was reiterated that the tribunal must ask

    a. whether the worker believed at the time he was making the disclosure that it was in the public interest and,

    b. if so, whether that belief was reasonable.

36. More than one view may be reasonable as to whether something is in the public interest

37. Moreover an employee can attempt to justify the belief after the event by reference to matters which were not in his head at the time as long as he had a genuine belief at the time that the disclosure was in the public interest. Moreover that belief does not have to be the predominant motor.

38. The tribunal could find that the particular reasons why the worker believed the disclosure to be in the public interest did not justify his belief but nevertheless find it have been reasonable for different reasons. All that matters is that the subjective belief was objectively reasonable (*Nuromohamed* paragraph 29)

39. In considering whether the belief was reasonable factors include

    a. the numbers in the group whose interests the disclosure served

    b. the nature of the interests affected

c. the extent to which they are affected by the wrongdoing.

d. the nature of the wrongdoing

e. the identity of the wrongdoing

40. *Babula v Waltham Forest College* held that provided a whistle-blower's subjective belief that a criminal offence had been committed is held to be objectively reasonable neither the fact that the belief turns out to be wrong, nor the fact that the information which the claimant believed to be true does not amount to a criminal offence is sufficient to deprive protection.

Detriment due to Protected Disclosure

41. In respect of a claim of detriment, Harvey on Industrial Relations states "The term 'detriment' is not defined in the ERA 1996 but it is a concept that is familiar throughout discrimination law … and it is submitted that the term should be construed in a consistent fashion. If this is the case then a detriment will be established if a reasonable worker would or might take the view that the treatment accorded to them had in all the circumstances been to their detriment. In order to establish a detriment it is not necessary for the worker to show that there was some physical or economic consequence flowing from the matters complained of"

42. In *Fecitt v NHS Manchester* [2012] ICR 372, the Court of Appeal held that the test of whether an employee has been subjected to a detriment on the ground that he had made a protected disclosure is satisfied if, "the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower"

43. In *Martin v Devonshires Solicitors [2011] ICR 352*, the EAT held, at paragraph 22 that

> "In our view there will in principle be cases where an employer has dismissed an employee (or subjected him to some other detriment) in response to the doing of a protected act (say, a complaint of discrimination) but where he can, as a matter of common sense and common justice, say that the reason for the dismissal was not the complaint as such but some feature of it which can properly be treated as separable. The most straightforward example is where the reason relied on is the *manner* of the complaint. Take the case of an employee who makes, in good faith, a complaint of discrimination but couches it in terms of violent racial abuse of the manager alleged to be responsible; or who accompanies a genuine complaint with threats of violence; or who insists on making it by ringing the managing director at home at 3 a m. In such cases it is neither artificial nor contrary to the policy of the anti-victimisation provisions for the employer to say "I am taking action against you not because you have complained of discrimination but because of the way in which you did it". Indeed it would be extraordinary if those provisions gave employees absolute immunity in respect of anything said or

> done in the context of a protected complaint.... Of course such a line of argument is capable of abuse. Employees who bring complaints often do so in ways that are, viewed objectively, unreasonable. It would certainly be contrary to the policy of the anti-victimisation provisions if employers were able to take steps against employees simply because in making a complaint they had, say, used intemperate language or made inaccurate statements. An employer who purports to object to "ordinary" unreasonable behaviour of that kind should be treated as objecting to the complaint itself, and we would expect tribunals to be slow to recognise a distinction between the complaint and the way it is made save in clear cases. But the fact that the distinction may be illegitimately made in some cases does not mean that it is wrong in principle.

44. In *Panayiotou v Kernaghan [2014] IRLR 500*, at para 49 and 52 the EAT held:

> "[49] There is, in principle, a distinction between the disclosure of information and the manner or way in which the information is disclosed. An example would be the disclosing of information by using racist or otherwise abusive language. Depending on the circumstances, it may be permissible to distinguish between the disclosure of the information and the manner or way in which it was disclosed. An employer may be able to say that the fact that the employee disclosed particular information played no part in a decision to subject the employee to the detriment but the offensive or abusive way in which the employee conveyed the information was considered to be unacceptable. Similarly, it is also possible, depending on the circumstances, for a distinction to be drawn between the disclosure of the information and the steps taken by the employee in relation to the information disclosed.'
>
> …
>
> [52] Those authorities demonstrate that, in certain circumstances, it will be permissible to separate out factors or consequences following from the making of a protected disclosure from the making of the protected disclosure itself. The employment tribunal will, however, need to ensure that the factors relied upon are genuinely separable from the fact of making the protected disclosure and are in fact the reasons why the employer acted as it did.'

The Law on Reasonable Adjustments

45. Section 20 of the Equality Act 2010 provides in respect of the duty to make reasonable adjustments as follows:

"(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

46. Section 21(1) provides that a failure to comply with the first requirement is a failure to comply with the duty to make reasonable adjustments

47. In *Environment Agency v Rowan* [2008] IRLR 20, the EAT gave guidance on how an employment tribunal should act when considering a claim of failure to make reasonable adjustments. The tribunal must identify:

> "(*a*) the provision, criterion or practice applied by or on behalf of an employer, or;
>
> (*b*) the physical feature of premises occupied by the employer;
>
> (*c*) the identity of non-disabled comparators (where appropriate); and
>
> (*d*) the nature and extent of the substantial disadvantage suffered by the claimant'.'

48. The Equality Act 2010 provides that a substantial disadvantage is one which is more than minor or trivial: see s 212(1).

49. In *Tarbuck v Sainsbury Supermarkets Ltd* [2006] IRLR 664, the EAT held "the only question is, objectively, whether the employer has complied with his obligations or not. That seems to us to be entirely in accordance with the decision of the House of Lords in Archibald v Fife Council [2004] IRLR 651. If he does what is required of him, then the fact that he failed to consult about it or did not know that the obligation existed is irrelevant. It may be an entirely fortuitous and unconsidered compliance: but that is enough. Conversely, if he fails to do what is reasonably required, it avails him nothing that he has consulted the employee." (para 71)

Findings of Fact

50. The claimant was initially engaged by the council as a Case Management Officer via an agency. He worked in the Case Management team dealing with applications for temporary accommodation and assisting clients who were either homeless or facing homelessness. We find (and it is not disputed) that he was particularly good at interactions with clients and he was able to build a good rapport with them.

51. In June 2018 the respondent advertised for directly employed Case Management Officers on a 12 month fixed term contract. The claimant applied for that role and was given an offer of employment on 20 July 2018.

52. However, although the claimant was good at working with clients there were concerns about his performance in other areas. On 26 July 2019, a meeting took place between Lisa Eales, Ivy Woolridge and the claimant. Ms.

Woolridge was a housing specialist who did not have a specific line management responsibility towards the claimant but was described as being in a functional management role. The minutes of the meeting at page 79 of the bundle refer to concerns around the claimant's caseload and not progressing cases through H-Click (a software system) and concern around the claimant seeming distracted. The claimant explained that he was feeling exhausted due to domestic issues and said that he would make every effort to make improvements. Ms. Eales suggested that the claimant should reduce his to-do list and do shorter lists with actions for the day and she would monitor that. She was also to monitor that PHP's were being done correctly and a review meeting was to be arranged for 2 weeks' time.

53. A further meeting took place on 9 August 2018 when both positive matters and areas of concern were raised. Those areas of concern included that on 31 July only one item on the to-do list was completed, the claimant appeared distracted and kept walking away from his desk and things were not always done to a high standard. The claimant was told that, having consulted with HR, a decision had been made to put his employment offer on hold until the end of August at which time, unless significant improvements had been made, the offer would be rescinded. There was discussion of the claimant's autism and the claimant was asked if there was any other support which could be offered. He responded by saying that he felt the respondent had been very supportive and he really enjoyed working there (page 82).

54. A report from Occupational Health was obtained on 23 August 2018 which stated that whilst the claimant had struggled in school he did not see his autism as forming a barrier of any kind. The report stated that in periods of stress it was possible the situations would appear magnified in the claimant's mind and that due to his autism he was more likely to provide abrupt responses to questions which could be perceived as blunt or rude. It did not refer to any difficulties in respect of meeting deadlines.

55. A review meeting took place on 30 August 2018 with Lisa Eales and Ivy where it was felt that there had been a considerable improvement in the claimant's behaviour, although there were still some areas where some improvement was required. The Occupational Health report was discussed and it was decided to reinstate the claimant's employment offer. The claimant was told that he would be on probation for 6 months.

56. On 30 August 2018, the claimant received an email from the mother of a client stating that her daughter's mental health was being impacted due to men knocking on her door and offering crack for sale at her accommodation in a guest house in Southampton. A request was made for more suitable accommodation (page 89). The claimant says that he forwarded that email to Ms. Woolridge.

57. On 1 October 2018 the claimant received another email, which was copied to Ivy Woolridge referring to another client feeling threatened at the same premises by other residents. The service user was looking for a "temp nomination"(page 106).

58. Sometime before 8 October 2018, the respondent received a complaint from the claimant's (former) landlord. It appears that the claimant had not been given a return of his deposit to which he was entitled and he had

contacted the landlord about that matter, using his work email account. The landlord complained that the claimant was representing the respondent and using his position of power as a threat. The claimant was asked to attend an investigation meeting on 8 October 2018 where the matter was discussed in the context of the respondent's IT Internet and Email Usage Policy. The claimant was told that the letter he had sent, showing the council's telephone number and the council's email account, could be considered as bringing the council into disrepute. He was told that the matter would be passed to Ms. Eales to discuss via probationary review. (Page 107)

59. On the next day a probation review meeting was fixed for 18 October 2018 (page 108)

60. On 15 October 2018, the claimant entered into an email exchange with one of the clients referred to above, who wanted a Discretionary Housing Payment. He stated "I can now confirm payment of the DHP has been agreed will be paid directly to VIVID, Yeah!… If you would take a few moments to do the Alma Lodge thing I would be very grateful. I am pestering about this because I do not want to place another young and pregnant person in there if there are issues." (Page 112)

61. The last sentence was a reference to asking the client to set out her concerns about the property in question. The claimant said that he had been asked to do that by Ivy Woolridge. The client replied on 17 October 2018 setting out the issues and the claimant forwarded the email to Ivy Woolridge on 18 October 2018 stating "it has been brought to my attention that there has been a number of issues relating to drugs and poor standards… I think the contents of [the client's] email raise serious issues about the continued use of this establishment, particularly with regard to vulnerable customers. It would certainly wrestle with my conscience if the expectation was to place certain customers at [the premises]. At this point I feel that we are fortunate that something disastrous has not occurred. The consequences of a serious incident could be far-reaching." (Page 111).

62. The respondent accepts that email was a protected disclosure.

63. On the same day the claimant had his performance review meeting in the afternoon. The minutes appear at page 122 of the bundle and show that various concerns were raised with the claimant. Firstly, there was the issue of the letter which the claimant had sent to his landlord. Secondly, there were concerns about the claimant's performance standards and work output. Reference is made to a letter which had been sent to a resident without the template features having been tailored to the individual circumstances and his lack of productivity. The claimant was also shown the email of 15 October 2018 that he had sent in relation to the DHP to the client. Shirley Robbins, HR specialist who was at the meeting, said to the claimant that it was important that regardless of the situation any communication sent to someone outside the council was an official document and needed to maintain a professional image.

64. The claimant says that the matters which were raised with him in that meeting amounted to bullying as a consequence of having made a protected disclosure earlier in the morning.

65. Ms. Eales says that she was not aware of the email which amounted to a protected disclosure when she saw the claimant and points out that the meeting had been fixed on 11 October 2018.

66. We find there was nothing wrong with raising, with the claimant, his decision to send his landlord a complaint about the deposit using the respondent's email account. It could well be seen that the claimant was seeking to take advantage of his position and it was unwise of him to do so. We also find that there was nothing wrong with raising, with the claimant, the ongoing performance concerns which we accept existed.

67. We agree, however, with the claimant that it is difficult to see what was wrong with him using the words which he did in the email of 15 October 2018. We are somewhat surprised that those matters were raised. Nevertheless it appears that in context, when they were raised, they were not raised as a significant point and they have assumed greater significance in the mind of the claimant with the benefit of hindsight. We also note that it was not Ms. Eales who raised the point but Shirley Robins. There is no suggestion that Ms. Robbins was aware of the claimant's whistleblowing email and we accept that Ms. Eales was not aware of it either. There is no evidence that the matter was raised with the claimant because he had made a protected disclosure that morning, indeed as we go on to set out, the respondent has responded entirely appropriately to the claimant's disclosure.

68. The claimant was asked, in the meeting, what he thought had led to his dip in performance and he said that it was largely due to his personal issues and he was reminded of the employee support line. Earlier in the meeting there had been a discussion about the claimant's autism and he was asked what measures he put in place to do tasks and whether any action was required in the light of that. He said that he found checklists helpful which he was writing in conjunction with Emma.

69. The outcome of the meeting was sent to the claimant on 25 October 2018 and on, 28 October 2018, he replied stating that he was embarrassed to be in that position, that he recognised that he had been facing lots of issues some of which were life changing and "I recognise that I have placed myself in an unfortunate position and want to give you my cast iron reassurance about my performance going forwards and can only say you will see a dramatic improvement. I acknowledge and want to genuinely thank you for the support and patience you have given to me." (Page 126)

70. On 29 October 2018, Ms. Eales wrote to the claimant again, following a meeting which had taken place on that day. During that meeting Ms. Eales had raised with the claimant that a discussion that he had had on the telephone, of a personal nature, was deemed not to be appropriate in the workplace. During the hearing, the claimant contended that the complaint in that respect was without foundation. He said that he had made a short humorous comment to someone that he knew to the effect not having had sex since his son was born. The claimant was put on a 2 week monitoring period.

71. That email records that the claimant had been reminded about the employee assistance program and a discussion has taken place about his

autism. The claimant had mentioned that stress could aggravate his condition but confirmed there was no other support which could be provided, but he had taken on board the actions of putting a checklist together and using quieter days to focus on admin and working in a quiet space.

72. A further meeting took place on 20 November 2018, following the two-week period of closer monitoring. Ms. Eales wrote after that meeting (page 136) stating that there had been a marked improvement in the claimant's performance but drawing to his attention some matters of concern. One related to a gentleman who had escaped from a secure unit, one related to an email to Vivid the tone of which was very "them and us" and one was in relation to suggesting in a meeting that a colleague should be performance managed. There was also an issue about whether the respondent gave people with mental health priority need - which it was suggested showed a lack of understanding of how the banding system worked at Eastleigh. Going forward the claimant was to be managed and reviewed informally during one-to-ones as per normal procedure and the probationary period would be reviewed at 3 and 6 months.

73. In respect of the email to Vivid, we were told that it was the email which appears at page 130 of the bundle. That does not appear to be an email to Vivid but, if that is the correct email, we can see nothing wrong with the terms of it and, again, we are somewhat surprised that it was raised. However we accept that this was an issue of management of the claimant and the fact that we can see nothing wrong with it does not automatically mean that it was raised in bad faith. This is not an act of detriment about which the claimant complains, however we do take account of the respondent's actions in raising it when, later in these reasons, we consider whether the reason for the claimant's suspensions were because he had made disclosures.

74. Apart from the fact that we see no reason to raise with the claimant any concerns about that email, we consider the other matters which were raised with the claimant to be normal management matters to which no objection could be taken.

75. On 20 November 2018, the claimant wrote to Mr. Trayer stating that he had serious concerns around safeguarding issues and use of the whistleblowing policy. Mr. Trayer replied to encourage him to raise his concerns using the Council's Whistleblowing Policy which was available on staff hub. (Page 131a)

76. On 21 November 2018 the claimant wrote to Shirley Robins stating that he wanted to use the whistleblowing policy due to serious concerns involving safeguarding and said that there was an overlapping issue because he felt that he was a victim of bullying and harassment with possible discrimination towards his autism or gender identity (page 132).

77. On the same day Shirley Robins sent a copy of the dignity at work policy and asked the claimant to let her know if he wished to speak to her initially or if he was happy to raise the matter with his line manager (page 133). Ms. Robins said that she was happy to meet with the claimant if he wished to do so.

78. Later, on 21 November 2018, the claimant set out concerns to Shirley Robins stating that they represented a huge failing on the part of management (page 134).

79. On 23 November 2018 an allegation was made that somebody had been sexually assaulted at the premises in relation to which the claimant had made a disclosure.

80. On 26 November 2018, the claimant wrote a lengthy letter to Mr. Trayer setting out his concerns about his treatment and stating that, in respect of his concerns about the premises, a meeting was required of the utmost urgency as the risks were huge and there was a lack of adequate response from the claimant's immediate management. He stated "I remain in trust but that can't last much longer under these conditions." Page 141 – 142.

81. Mr. Trayer replied on the next day stating that there were 2 separate issues, firstly victimisation under the council's whistleblowing policy and secondly concerns about the council placing vulnerable people at the Alma Guest House.

82. In relation to the first point Mr. Trayer had spoken to Catherine Granville who was going to personally review the case to ascertain all of the facts and, in relation to the safeguarding point, Mr. Trayer pointed out that the meeting of the Council's Safeguarding Board would discuss the issue the next day. He stated that he was aware the claimant would be in attendance at that meeting to articulate his concerns and to ensure that there was an open honest and frank debate.

83. The claimant had been asked, at short notice (most likely on 26 November 2018 but not before then) to prepare a report for the safeguarding meeting. That report appears at page 165 of the bundle and is a 3 page report together with appendices. The claimant states that he wrote it on the morning of the meeting. As part of the report the claimant makes particular criticism of his "manager" stating that the manager was aware of all the grave concerns in relation to the property which had been raised over a six-month period and "from my view point I have to question the competence of the manager at what looks like a complete and wilful neglect of duties." (Page 167)

84. We have listened to the recording of the meeting on 28 November 2018 which the claimant made secretly. It is clear to us that there was no attempt at the meeting to sweep the claimant's concerns under the carpet, indeed quite the opposite. The concerns were taken seriously and the claimant was listened to. Early on in the meeting the participants seemed to be leaning towards stopping the placement of women at the property. However as a result of representations made by the claimant the decision went further and the council decided, until the matter could be investigated further, to place no vulnerable people at the property whether male or female, except in the case of the Severe Weather Emergency Protocol being engaged.

85. The claimant spent a large amount of the hearing seeking to persuade us that the actions of Ivy Woolridge at that meeting were dishonest or disingenuous and an attempt to cover matters up. We have attempted to explain to the claimant that our function is not to conduct a review of the

council's safeguarding procedures or to conduct an enquiry into how those procedures were applied in any particular case. Our role is simply to decide whether the claimant made protected disclosures and, if he did, whether he was subjected to a detriment or dismissed as a result. We must also consider whether there was a failure to make reasonable adjustments in relation to his autism in relation to a 10 day appeal period to which we will return. The claimant has a fixed view that his immediate manager and other members of the respondent's housing team did not deal with the situation as he would want them to. That is not an issue in which we can or should engage. We have not heard from Ivy Woolridge to hear her side of events, nor should we have done. We note that as a result of the claimant's concerns an internal investigation took place which found that there was no inappropriate behaviour by her. Moreover, Southampton City Council were also involved in considering the use of the Alma Road guesthouse and as we understand it found that it was appropriate to continue using the Alma Road property, at least in some circumstances.

86. As a result of the claimant's concerns about being victimised it was agreed that whilst Lisa Eales would continue with day-to-day management of the claimant, her manager Louise O'Driscoll would take over the management of the performance, behaviour and conduct issues.

87. Following the meeting on 28 November 2018, Melvin Hartley was tasked with investigating Mr. Mason's complaint about poor decisions being made in the use of the Alma Road Guesthouse. He was, we are told, a safeguarding expert as well as being a former policeman. Although he works for the respondent he appears to have been independent of the matters about which the claimant was complaining. As part of his investigations he sought and obtained permission to consider the emails between the claimant and Ivy Woolridge. In the claimant's sent box he discovered that the claimant had sent, to his own personal email address (a Hotmail account), a housing case file of a client who had been placed in temporary accommodation which contained sensitive personal data such as medical history, passport copy and other personal sensitive information. He had also sent her address to himself.

88. As a result of that discovery, a meeting took place on the 4 December 2018 between the legal services manager of the respondent, who was also the data protection officer, the deputy data protection officer, Ms. Granville the HR lead specialist, Mr. Hartley and the chief internal auditor. It was decided that there was a potential data security breach and the breach was likely to be motivated by the claimant seeking to gather evidence for his case in the context of him having raised a complaint under the whistleblowing policy and claiming that he was being victimised and bullied as a result. The meeting decided that there was a potentially serious breach of GDPR legislation and that matters needed to be investigated. It was acknowledged that suspension was a last resort however it was felt that the claimant presented a continued risk to the council because he would have continued access to personal sensitive data in the course of his role, both electronic and physical. The minutes of meeting referred to the claimant's behaviour indicating that he was a disgruntled employee and stated that the seriousness of the actions, should they prove to be founded, would have diminished the trust the respondent had in him. In circumstances it was decided to suspend the claimant.

89. We accept that the fact of suspension in this case would have been upsetting for the claimant and was not a neutral act. It would amount to a detriment.

90. Having regard to the references to the claimant having made a complaint under the whistleblowing policy and the fact that the claimant was regarded as a disgruntled employee we have given anxious consideration to the question of whether the suspension was because the claimant had made a protected disclosure or whether the making of the protected disclosure had more than a trivial influence on the decision to suspend him.

91. We have come to the conclusion that the making of the protected disclosure did not influence in any significant way, indeed in any way at all, the decision to suspend the claimant. In particular, in reaching that conclusion we have noted the following matters.

    a. The respondent had been responsive to the claimant's whistleblowing as is clear both from the meeting of 28 November 2018 and the fact that Mr. Hartley had been tasked to investigate the claimant's concerns.

    b. The people who were involved in the decision to suspend the claimant were not the claimant's immediate managers or the colleagues about whom he had complained but were senior members of the respondent's management who were largely independent of the allegations which had been made.

    c. The decision by the claimant to send a client's personal file to his personal email address was potentially a very serious breach of data protection regulations. The claimant has sought to persuade us that, in fact, his actions were entirely justified because he was investigating a whistleblowing matter and that, in those circumstances, the greater good outweighs anything else. We have serious doubts as to whether that is an accurate statement of the law, but it does not matter whether the claimant would have an ultimate defence to the concerns of the respondent. The respondent, in the situation it found itself in, was entitled to suspend the claimant whilst it investigated what had happened. The claimant would then have his opportunity to explain his motivation.

    d. The information Commissioner's office has said, in writing, that the respondent was correct to treat what had happened as a potentially serious data breach (page 181).

    e. The claimant was only suspended for 3 days while the matter was resolved.

    f. In fact, the claimant received only a very minor sanction in relation to what he had done -namely being given a management warning rather than any formal warning. Other employers may well have dismissed the claimant in the circumstances.

92. We are entirely satisfied that the decision to suspend the claimant was nothing to do with the fact that he had made a protected interest disclosure but because he had sent confidential information to himself outside of the

security systems which the respondent has. Although reference is made to the claimant being a disgruntled employee, we find that was a reference to his ongoing complaints about his immediate managers and colleagues who he regarded as dealing with matters incompetently. Those complaints, and the dissatisfaction that they represented, can be properly distinguished from the public interest disclosure which the claimant made.

93. As we have indicated above, the claimant now complains about the manner of his suspension on the day and seeks to amend his claim accordingly. It is difficult to make any findings of fact as to the manner of the claimant's suspension. In the claimant's witness statement he only deals with that matter in paragraphs 51-52 and 69. He does not give any particulars of why he says the manner of the suspension on that day was distressing for him. The suspension was carried out by Catherine Granville who, understandably, gives no evidence on the point, since it was not identified as an issue. In cross examination of Ms. Granville the claimant challenged the way in which his 2nd suspension took place but not this one. In those circumstances we simply are unable to make any findings as to the manner of this, the first, suspension. Thus, even if we had permitted an amendment in this respect, the claimant has not produced sufficient evidence to satisfy us that there was anything inappropriate about the manner of his suspension.

94. On 13 December 2018 the claimant raised a formal complaint about 4 seniors who he said he was being victimised by, being Ivy Woolridge, Emma Boyce, Lisa Eales and Janine Pickering. (Page 193).

95. On 20 December 2018 Mr. Hartley provided his report into the use of the Alma Road Guest House. He concluded that the respondent's response to the complaints received throughout the period had been fair, reasonable and proportionate based on available information at the time of the decision-making. He made various recommendations.

96. The claimant saw the report before it was circulated to the board and was unhappy with it, he therefore sent comments to Catherine Granville which appear at pages 204 and 207 of the bundle. Within the 2nd of those documents the claimant repeated strong allegations against Ms. Woolridge, describing her as giving false and misleading information and referring again to wilful neglect of the duty of care by the respondent or its employees.

97. On 7 January 2019 Ms. Granville forwarded those to Mr. Hartley asking him to review them (page 209).

98. Mr. Hartley's report was then sent to the Council's Safeguarding Board and reviewed by it and Mr. Trayer. On 18 January 2019, Mr. Trayer wrote to the claimant stating that the findings and conclusion of the report were accepted and that there was no requirement to refer the matter on or take any further action. He stated "I am also satisfied that there is no foundation to the particular concerns you raise regarding the Homelessness Prevention Specialist who has my full confidence." That was a reference to Ivy Woolridge. He went on to state "I now consider this matter closed and the Council will not enter into further discussion or correspondence on the disclosure. If you are not satisfied with the Council's response you have the option to take the disclosure outside of the Council to an appropriate body;

there is a list of organisations within the Whistleblowing policy as guidance." (Page 213)

99. On the 21 January 2019 a meeting took place between the claimant and his representative and Jo Cassar who was investigating his allegations of bullying and harassment.

100. On 23 January 2019 the claimant returned to work after some sickness absence, he had a meeting with Louise O'Driscoll who discussed his workload. She pointed out to him that he had 16 cases that were over 57 days old and stated that he would need to give a plan on how this would be addressed. There are certain statutory time limits in relation to the conduct of homelessness work and the respondent was concerned that where cases are over 57 days old funding may be at risk.

101. Although the claimant told us that everyone had difficulties with closing cases because of difficulties with the H – Click system, that is not consistent with the email dated 25 January 2019 from Lisa Eales to Jo Cassar. That shows that the claimant had 16 cases which were older than 57 days whereas other officers shown only had 2, 9, 6 and 3 cases respectively. (Page 226)

102. On 6 March 2019 the claimant had a review in respect of his probationary period with Louise O'Driscoll. It was noted that there were still issues around updating case notes accurately and comprehensively and incomplete paperwork. It was noted that improvement was required with completing cases within the 56 day statutory timescales. Positive matters were also noted such as the claimant's good rapport with customers and that the relationships of most of his colleagues were working although there was still tension with others. The probationary period was extended for a further 3 months. The claimant did not challenge Ms. O'Driscoll about those matters (either at the time or when she gave evidence) and he accepted in his closing submissions that he did have performance issues. (Page 237)

103. On 8 March 2019 Jo Cassar reported on the claimant's complaints about victimisation and bullying. The investigation was thorough and found no evidence that the 4 named officers bullied, victimised or harassed the claimant. The report was sent to the claimant by Catherine Granville on 11 March 2019 and she stated that he had the right to a formal hearing under the council's grievance procedure and that Ms. Granville would like to support him and the colleagues identified in the allegation in fostering positive working relationships (page 267)

104. On 18 March 2019 Councillor Rich wrote to the claimant raising concerns about a client at a different guesthouse. (Page 268). On 5 April 2019 Emma Boyes, a colleague of the claimant, sent him an email setting out a course of action in relation to that client. The claimant forwarded that email to Councillor Rich stating "please see comments from the email chain relating to issues around [illegible] and the response from management. I have sought their views on delicate matter but having looked at the picture of the child who has been severely bitten I think it entirely reasonable to return the property without a guarantee that the infestation of rats and fleas had been fully resolved." That email appears to say that the claimant disagrees with his managers (page 269). A more obvious criticism by the

claimant is in a subsequent email that the claimant wrote on 11 April 2019 where, forwarding on an email from Janine Pickering about the Alma Road property and the fact that it would now be used in certain circumstances, the claimant wrote to Councillor Rich stating "I have highlighted my concerns around safeguarding and other poor practice here. I await to see the response but the words Sh*t & fan spring to mind. This is about keeping safe and protected. It is about preventing future victims and I will not rest until this is all effectively challenged." (Page 279).

105. Meanwhile on 5 April 2019 a probationary review meeting had taken place between the claimant and Karen Hunter. Ms. Hunter had joined the respondent in February 2019 as a line manager to Lisa Eales. Given the ongoing difficulties it was decided that Ms. Hunter would take over the performance management of the claimant. Having reviewed the claimant's case files she went through various matters with him. She set out the positives in relation to the claimant's work and also the areas still requiring improvement including noting that of 8 randomly selected cases, 4 were incorrect, there were not notes for every case and in 4 of 8 cases checked letter templates had errors due to incorrectly selecting or deleting appropriate sentences. There were also issues in relation to sending attachments to emails. A further review meeting was planned. (Page 272)

106. On 10 April 2019 the claimant raised a formal grievance and was invited to a grievance hearing on 7 May 2019 with Paul Naylor.

107. On 23 April 2019 a copy of Ivy Woolridge's report to the safeguarding board on 28th November 2018 was found in a communal space. It contains the claimant's annotated notes which included critical remarks of Ms. Woolridge (page 287). The respondent regarded this as another potentially serious breach of data protection. It also discovered the emails to Councillor Rich

108. On 26 April 2019 the claimant was again suspended. In this respect there is dispute between the parties as to what happened. The claimant says that he returned to work after a period of absence and set up his computer in the workplace. He was then approached and asked to go to a separate room where he was told that he was being suspended to allow for investigation of those matters. He then had to pack his computer away and leave. He was given a letter dated 26 April 2019 (page 285). The respondent states that Ms. Hunter approached the claimant upon his arrival at his locker and asked him to come into a private meeting room and was then told that he was suspended. The claimant did not challenge Ms. Hunter's statement in this respect and although the claimant's position was not explored when he was cross-examined that is understandable having regard to the issues as they had been identified .

109. The decision to suspend the claimant was that of Karen Hunter. There is no evidence to suggest that the decision to suspend the claimant was motivated by anything other than another potential data protection breach having occurred as well as the emails sent to a councillor criticising his colleagues and managers. We find that the reason for the suspension was those things and whether the suspension was justified or not (and we considered that it probably was) it was not motivated by the claimant's disclosure. Ms. Hunter had joined the respondent after the claimant had

raised his concerns and there is no evidence upon which an assertion could be founded that she was motivated by the fact that he had been a whistleblower. Leaving a confidential report lying in a communal area is a potential data breach and the emails which had been sent to the councillor might have amounted to acts of misconduct; there was ample reason to suspend the claimant. Having heard the evidence of Ms. Hunter we accept her evidence.

110. Even if the claimant's description of the suspension is correct, we find that there was nothing wrong in asking the claimant to come to a meeting after he had set up his computer, but again and more to the point, even if there was something wrong with the manner of suspension we accept that the respondent was motivated only by the potential data protection breach and the emails to Councillor Rich and not by the previous disclosure (or indeed any of the other documents which might possibly amount to protected disclosures even though they have not been pleaded as such).

111. The letter of 26 April 2019 dealt not only with the claimant's suspension from work but also invited him to a probationary review meeting on 30th April. The purpose of the meeting was to discuss the concerns that had been brought to Ms. Hunter's attention and the claimant had the right to be accompanied. The meeting was to take place on 30th of April 2019.

112. On 30 April 2019 the claimant left a voicemail stating that he was unable to attend the meeting due to feeling unwell. On the same day the claimant sent a letter to Ms. Hunter raising additional grievances in respect of his suspension. He made reference to various case law and stated "in the event these matters escalate to the Employment Tribunal, which it appears is highly probable, I will be sure to outline in my claims to the Employment Tribunal how my employer has engendered on a fishing expedition with an ulterior motive to give me the boot by reason that I have done protected acts on protected grounds." (para 14, page 290).

113. The claimants grievance hearing took place on 7 May 2019 and the claimant set out a written opening and closing statement (pages 296 & 297).

114. On 14 May 2019 the claimant set out a document headed "Response to Melvin Hartley's Whistleblowing report." In relation to "Case 5" the claimant writes "this represents a catalogue of malpractice and lies. The reports to IW were highly serious issues made in good faith… I provided further information to the Whistleblowing process which have been ignored and taken out of context." He went on to state "MH report findings are based upon lies, misleading information and critically omitted to involve me which in doing so he has produced the weakest of reports…". (Page 337). To the extent that the claimant complains that he had not been involved, it is correct that he was not interviewed as part of Mr. Hartley's investigation but the allegations which he had made were well recorded and the written comments which he made afterwards had been forwarded on to Mr. Hartley.

115. On 16th May 2019 a detailed grievance hearing outcome was sent to the claimant (page 340). The grievance concluded that there was no evidence of the claimant having been singled out for different treatment as

a result of his raising concerns regarding the Alma Road property or that the investigation conducted by Jo Cassar was flawed.

116. The letter concluded "should you wish to appeal against this decision you have the right to appeal to Stage 2 of the Council's Grievance Policy. If you wish to pursue this you should put your reasons in writing to me within 10 working days of the receipt of this letter". This is the PCP which forms the claimant's complaint of failure to make reasonable adjustments. The respondent admits that PCP existed. We have not been taken to the relevant policy, both parties accepting that the PCP which we must consider is as it was set out in this letter.

117. On 20 May 2019 the claimant sent a lengthy letter to Mr. Naylor alleging various breaches of the Equality Act 2010. The letter refers to the relevant PCP and paragraph 8 states that the time frame applies a discriminatory effect on protected grounds of the claimant's disability. At paragraph 28 the claimant states "in accordance to the aforementioned grievances, I am also blowing the whistle in accordance with section 43A, 34B…" He goes on "put short, the respective omissions by yourself to make reasonable adjustments to the grievance procedures and furthermore, arbitrarily ignoring the Council's public sector equality duty puts me and puts persons who share my disability at a substantial disadvantage in comparison to nondisabled persons. Therefore, these matters are in the public interest. It is in the interests of all Council employees to know that a senior manager like yourself has failed, is failing, and is likely going to continue to fail to comply with the Statutory Acts." (Paragraph 31)

118. We must decide whether that letter amounts to a protected disclosure. In our view whilst a large amount of the letter reads as an allegation, there is a sufficient disclosure of information for it to be said that there has been a disclosure of information. The claimant has referred to the letter which he complains about and what is within the letter, namely the relevant PCP. The claimant refers to the council having imputed knowledge of his autism and states that the timeframe does not take into account the substantial adverse effect which the cumulative effects of his disability has on his day-to-day activities, especially when put under stress, distress or excessive pressure. Thus we conclude there was a disclosure of information.

119. Moreover we consider that the claimant genuinely believed that the information tended to show a breach of the Equality Act 2010. The letter was not drafted by the claimant but on his behalf by somebody who, he says, has knowledge of law. Thus although the initial knowledge as to the breach of the legal obligation was not the claimant's (as the respondent submitted), once the letter had been read by the claimant, he did, at that point, believe that the information within it tended to show that the respondent had failed to comply with a legal obligation to which it was subject.

120. The question of whether or not that belief was objectively reasonable is more difficult. The simple fact of a PCP being in existence is not a breach of the Equality Act. The breach occurs if reasonable adjustments are not made. Nevertheless, it was reasonable for the claimant to believe that a

PCP was, in itself, unlawful and/or that the R not making adjustments to it was unlawful.

121. We also accept that the claimant genuinely believed that it was in the public interest to complain about the 10 working day limit because it would put other disabled people at a disadvantage. The question of whether the claimant reasonably believed that is more difficult; if the respondent was routinely making allowances for people with disabilities by extending the time limit or otherwise, then the information which the claimant disclosed could not reasonably be believed to be in the public interest. We are prepared to accept that the claimant's belief was, however, reasonable insofar as the respondent is a large employer that is likely to employ disabled persons and has a strict time limit for an appeal. In that context we note that the letter from Mr. Naylor did not suggest that there could be any exceptions in relation to the time limit.

122. Thus we accept that the letter amounted to a protected disclosure.

123. At paragraph 18 of the letter the claimant stated "to this end, I will furnish my appeal on or about 14.6.19. This timeframe does not prejudice either party's legal positions." At paragraph 20 the claimant stated "these matters are now the last act or final straw – Lewis v Motorworld Garages Ltd [1986] ICR 157"

124. On 29 May 2019, Ms. Hunter wrote to the claimant stating that the probationary review meeting would be rescheduled to take place on 20th June 2019. The letter stated "the purpose of this meeting is to discuss a number of serious concerns that have been brought to my attention that I need to consider, together with the ongoing concerns regarding your performance that we have already discussed." The claimant was told that he had the right to be accompanied and told that if Ms. Hunter considered his performance or conduct was unlikely to meet the required standards expected for the role, a potential outcome would be termination of the employment. The claimant was invited to submit written evidence by 18 June 2019 to Catherine Grantham. The letter also stated that on the basis that the meeting had been postponed a number of times there would be no further postponements except in exceptional circumstances. (Page 356).

125. On 29 May 2019 the claimant was invited to attend a grievance appeal hearing to take place on 18th June. The letter stated that the claimant had the right to present any documents that he felt were relevant to his appeal and asked that they should be submitted by no later than Thursday, 13 June 2019.

126. In the meantime the respondent had asked Astrid Patil to review the investigation by Mr. Hartley. She was asked to consider 2 questions, firstly did the respondent follow the correct procedure under the whistleblowing policy and secondly was it reasonable for Mr. Hartley to conclude there had been no misconduct or malpractice within the council and that the claimant's allegations were unfounded. Ms. Patil is a solicitor within the respondent's organisation. She reported on 12 June 2019 and concluded that the investigation had been properly conducted (page 359a).

127. On the same day Ms. Patil also wrote to Mr. Mason. It is not entirely clear to us how she came to be involved in this respect but she wrote to him about his letter of 20 May 2019. The obvious inference is that she was asked to review it by the respondent. She considered the allegation that the council had failed to make reasonable adjustments. Within the letter she referred to an email from Catherine Glanville on 21 May 2019 in which Ms. Glanville stated "the council will agree to your request for additional time in which to prepare your submissions for the Appeal Hearing as a reasonable adjustment and I will schedule an appeal hearing for the week beginning on 17th June."

128. Ms. Patil concluded that the council's grievance policy complied with the Equality Act 2010 on the basis that a timescale of 10 working days to appeal against a grievance was reasonable but the period of time can be extended where reasonable adjustments were appropriate. She noted that the council had given extra time (page 360).

129. On 13 June 2019 Catherine Granville forwarded to the claimant the review by Ms. Patil of Mr. Hartley's investigation. We find that in so doing the council went beyond what was required of it but clearly showed that it was taking the claimant's concerns seriously and not, in any way, trying to hide them.

130. On the same day, in relation to the concern about the timeframe to appeal, the claimant wrote to Ms. Patil stating "I think that is all a little too late on all accounts don't you?" (Page 367). He also wrote to Ms. Granville stating "I'd rather leave that little matter to the Judge at the employment tribunal. I relish and cherish beautiful thoughts for that week." (Page 365).

131. On 17 June 2019 the claimant set out a lengthy and detailed response to the summary of Mr. Naylor (page 369) and also wrote a lengthy letter to Ms. Patil (page 381).

132. Within his Response to the Grievance Hearing Summary, the claimant stated "please note, there are many employees of Eastleigh Borough Council who were guilty of disregarding very serious safeguarding reports. The list of people involved in this from a pro Eastleigh Borough Council point of view is below". The claimant then lists 25 people from the chief executive to 2 councillors.

133. Within the letter to Ms. Patil the claimant stated to her that "… It is my reasonable belief that you have (and are) *aiding* the Council in accordance with s112(1) EqA 2010 to "deliberately conceal" a "miscarriage of justice"…" The claimant then set out extracts from the code of ethics and stated that Ms. Patil had acted in contravention of the Solicitor's Regulatory Authorities code of ethics. (Page 381, italics original)

134. The grievance appeal took place on 18 June 2019 when the claimant was able to attend and in the course of that meeting the claimant stated that Emma Boyes had contaminated evidence and fed lies into a fabricated investigation. (Page 394).

135. On 19 June 2019 Ms. Granville wrote to the claimant stating that she wanted to check he was still able to attend the meeting scheduled for the

next day. She stated that the outcome letter of the appeal hearing would also be provided. He replied asking Ms. Granville to email him a copy of the letter and stated "as for tomorrow's meeting I give you notice that I am unwell and therefore unable to attend." (Page 396). Ms. Granville replied to ask him to call her in the morning to discuss a potential revised date for the meeting.

136. On 20 June 2019 the claimant was sent the outcome of his appeal which was contained in a detailed letter from Natalie Whitman, Corporate Director (page 398).

137. The claimant did not attend at the probationary review meeting and we have heard from both Ms. Granville and Ms. Hunter about the decision made in that respect. At the time when Ms. Hunter wrote the letter dated 29th May she had been inclined to terminate the claimant's employment because she felt his performance was not of the required standard and the claimant was still making the same mistakes. She remained concerned about the 2nd data breach and had noted that the contract was for a fixed period of 12 months and there was no prospect of extending the term. She had noted that the probability was extremely low that the claimant would be able to improve prior to the end of his contract.

138. The claimant says that he understood that, although the original contract was for 12 months, he would be given a permanent position at the end of it. We note from the job advert that it does state "as this role evolves there may be permanent opportunities for the right candidate in due course." We anticipate that the claimant may well have been told something similar at interview. However we do not accept the claimant's assertion that he was told that he would definitely be given a permanent contract at the end of the 12 month period. Even if the claimant had been told that, it would clearly have been subject to the requirement that the claimant had proved himself suitable for appointment to a permanent post.

139. The decision in relation to the claimant's termination of employment was, however, made by Ms. Granville. She told us, and we accept, that in the grievance hearing and the appeal the claimant had indicated that he did not believe it would be possible for him to return to work. She noted that the claimant seemed intent on pursuing a tribunal claim rather than resolving the matter and that he had consistently refused to accept what the Council had done about the concerns he had raised about the Alma Road guesthouse. He refused to accept the investigation into bullying and harassment claims and had consistently linked both his performance process in any disciplinary issues with his whistleblowing complaints. She states "it was clear the claimant was never going to accept anything the Council did in relation to any of these matters. This, together with the increasingly extreme language, indicated to me that the relationship had truly broken down and there was very little prospect of anything being resolved outside of an Employment Tribunal which the claimant had already indicated that he wished to pursue. Taking all this into account, together with the fact that the claimant had only ever been employed on the basis of a fixed term contract for 12 months and that there was only 2 months left to run on the contract… I couldn't see any other option other than to pay out the balance of the contract and bring the contract to an end." That is what she did.

140. We are entirely satisfied that the explanation given by Ms. Granville was true. We are also entirely satisfied that neither she nor Ms. Hunter were influenced at all by the fact that the claimant had made protected disclosures. As we have already said, the council, in fact, did everything it could in relation to the earlier disclosure in terms of investigating it and also responded fully to the second disclosure (as well as extending the time for appeal). The claimant was never going to accept the respondent's decisions but, moreover, it is clear from the evidence that we have seen that he was going to continue to make allegations about his colleagues and the management, including to councillors. It is abundantly clear to us that the relationship between the respondent and the claimant had broken down irretrievably.

Conclusions

141. We state our conclusions by reference to the list of issues. Many of the conclusions will be apparent from the findings of fact we have set out above.

142. In relation to issue 8.1.2, for the reasons we have given above, we accept that the email of 20th May 2019 disclosed information. In relation to issue 8.2 we accept that the information disclosed in the letter was information which in the claimant's reasonable belief tended to show that the respondent was in breach of the Equality Act. In relation to issue 8.3, we accept that the claimant reasonably believed that the disclosure was made in the public interest because of his understanding of the impact that it would have on other disabled persons.

143. In relation to issue 8.4.1, whilst we are somewhat surprised that the respondent raised the claimant's comments that were made in the email of 15 October 2018 in the meeting of 18 October 2018, we find there was nothing surprising about the respondent raising the other matters with the claimant. Moreover in relation to all of the issues raised (including those in relation to 15 October 2018 email) we do not find that the raising of them was a detriment. All employees expect to receive feedback from their managers as to how they are doing. It is not to their detriment for them to do so. Often it is to their advantage, particularly in a probationary period. Most employees would want to know how their behaviour and conduct was being assessed, so as to know whether anything must be changed in order to pass the probationary period. It is not suggested that the meeting was carried out in an unpleasant or aggressive fashion and, therefore, we do not find that what happened in this meeting was to the claimant's detriment. The claimant may not agree with the points which were raised and we may not agree with all of them, but that does not mean that the raising of them was to the claimant's detriment.

144. However, even if we are wrong in that respect, we are entirely satisfied that the reason for the claimant's treatment was not in any way influenced by the disclosure made on the morning of 18 October 2018, the respondent was only responding to the shortcomings that it perceived existed in the claimant's performance.

145. In relation to the suspension in December 2018 (issue 8.4.2) we accept that being suspended was to the claimant's detriment. However, we

are entirely satisfied that the only reason that the claimant was suspended was because of his behaviour in emailing confidential documents to himself. The reason for the suspension was not influenced at all by the disclosure of 18 October 2018.

146. We are conscious that the claimant had sent other documents to the respondent which might be said to amount to disclosures, even though the claimant has not identified them as such in these proceedings, for the purposes of clarity, we do not find that any disclosures of information to the claimant's employer was the reason for the claimant's treatment. It was purely his conduct.

147. The same can be said in relation to the suspension on 26 April 2019 (issue 8.4.3). We find that the only matters motivating those who suspended the claimant were the potential data breach when it appeared that the claimant had left an annotated report from Ivy Wooldridge in a public place and, to a lesser extent, the emails which the claimant had sent to Councillor Rich. Having regard to the witness statement of Ms. Hunter we think it was primarily the potential data breach which led to the suspension. Again, we are satisfied that it was not any disclosure of information by the claimant.

148. In relation to the claimant's claim of unfair dismissal, we find that the sole or principal reason for his dismissal was not the disclosure of information by him, whether on 18 October 2018 or 20th May 2019 or any other time. The reason for the dismissal was a combination of the fact that the claimant was failing his probationary period due to performance concerns, had only 2 months left to run on his fixed term contract in any event and he had shown himself unwilling to stop criticising colleagues or managers in relation to shortcomings which he perceived existed.

149. In relation to the claim of disability discrimination, the claimant's autism is admitted. It is admitted that it amounted to a disability. Thus we only need to consider issues 10.1 to 10.5 (as added).

150. We find, in relation to issue 10.1, that a PCP was initially applied. The precise PCP is that which appears in Mr. Naylor's letter of 16 May 2019 - that if the claimant wished to appeal to stage 2 of the grievance process he must put his reasons in writing within 10 working days.

151. In relation to issue 10.2, we do not accept that the claimant was put at a substantial disadvantage compared with nondisabled persons. The claimant has shown himself able to compile documents at speed, not least in relation to his submission to the Safeguarding meeting on 28 November 2019. Further, within 4 days of the letter of 16 May 2019 the claimant was able to submit his letter dated 20th May 2019 and which ran to 10 pages. Although the claimant says somebody helped him to draft that letter, it is clear that the claimant was able to marshal matters sufficiently to enable it to be drafted.

152. In any event, it is clear that the respondent did not, in the event, apply the PCP in the claimant's case. The claimant submitted his reasons for appeal on 17 June 2019, outside the 10 day time limit, and those reasons were considered by the respondent. The claimant was given an appeal which was full and comprehensive. In those circumstances we find that

even if there was a PCP which put the claimant at a disadvantage, issue 10.3 is answered in favour of the respondent. The respondent did take such steps as were reasonable to avoid the disadvantage because it extended the time limit and gave the claimant an appeal.

153. If we were wrong on both of those points, we would have answered issue 10.4 in favour of the respondent. The respondent had repeatedly asked the claimant whether he needed any assistance because of his autism and, at no point, was there any suggestion made that the claimant could not meet particular deadlines. Although the claimant says that the respondent should have had a meeting with him specifically to discuss his autism, we do not find that was necessary in this case. In various meetings the respondent had made clear that it was interested in knowing what adjustments could be made for the claimant and the claimant could have raised those matters.

154. In respect of issue 10.5, having regard to the decision in Tarbuck, simply failing to consult with the claimant would not amount to a failure to make reasonable adjustments.

155. However, in any event, we find that the respondent did consult with the claimant sufficiently as we have set out above.

156. In those circumstances we do not need to address issues 11 and 12 and the claimant's claims fail.

Employment Judge Dawson

26 November 2020

REASONS SENT TO THE PARTIES ON

.....27 November 2020.....

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FOR THE TRIBUNAL OFFICE