EMPLOYMENT TRIBUNALS

Claimant: **Mr Norman Hutchinson**

Respondent: **Governing Body of Downsell Primary School**

Heard at: **East London Hearing Centre**

On: **2, 3, 4, 5 and 9 March 2021**

Before: **Employment Judge Burgher**
Members: **Mrs S Jeary**
Mrs M Legg

Appearances

For the Claimant: **In person**

For the Respondent: **Mr D Gray-Jones (Counsel)**

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was V by Cloud Video Platform, hybrid. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.

JUDGMENT

1 The Claimant's claims for disability discrimination fail and are dismissed.

2 The Respondent unfairly dismissed the Claimant.

3 The Respondent is ordered to pay the Claimant the total sum of £10,906.08 in respect of his unfair dismissal claim.

4 If the unfair dismissal award is paid or set off by the Respondent, the Claimant is ordered to pay the Respondent the sum of award of £11,400 in respect of its legal costs. This includes the £800 that the Claimant has paid in respect of deposit orders.

5 Alternatively, given the Claimant's limited means, if the unfair dismissal compensation sum is not paid by the Respondent or set off, the Tribunal limits the costs award that the Claimant must pay to the Respondent to the deposits he paid of £800.

6 The recoupment provisions apply.

Grand total	**£10,906.08**
Prescribed element	**£716.67**
Period of prescribed element	**14 October 2019 to 3 February 2020**
Excess grand total over prescribed element	**£10,189.41**

REASONS

1 By consent the name of the Respondent is amended to the Governing Body of Downsell Primary School.

Issues

2 At the outset of the hearing the complaints and issues were discussed and confirmed, and the Claimant makes the following claims:

a. Direct discrimination (s. 13 Equality Act 2010 'EqA') - less favourable treatment on the grounds of his disability; and/ or

b. Discrimination arising from disability (s. 15 EqA 2010); and/ or

c. A failure to comply with the duty to make reasonable adjustments (s. 20/ 21 EqA 2010);

d. Disability related harassment (s. 26 EqA 2010); and

e. Unfair dismissal

3 The specific factual allegations for the separate discrimination claims are as follows:

3.1 Lack of support/ sympathy for the Claimant's health and his need to attend medical appointments: Mr Chetty had a persistently negative attitude and response to the Claimant's increased need to attend medical appointments relating to his disability(s) (in the period after April 2017 through to December 2017). It is alleged that Mr Chetty would question why the Claimant needed to attend so many appointments and why he needed to attend such appointments in school hours (despite the Claimant pointing

out that it was very difficult to change hospital and clinic appointments due to the long waiting times). The Claimant contends that this amounted to

a. Direct discrimination (s. 13 EqA 2010) - less favourable treatment on the grounds of his disability; and/ or

b. Discrimination arising from disability (s. 15 EqA 2010) — unfavourable treatment (Mr Chetty's lack of support/ sympathy) for something arising in consequence of his disability (namely the need to attend regular medical appointments); and/ or

c. A failure to comply with the duty to make reasonable adjustments (s. 20/ 21 EqA 2010) (the PCP which put the Claimant, as a disabled person, at a substantial disadvantage in comparison with those who are not disabled namely Mr Chetty's negative attitude to the Claimant's need to attend medical appointments during working hours; and a reasonable adjustment would be to adopt a more positive attitude to 'such medical appointments); and/ or

d. Disability related harassment (s. 26 EqA 2010)

3.2 Bringing misconduct charges against the Claimant: On 16 November 2017 (following his return to work on 13 November 2017 after sick leave) the Claimant was called to a meeting with Mr Chetty and suspended in relation to a number of allegations of misconduct. The Claimant was then subject to a disciplinary process which culminated in a disciplinary hearing heard by a panel of Governors (chaired by Martin Doré) on 30 April 2018. Of the ten allegations under consideration at the disciplinary hearing, the majority (eight in total) were found not to be substantiated. The two upheld by the disciplinary panel were: The Claimant had failed to undertake work as instructed by the head teacher in relation to inputting data; and there was evidence to suggest that the Claimant had behaved in a rude/ disrespectful manner towards the head teacher. The disciplinary panel decided that the Claimant should be issued with a final written warning for a period of 18 months.

3.2.1 It is contended that the disciplinary allegations made by Mr Chetty lacked any real substance or justification. The fact that eight of the ten allegations were not upheld by the disciplinary panel were said to support this. The Claimant alleges that Mr Chetty raised a number of allegations against him that were both spurious and malicious, and further that he then encouraged and incited other members of staff to make statements relating to the Claimant's work and character in support of the charges being brought against him.

3.2.2 The Claimant believes that Mr Chetty had an 'agenda' against him and wanted to remove him from the School and that the reason (or at least part of the reason) for this was the Claimant's disability(s), or matters arising from them such as how the symptoms of those disability(s) affected the Claimant at work, alongside the

inconvenience of having to manage/ cater for the Claimant's disability(s) in the workplace. He maintains that this was

a. Direct discrimination (s. 13 EqA 2010) - less favourable treatment on the grounds of his disability; and/ or

b. Discrimination arising from disability (s. 15 EqA 2010) — unfavourable treatment (having misconduct charges brought against him) for something arising in consequence of his disability (namely how his disability(s) and associated symptoms impacted on him at work); and/ or

c. A failure to comply with the duty to make reasonable adjustments (s. 20/ 21 EqA 2010) (the PCP being subjecting the Claimant to a disciplinary process in relation to alleged misconduct; a reasonable adjustment being to afford more leniency/leeway by making investigations into and allowances for the way in which the Claimant's disability(s) impacted on his work and not treat such matters as disciplinary ones); and/ or

d. Disability related harassment (s. 26 EqA 2010)

3.3 Keeping the Claimant suspended for an unjustifiably lengthy period.

The Claimant was first suspended on 16 November 2017. The disciplinary outcome letter was dated 3 May 2018. The Claimant was on suspension for an initial period of some 5 1/2 months, which given the nature of the allegation he faced, was an inordinately and unjustifiably lengthy period, and caused him feelings of isolation and stress. He contends that this treatment amounted to disability discrimination in the following forms:

a. Direct discrimination (s. 13 EqA 2010) - less favourable treatment on the grounds of his disability; and/ or

b. Discrimination arising from disability (s. 15 EqA 2010) — unfavourable treatment (being suspended for a lengthy period) for something arising in consequence of his disability (namely how the Claimant's disability(s) and associated symptoms impacted on him at work); and/ or

c. A failure to comply with the duty to make reasonable adjustments (s. 20/ 21 EqA 2010) (the PCP being subjecting the Claimant to a lengthy period of suspension; a reasonable adjustment being to keep the period of suspension as brief as possible.

d. Disability related harassment (s. 26 EqA 2010).

Unfair dismissal

3.4 The Claimant also claims unfair dismissal in respect of his dismissal on 16 October 2019 by a second panel, for some other substantial reason, namely the breakdown of the necessary trust and confidence. This claim was permitted by way of an amendment by EJ Gardiner at a preliminary hearing on 17 August 2020.

Evidence

4 The Claimant did not provide a witness statement, contrary to Tribunal orders. In order to ensure that the hearing could proceed the Claimant was permitted to rely on the relevant paragraphs in the document entitled "Amended Details of Case" [Bundle pp.51 – 61]; relevant passages from the claim he had originally submitted to the Tribunal [pp.138 – 156]; and a one page undated letter to the Respondent's solicitor following 1 February 2021 email relating to disability as his evidence in chief.

5 The Respondent called the following witnesses:

5.1 Mr Deena Chetty, Head Teacher from 15 September 2016.

5.2 Ms Musammot Monwara Rahman, Reception Class teacher and the Acting Computing Leader.

5.3 Ms Maria Regan, Assistant Headteacher.

5.4 Mr Martin Doré Chair of the Respondent's Governing Body, part of disciplinary panel.

5.5 Mr Robert Morini co-opted governor, investigating officer.

5.6 Kirsty Jones, Parent Governor part of dismissal panel.

6 All witnesses gave evidence under oath of affirmation and were subject to cross examination and questions from the Tribunal.

7 The Tribunal was referred to relevant pages in the agreed bundle consisting of 1242 pages. The Tribunal had a helpful chronology prepared by Mr Gray Jones referencing key pages of the bundle. Whilst the bundle was extensive few of the pages were actually referred to in evidence.

Assessment of witnesses

8 The way the Claimant gave evidence to the Tribunal was not helpful. He tended to evade simple questions, challenge the relevance of them or initially deny uncontentious matters which, when pointed to documents, he subsequently agreed to. This occurred in relation to attendance at particular meetings and his sickness absence.

9 Mr Chetty gave evidence in a forthright manner about his recollection of events. However, the Tribunal formed the impression that, at times, he sought to state what would put him in a good light to the Tribunal rather than what was actually the position. This was apparent from his response that he had a *'very good relationship'* with the Claimant up until the suspension. This was inconsistent with the numerous grounds for the Claimant's initial suspension and the notes of the discussion Mr Chetty had with Mr Morini on 28 August 2018. Mr Chetty also stated that he knew nothing about covert recordings until reading the disciplinary outcome note in April/May 2018. This was inconsistent with what was recorded in the suspension meeting on 16 November

2017 and the discussion he had with Mr Morini relating to the Claimant's grievance on 28 January 2019.

10 In summary, the Tribunal conclude that Mr Chetty was deeply unhappy that the Claimant was not actually dismissed in May 2018 by the Doré panel and he took steps to ensure that the Claimant did not return to work at all. We infer this from the notes of the meeting of 28 August 2018, the fact that the Claimant did not return to work following the disciplinary outcome. We accept the Claimant's evidence regarding what his union representative told him in May 2018 specifically that the Respondent was trying to reopen the case which was already closed and ignoring his appeal against the disciplinary sanction.

11 Whilst Mr Chetty maintained that he had no involvement in the Claimant not returning to work on 3 May 2018 after the Doré disciplinary panel outcome we do not accept this. Mr Chetty gave evidence that following the disciplinary outcome he sought to identify exactly what the Claimant had said during the disciplinary process. Once reviewed this he called Mr Kemble to express his shock and objection in allowing the Claimant to return to work.

12 The minutes of the meeting of 28 August 2018 record Mr Chetty as stating that the Claimant '*was not missed*' and ICT at the school '*has never been so good and has evolved*' in the Claimant's absence. Mr Chetty is recorded as saying that the Claimant '*was taking excessive lunch breaks*' and that he '*could manipulate technology and change things*'. Mr Chetty stated that he does not want the school to go backwards. He also raised issues about the Claimant apparently placing bugs and recording conversations in the ICT suite and infers that the Claimant has recorded every conversation which undermines trust. Mr Chetty implicitly criticised the Doré disciplinary panel for not believing him or Mrs Hawkins (Deputy Headteacher) and accepting the Claimant's suggestions that he was subjected to a witch hunt.

13 The Respondent did not provide any explanation for the gap in the Claimant not returning to work between 3 May 2018 to being suspended again on 18 June 2018. The Claimant was suspended following an allegation that during the disciplinary hearing it became apparent that he been recording private conversations with the Headteacher without permission. However, the reality was that Mr Chetty, and the disciplinary panel were aware of this issue and Mr Chetty had explicitly stated that this amounted to 'gross misconduct' when the Claimant was suspended on 16 November 2017.

Disability

14 The Respondent accepts that the Claimant was disabled for the purposes of the Equality Act 2010 by reason of diabetes and asthma. The Respondent does not accept that the Claimant was disabled by reason of osteoarthritis or depression at the relevant time.

15 We conclude that the Claimant has established that he was disabled by reason of diabetes, asthma and osteoarthritis. Diabetes and asthma were conceded as disabilities by the Respondent. In respect of osteoarthritis the Claimant gave evidence

that he was diagnosed as having osteoarthritis in 2017 and that he had to use a walking stick due to his condition at the time and the Respondent knew about this. This was not challenged.

16 We do not conclude that the Claimant was disabled by reason of depression at the relevant time. The Claimant stated that this occurred after his first period of suspension.

Facts

17 The Tribunal has found the following facts from the evidence.

18 The Claimant commenced work with the Respondent on 5 December 2005. He was employed as an ICT technician. The Claimant was able to agree with previous head teachers and was able to arrange flexible conditions specifically in relation to storage, key holding and work lunch hours that were not strictly provided for in his contract. The Claimant clearly believed that he had property to various files and cupboards in the school and that the headteacher, or others, were unable to access without his permission. He stated that he stored personal property and tools in the school's cupboards and storage container.

19 The school has a leave of absence policy that provides that routine medical and dental appointment should be taken outside of school hours. The policy acknowledges that there can be less flexibility for hospital/ specialist appointments. In these circumstances staff will be asked to change their appointments but if appointments cannot be changed to take place outside the school hours paid leave of absence may be granted when the individual may normally be working.

Absence

20 Between September 2016 and November 2017, the Claimant was absent for 36.75 days working days due to sickness absences or medical appointments. Discounting sicknesses there were 15 occasions involving the Claimant attending GP or medical appointments. The Claimant applied for time off by using the schools approved form, all of the occasions were granted and he was paid to take the time off to attend them. There was never an occasion where Mr Chetty did not approve the Claimant's leave and the Claimant was paid in full.

21 There was one occasion where Mr Chetty asked the Claimant whether he could move his medical appointment and the Claimant stated he could not. The Claimant was able to attend the medical appointment without any ramifications or repercussions.

22 The Claimant expressed concerns that he felt physically abused by Mr Chetty asking why he needed to take so many appointments and he felt he was being put under stress and pressure. Mr Chetty stated that he had a school to manage. He needed to arrange appropriate cover and there may have been an occasion when he asked the Claimant to move his appointment and also occasions when he asked him to make appointments outside school hours. We accept that Mr Chetty asked the

Claimant why he had to have so many appointments. This was Mr Chetty seeking to understand the reason and basis for the absences. These conversations were in relation to the management of the school and were consistent with the absence policy. We find nothing objectionable in this communication that Mr Chetty had with the Claimant. These were reasonable discussions concerning the management of the school which was not consistent with a campaign against the Claimant as alleged. The Claimant has not established any such campaign on the evidence presented to us.

23 The Tribunal observe that during 2016/17 the Claimant had deteriorating health issues which were undiagnosed, and this caused him undoubted concern and stress. This has to be put into the context of the Claimant's perception regarding the questions that Mr Chetty was asking him during this period relating to medical appointments. We do not find that there was a challenge to the Claimant taking time off or being asked to arrange alternative times for medical appointments.

ICT provision

24 Mr Chetty commenced employment as head teacher at the Respondent school in September 2016. He was immediately concerned about the state of provision of ICT within the school. The school had 14 laptops for 600 children which was an extremely poor provision. Mr Chetty spoke with the Claimant and was told that the school needed to invest in infrastructure as it had not done so before. Mr Chetty arranged cost savings to facilitate the purchase of more ICT equipment and service provision.

25 In January 2017 Mr Chetty decided to use an organisation called Strictly Education, an external company, to instal a server in the school and provide ongoing technical support. Strictly Education had a live ICT fault log rating concerns as red, amber and green to confirm whether the fault had been actioned. In May/June 2017 the Claimant was specifically asked to complete this log as a way of increasing efficiencies in resolving ICT problems. The Claimant did not complete the log.

Car park

26 On 12 July 2017 Mr Chetty was contacted in relation to the Claimant’s car being left overnight at the school. The contract manager of Kier Services wrote to Mr Chetty stating that the Claimant's car was stored overnight in the car park and it may attract unwanted attention and lead to a break in. It was stated that the car park facilities were for use during the day only and it appeared that the Claimant’s car was installed onsite permanently. Mr Chetty was asked to arrange for the member of staff to remove the car from the car park. We accept that Mr Chetty raised this with the Claimant and asked him to remove his car. We also accept that the Claimant did not do so for a couple of months. We do not accept the Claimant’s evidence that his car was on site for only one week. This is contrary to the contemporaneous correspondence in September 2017 and what was recorded as the Claimant saying during the disciplinary investigation meeting on 1 February 2018, albeit Claimant this disputed it before us.

Suspension

27 The Claimant had a three week period of absence due to ill-health and returned to work on 13 November 2017. On 15 November 2017 the Claimant was invited to a meeting with Mr Chetty. Mr Chetty had purchased new laptops and the school needed to have space to store them. Mr Chetty sought to use the cupboards in the ICT suite as they would need to be used for the school purposes. The Claimant was resistant to this and began raising his voice stating that the previous headteachers purchased the cupboards specifically for him and that the cupboards should not be touched as the cupboards belonged to him. Mr Chetty explained the school budget was used to purchase the cupboards for the use of ICT resources and not personally for the Claimant. An argument ensued; the Claimant would not accept that the cupboards could be used for other purposes. Mr Chetty told the Claimant again that the cupboards were to be used by the school. Mr Chetty was concerned, and he contacted HR support with allegations that the Claimant had not followed management instructions and that the Claimant was verbally aggressive towards him. The advice was to call the Claimant in the office in the morning and suspend him for not following management instructions and for failing to provide access to the cupboard areas.

28 On 16 November 2017 the Claimant was called into Mr Chetty's office for a meeting and the assistant headteacher Ms Jan Hawkins was present. Mr Chetty sought to suspend the Claimant and there were notes taken. The Claimant was agitated and upset during this discussion, he was not prepared to give the keys to Mr Chetty and he felt challenged that his lockers were going to be used. The Claimant threatened to call the police. The Tribunal observe that the notes of this meeting state that the Claimant informed Mr Chetty that he recorded the conversation and Mr Chetty is noted of saying that would amount to gross misconduct. The Claimant was subsequently suspended and was sent a suspension letter outlining the grounds of his suspension as follows:

> *Refusing access to storage areas despite being requested to do so;*
>
> *Concealing in those storage areas equipment owned by the School thereby causing duplicate equipment to be purchased;*
>
> *Refusing access to school equipment.*
>
> *Refusing to follow reasonable management instructions*
>
> *Behaving in a threatening manner towards Senior Management*
>
> *Storing personal belongings on the school site*

29 In respect of the recording that was mentioned the suspension letter stated:

> *At the meeting today you mentioned that our conversation had been recorded. I would like to request a copy of the recordings and would also like to remind you or the duty you have as an employee of Downsell Primary with regards to confidentiality and whilst I would expect you may wish to share the recordings with your union representative or representatives supporting you, I must ask that you confirm your agreement that this recording will not be further disseminated by you. Should you wish to record further meetings you must*

request permission prior to recording conversations and the recording of staff and managers and pupils within the school without their knowledge and consent is as you will be aware unacceptable behaviour and could lead to further allegations of a disciplinary nature being made. I would therefore urge that you in future ensure that you have sought permission before making any recordings.

30 The investigation therefore concerned a range of matters including the Claimant's attitude towards Mr Chetty. The recording of the conversation was known about and it was decided not to include as part of the investigation albeit an indication was given as to what would happen in respect of any future recordings that are made without permission.

Investigation and delays

31 Ms Regan gave evidence about the disciplinary process that ensued. By letter dated 11 December 2017 the investigation allegations were specified as follows:

- *Refusing access to storage areas despite being requested to do so;*

  0 By refusing to hand over school keys;

  0 By refusing to make duplicate keys

- *Concealing in those storage areas equipment owned by the School thereby causing duplicate equipment to be purchased resulting in;*

  0 Teachers not having adequate resources;

  0 A financial detriment to-the school with a limited budget.

- *Refusing access to school equipment.*
- *Refusing to follow reasonable management instructions resulting in the undermining of the Headteacher's position.*
- *Behaving in a threatening and rude/disrespectful manner towards Senior Management*
- *Storing personal belongings on the school site, despite several requests for their removal.*

32 Ms Regan outlined the delays and steps trying to coordinate an investigation meeting given the unavailability of the Claimant, his representative and Human Resources Manager, Carlene Reid. It was not possible to arrange a meeting before 1 February 2018 despite there being three prior attempts made to arrange a suitable mutually convenient date. We find that none of the delays that occurred related to the Claimant's disabilities, in fact the Claimant did not suggest that they did.

33 At the investigation meeting with the Claimant on 1 February 2018 the Claimant stated that Mr Chetty was a liar and the Claimant had taken recordings of conversations with Mr Chetty. He subsequently clarified that it was up to 6 meetings. The Claimant gave two CDs of the recordings to his union representative at the meeting of the presence of the investigation meeting attendees for them to be transcribed.

34 There was then further a delay for the CDs to be transcribed by the Claimant's union representative and to be sent to the investigation panel. On 26 March 2018 Ms Reid emailed Ms Regan to inform her that she had spoken to the Claimant's union representative who still had not reviewed the CD of the conversation but will do so shortly. It was suggested that the report be finalised following receipt of the transcript. The transcripts were not forthcoming, and the disciplinary hearing took place on 30 April 2018.

Disciplinary hearing and outcome

35 The disciplinary hearing started one hour late. At the start of the disciplinary hearing the Claimant's union representative handed Mr Doré, the chair of the disciplinary panel, a small envelope, without any name or subject on. The envelope had handwritten documents inside, which Mr Doré could not read. Mr Doré did not ask what the document was, nor did the Claimant's union representative say what the document was. Mr Doré did not further consider the document or hand it to anyone else. It was not before the Tribunal and was only acknowledged for the first time during questions during the Tribunal hearing. The Tribunal queried Mr Doré's and lax approach to this document and lack of any enquiry by him. It is apparent that Mr Doré was concerned that the meeting was already running an hour late and he did not take the care that was necessary to investigate the relevance of the envelope. The Claimant consistently maintained that he had handed over the CDs to his represented for her to transcribe and we accept the Claimant's evidence that this is what he expected her to do.

36 By 30 April 2018 the disciplinary panel had all matters before it including references to covert recordings; the Claimant being disrespectful; and calling Mr Chetty a liar. Following consideration it dismissed eight of the allegations and decided to issue the Claimant a final written warning against the Claimant to be on his file for 18 months.

37 Whilst the Doré disciplinary panel could have reasonably concluded on the information before it to dismiss the Claimant it did not do so. The disciplinary panel could have also paused the disciplinary process to consider any further matters which were already in their knowledge, such as the extent of the recordings and the allegations the Claimant was making about his lack of trust in Mr Chetty, but again it did not do so. The Doré disciplinary panel had all the relevant information before it and concluded that a final written warning was appropriate.

38 On 1 May 2018 the Claimant raised a grievance against Mr Chetty alleging that he was being intentionally forced out of his employment through victimlsing, humiliating and discriminating conduct, micromanagement that has turned into harassment and bullying. The Claimant raised 11 areas of concern.

39 The Claimant gave evidence that having been given the disciplinary outcome on 3 May 2018 he sent his appeal letter on 10 May 2018 and was not allowed to go back to work. He had information from his union representative that his appeal had been acknowledged but that the human report resources department were wanting to action further points that were allegedly missed in the disciplinary hearing. His union

representative told him that the Respondent was trying to reopen the case that was already closed.

40 We accept that there were discussions between Mr Chetty and HR where Mr Chetty was emphatic that the Claimant should not return to work. As outlined above the notes of the meeting with Mr Morini on 20 August 2018 evidenced Mr Chetty's mindset. During that meeting Mr Chetty rehashed matters that had been dealt with by the Doré panel involving misconduct. He also mentioned matters that had not been raised with the Claimant such as bugging the ICT suite, and the efficiencies within the ICT during the Claimant's absence. Mr Chetty had a firm view on preventing the Claimant's return and HR sought to assuage Mr Chetty by embarking on a second process to facilitate the Claimant's dismissal.

Second suspension and dismissal

41 On 18 June 2018 the Claimant was sent a second suspension letter. The Claimant's subsequent suspension was on the basis of recording private conversations. However, recording conversations was a matter that Mr Chetty was aware of at the suspension meeting on 16 November 2017 and it was decided not to pursue this as a separate allegation of misconduct.

42 The Claimant remained on suspension and on 8 October 2018 was invited to a disciplinary investigation meeting to consider the following:

> *You have been recording private conversations with the Headteacher without his knowledge or permission;*
>
> *You have openly expressed your views and repeated allegations you have made regarding the Headteacher which may have been a breach of your duty of trust and confidence towards the School.*

43 The Claimant attended a disciplinary investigation meeting on 18 December 2018 chaired by Mr Morini. The Claimant answered questions put to him of his view of Mr Chetty.

> *I think he needs to grow a few. He needs to be tough enough as a leader to get on with the job. He just needs to accept the fact that I have that opinion of him and put it to the back of his mind.*
>
> *Well I'm not going to hug or kiss him but I don't have an issue with someone who doesn't like me. It's about being open and professional. The recordings won't happen again.*

44 During this meeting the Claimant stated that he could work with Mr Chetty but that Mr Chetty needs to be more transparent.

45 The Claimant's grievance was finally concluded on 10 June 2019. Mr Morini did not uphold the grievance.

46 By letter dated 12 June 2019 the Claimant was notified that a governor formal hearing to consider dismissal would be convened to address the following:

1) *That you recorded private conversations with the Headteacher without his knowledge or permission*
2) *That you have openly expressed views and repeated negative allegations regarding the Headteacher including that he is deceitful and untrustworthy.*

3) *As a result, your relationship with the Headteacher has broken down. The Headteacher no longer feels he can trust you and this potentially makes your ongoing employment at the school untenable.*

47 The dismissal panel convened on 15 July 2019 and 4 October 2019 to consider the matters. The outcome of the dismissal panel was sent on 14 October 2019.

48 The dismissal panel accepted that allegation 1) was made out and accepted Mr Chetty's contention that he was startled and on the back foot once he knew that the meeting was being recorded. However, the dismissal panel did not have all the relevant information before it, including the documentation relied on for the first disciplinary process. This would have undermined Mr Chetty's assertions in this regard.

49 The dismissal panel also made reference to the transcripts of the recordings not being available. However, the transcripts were actually handed to the Doré panel and Mr Doré did not consider them and decided against giving them to anyone else.

50 In respect of allegation 2) the dismissal panel stated that it was not presented with any evidence on this but referred to the Doré panel where this was discussed. It also referred to the comments that the Claimant made in the investigation meeting on 18 December 2018 and accepted the Claimant's assertion that this was his view given in an investigation meeting and not something that was openly discussed. The dismissal panel did not find that this allegation was substantiated.

51 However, the dismissal panel concluded that, in respect to allegation 3) there was a complete breakdown in trust and confidence between the Claimant and Mr Chetty, supported by the fact that the Claimant felt it necessary to record conversations. Mediation was dismissed as '*over time both party's views have become entrenched further*, *and that mediation would be unlikely to be successful, although, it must be said, it should have been attempted at an earlier stage*.'

52 The Tribunal find that the reason why mediation was not attempted at an earlier stage was because Mr Chetty had ensured that the Claimant did not return to work following 3 May 2018 disciplinary outcome.

53 The Claimant was dismissed on 14 October 2019 and paid 12 weeks in lieu of notice.

Law

Disability discrimination complaints

54 The Claimant presented separate factual allegations said to amount to:

54.1 Direct discrimination (s. 13 Equality Act 2010 'EqA') - less favourable treatment on the grounds of his disability; and/ or

54.2 Discrimination arising from disability (s. 15 EqA 2010); and/ or

54.3 A failure to comply with the duty to make reasonable adjustments (s. 20/ 21 EqA 2010);

54.4 Disability related harassment (s. 26 EqA 2010).

55 Section 13 EqA states:

Direct discrimination

(1)A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

56 Section 15 EqA states:

Discrimination arising from disability

(1)A person (A) discriminates against a disabled person (B) if—

(a)A treats B unfavourably because of something arising in consequence of B's disability, and

(b)A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2)Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

57 Section 20 and 21 of the EqA states:

20 Duty to make adjustments

(1)Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2)The duty comprises the following three requirements.

(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.

(4)The second requirement is a requirement, where a physical feature 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.

(5)The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put 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 provide the auxiliary aid.

58 Section 26 EqA states:

Harassment

(1)A person (A) harasses another (B) if—

(a)A engages in unwanted conduct related to a relevant protected characteristic, and

(b)the conduct has the purpose or effect of—

(i)violating B's dignity, or

(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2)A also harasses B if—

(a)A engages in unwanted conduct of a sexual nature, and

(b)the conduct has the purpose or effect referred to in subsection (1)(b).

(3)A also harasses B if—

(a)A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b)the conduct has the purpose or effect referred to in subsection (1)(b), and

(c)because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4)In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a)the perception of B;

(b)the other circumstances of the case;

(c)whether it is reasonable for the conduct to have that effect.
(5)The relevant protected characteristics are—

- *age;*
- *disability;*
- *gender reassignment;*
- *race;*
- *religion or belief;*
- *sex;*
- *sexual orientation.*

59 In respect of the Claimant's disability discrimination claims, the Tribunal had significant difficulty trying to fathom the extent and scope of them particularly relating to the misconduct and suspension allegations.

60 Further, when questioned by Mr Gray-Jones about his disability discrimination claims the Claimant stated that he did not raise such claims. He stated that he wrote what he wanted for his former barrister who then specified the claims. The Claimant indicated in evidence that the disability discrimination claims were not permitted. However, the extensive procedural history identifying the claims and issues completely undermined that assertion. The Claimant did not raise the relevant discrimination allegations with the Respondent's witnesses.

61 The Tribunal assessed the Claimant’s pleaded claim given the matters identified at the outset of the hearing and we referred to the relevant provisions of the EqA.

62 The Tribunal was unsure whether the Claimant was seriously maintaining his allegations of disability discrimination in respect of the allegations relating to bringing disciplinary allegations against him or keeping him on suspension for an unjustifiably long period. In any event the evidence was against the Claimant on these two points, particularly, he had acted inappropriately to Mr Chetty on 15 and 16 November 2017 and there were clear explanations unrelated to disability for the delay regarding the first suspension.

63 We accept that the Claimant felt concerned and upset about being asked why he had so many medical appointments, why he was asked to arrange some outside school hours and being asked to try and rearrange one appointment. This happened at a heightened time of stress and uncertainty for him regarding his health and his undiagnosed conditions. However, we do not conclude that it was reasonable in the circumstances for the Claimant to perceive that as harassment related to his disability for the purposes of section 26 EqA.

64 Further, this did not amount to direct discrimination (s13 EqA) as Mr Chetty was adopting the Respondent's policy on absence consistently.

65 It did not amount to unfavourable treatment arising in consequence of disability (s15 EqA) because the Claimant was not prevented from taking time off, he was paid for absences during school hours. In any event, we would have concluded that Mr Chetty was justified in querying absence in order to facilitate proper staff cover for managing the school.

66 This did not amount to a failure to make reasonable adjustments (s20/21 EqA) because there was no provision criterion or practice that placed the Claimant at a substantial disadvantage when compared to non-disabled persons.

67 In respect of the multiple allegations levelled against the Claimant and the delays involved in his suspension, our findings are that none of these matters were related to the Claimant's disabilities.

68 There were genuine concerns about the Claimant's conduct, his inability to follow instructions and about the relationship between the Claimant and Mr Chetty. it is unlikely that he would have been suspended at all if he had not acted as he did on 15 November 2017 and subsequently on 16 November 2017. Therefore, the Claimant has not established that there was a breach by the Respondent of section 13, 15 and 20/ 21 and 26 EqA in respect of this aspect of his claim.

69 There was nothing objectionable about the suspension timing and Ms Regan set out the chronology. Whilst there was a 5 and a half month delay in convening the disciplinary meeting the explanations for those delays were clearly explained and not challenged. The delay could not reasonably be suggested to be on the basis of the Claimant's disabilities. Therefore, the Claimant's claims under section 13, 15 and 20/21 and 26 EqA fail in respect of this aspect of his claim.

70 We therefore conclude that all of the Claimant's claims for disability discrimination fail and are dismissed.

Unfair dismissal

71 When considering unfair dismissal section 98 of the Employment Rights Act 1996 which states:

> ***General***
>
> *(1)In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*
>
> *(a)the reason (or, if more than one, the principal reason) for the dismissal, and*

(b)that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2)A reason falls within this subsection if it—
(a)relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b)relates to the conduct of the employee,

(c)is that the employee was redundant, or

(d)is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3)In subsection (2)(a)—

(a)"capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b)"qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a)depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b)shall be determined in accordance with equity and the substantial merits of the case.

72 Mr Gray Jones referred the Tribunal to the case of Perkin v St George's Healthcare NHS Trust [2005] EWCA Civ 1174 Wall LJ stated:

> *63. In my judgment, as Mr. Jeans argued, the essential and determinative facts were for the Tribunal to find. If there was properly material on which they could make such findings (and there was) the Tribunal was entitled to come to the conclusion that the Trust had a potentially fair reason to dismiss Mr. Perkin. Like Sedley LJ, I see this, speaking for myself, as a case as falling within SOSR rather than conduct, and it would have been preferable, in my judgment, if the Tribunal had so analysed it. However, like the EAT in paragraphs 18 and 19 of its judgment (set out at paragraph 31 above) I do not see the Tribunal's failure to categorise the reason as fatal to its reasoning or to the safety of its decision.*

> *64. The critical question which follows is whether Mr. Langstaff was right in his submission that the Tribunal's erroneous insistence in treating the case as one of conduct within section 98(2)(b) led it to apply the wrong test of fairness under section 98(4). This can be summarised as the* ***British Home Stores Ltd v Burchell*** *[1978] IRLR 379 point.*
>
> *65. There are, I think, two principal answers to Mr. Langstaff's argument on this point. The first, perhaps less persuasive, is that it is difficult to criticise the Tribunal for applying the* ***Burchell*** *test when the second issue identified by consent for its determination (see paragraph 13 above) was essentially couched in* ***Burchell*** *terms. Secondly, however, whilst* ***Burchell*** *is itself a "conduct" case, I see no reason why the principles it sets out relating to fairness should be limited to cases under ERA 1996 section 98(2)(b). For my part, therefore, I do not think that the Tribunal directed itself erroneously on the fairness issue by following the* ***Burchell*** *approach.*

73 We conclude that the Claimant was unfairly dismissed.

74 On 18 June 2018 the Claimant was suspended for a second time. Whilst Mr Gray-Jones submitted that this was not a conduct disciplinary matter, we conclude that it was. The Claimant's second suspension was on the basis of recording private conversations. However, recording conversations was a matter that Mr Chetty was aware of at the suspension meeting on 16 November 2017 and it was decided not to pursue this as a separate allegation of misconduct.

75 The Tribunal find that this was an attempt to have a second bite of the cherry which was not a reasonable option open to the Respondent in the circumstances. The fair and reasonable option, having issued a final written warning, was for the Claimant to return to work and for the management of that relationship to be addressed whether by assertive and close management, mediation or both. Indeed, Ms Kirsty Jones of the dismissal panel accepted that mediation would have been appropriate but by the time they were considering matters, over a year later with the Claimant still on suspension, it was too late. The Claimant's return to work was blocked by Mr Chetty's objection to the Doré disciplinary panel outcome.

76 Whilst the process that the dismissal panel undertook cannot be reasonably criticised, it did not have the full information relating to the Doré panel allegations which would have provided context. The fact that Mr Chetty had ensured that the Claimant did not return to work, preventing mediation, undermines the reasonableness of the dismissal. In short, the second panel simply should not have had the opportunity to reconsider matters that the Doré panel had before it, or ought to have considered.

77 The Doré panel had all the relevant information before it and could have adjourned and considered whether there were any further matters to raise but it decided in its wisdom to issue the Claimant with a final written warning instead of dismissing him. Mr Chetty was not happy with this; he criticised the Doré panel conclusions in not believing him and Ms Hawkins and got his way by having the second panel convened to meet his objective of dismissing the Claimant.

78 There was no criticism of the dismissal panel's independence but fairness in the circumstances would have been for the Claimant to have been able to return to work following the conclusions of the Doré panel. There was simply nothing new, contrary to what Mr Gray-Jones submitted, that the second panel could have considered. Mr Chetty had no reasonable basis to seek to reopen matters following what he read of the Doré panel's disciplinary process. Mr Chetty ought reasonably to have been required to comply with the Doré panel's conclusions and recommendations and manage it accordingly. No return to work process took place.

79 The Tribunal proceeded to consider what would have been likely to have happened had a fair process taken place. We have considered the following matters. The Claimant was as a matter of fact resistant to Mr Chetty's authority, he had clearly expressed distrust of Mr Chetty. However, there was not any occasion where Mr Chetty and the Claimant discussed between them what could or should happen to go forward with any working relationship. As a starting point Mr Chetty could have clearly set out the basis of the working relationship going forward, outlined his expectations concerning his authority as headteacher and the need for the Claimant to follow management instructions, and asked the Claimant whether he was prepared to comply with such expectations. This may or may not have succeeded but the Claimant was subject to a final written warning for 18 months. The Tribunal cannot reconstruct an artificial process in that regard. What the Tribunal has done is assess all the circumstances and we conclude that it is likely that given the process that had taken place and the personalities involved, the Claimant would not have remained in employment much longer than 18 months following the final written warning. We conclude that the Claimant would have left the Respondent's employment around 10 November 2019.

80 The Claimant was paid in lieu of notice on 14 October 2019. The effect of our conclusion is that the Claimant has a short period of additional loss of earnings of 4 weeks loss of earnings.

81 The Tribunal then considered whether the Claimant caused or contributed to his dismissal. We conclude that he did. The Claimant's manner and attitude to Mr Chetty in particular at the suspension meeting on 16 November 2017 made Mr Chetty feel uncomfortable and this amounted to inappropriate conduct that contributed to the dismissal. The Tribunal also conclude that the Claimant recording of two conversations without permission (the 2 CD's that were transcribed) was inappropriate conduct contributory to the dismissal.

82 We conclude that the Claimant contributed to his dismissal by the amount of 60%. We make a 60% reduction of the compensatory award only. We do not make a reduction for conduct of the basic award because the finding of the Doré panel was the Claimant should not be dismissed but be given a final written warning and the second panel should not have been convened to reconsider matters. Therefore, the Claimant's basic award is not subject to any reduction.

83 The calculation of the sums that the Claimant is entitled to be awarded are as follows:

Basic award	**£10,189.41** (21 x £485.21 (gross weeks' pay))	
Compensatory award		
Loss of earnings 4 weeks	£1491.68	(4 x £372.92 (net weeks' pay))
Loss of statutory rights	£300.00	
	£1791.68	
Less 60% conduct	*£1075.01*	
Total compensatory award	**£716.67**	
Total award	**£10,906.08**	

84 The Respondent is therefore ordered to pay the Claimant the sum of £10,906.08 in respect of his successful unfair dismissal claim.

Costs application

85 Following giving judgment Mr Gray-Jones applied for costs on behalf of the Respondent in respect of what he submitted was unreasonable conduct on behalf of the Claimant in pursuing the litigation; and on the ground that the Claimant's claims in relation to disability discrimination had no reasonable prospect of success.

86 Following a hearing on 14 January 2019 REJ Taylor ordered the Claimant to pay deposits in respect of the following claims:

86.1	Lack of sympathy/support regarding his medical needs	£100
86.2	Bringing misconduct charges against the Claimant	£100
86.3	Keeping the Claimant suspended for an unjustifiable length of time	£400
86.4	Ignoring the Claimant's appeal and grievance	£200

87 The allegation regarding ignoring the Claimant's appeal and grievance was subsequently disallowed by way of amendment, despite the deposit being paid.

88 The deposit order stated at paragraph 6

> *If the Tribunal later decides the specific allegation(s) or argument (s) against the party which paid the deposit for substantially the reasons given in the deposit order, that party shall be treated as having acted unreasonably unless the contrary is shown. and the deposit shall be paid to the other party (or, if there is more than one. to such party or parties as the Tribunal orders). If a costs or preparation time order is made against the party which paid the deposit. the deposit will go towards the payment of that order. Otherwise. the deposit will be refunded*.

89 On 18 December 2018 the Respondent wrote a costs warning letter to the Claimant stating:

> *You should be aware that the Council has gone to significant time and expense in defending this claim already. We have already spent £26,000 in defending the case excluding counsel's costs. These costs will continue to accrue once you lodge your deposit and pursue the claims further. We would expect based on legal costs spent so far that costs will reach in excess of £50,000.*

90 The Claimant paid the deposits totalling £800 following REJ Taylor's order and maintained the disability discrimination claims despite being informed that they had little reasonable prospect of success.

91 There were further preliminary hearings before EJ Prichard on 2 September 2019, before EJ McLaren on 10 June 2020 and EJ Gardiner on 17 August 2020. In all of these hearings the Claimant's disability discrimination complaints remained in issue. At the start of this full merits hearing the Claimant confirmed the scope of the issues. The disability discrimination claims were confirmed.

92 Mr Gray-Jones submitted that the Tribunal spent considerable time considering all the issues, in spite of the paucity of evidence to support the allegations. They were not withdrawn or conceded. They were determined. He submitted that it was unreasonable for the Claimant to continue with the claims.

93 Mr Gray-Jones submitted that by 20 June 2020, the Respondent's costs were £24,000 not including unfair dismissal costs and any disbursements. Total costs legal including unfair dismissal are approximately £48,000 including counsels' fees. He submitted that a limited cost order of £20,000 without a detailed assessment would be appropriate as the Respondent has patently incurred far more legal costs than that amount.

94 The Claimant objected to the costs application. He sought to persuade the Tribunal that he did not bring any disability discrimination complaints at all. He submitted a written document stating:

> *With regards to the Respondents legal team requesting cost for the claim of disability is untrue, from the onset it was established by Judge Pritchard that this was not a claim for disability but established my complaints were established and labelled under the disability equality act but it seems that the Respondents team are insisting that this is so, several times I was questioned by various Judges whom were involved with administrating this case also established that my claim for disability against the Respondent was not so. Again, at the hearing Mr Grey Jones asks me the question if I was proceeding with a claim for disability and I clearly said no.*
>
> *So, I am refusing to accept their application for cost as my complaint was directed at the Respondent for the treatment that he was directing at me and never a claim for disability.*
>
> *My claim for losses is listed within my document Scheduled of losses listed on pages 1161 to 1165.*

95 The Tribunal was not impressed with Claimant's submission that he did not seek to proceed with a disability discrimination complaint. It is clear that he did and he paid deposits as a condition of proceeding with them.

96 The Claimant's schedule of loss totalled £140,106.83 including heads of loss for disability discrimination. The schedule of loss includes a claim for injury to feelings and personal injury damages which would only been recovered if the Claimant succeeded in a disability discrimination complaint. Without a disability discrimination claim that Claimant's compensation unfair dismissal only would have been capped at no more than £40,000, given the Claimant's annual salary. The Claimant's schedule patently points against his suggestion that he was not claiming disability discrimination.

97 Rule 76 of the Employment Tribunal rules states:

> *76.—(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—*
>
> *(a)a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or*
>
> *(b)any claim or response had no reasonable prospect of success.*
>
> *(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.*
>
> *(3) Where in proceedings for unfair dismissal a final hearing is postponed or adjourned, the Tribunal shall order the Respondent to pay the costs incurred as a result of the postponement or adjournment if—*
>
> *(a)the Claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the Respondent not less than 7 days before the hearing; and*
>
> *(b)the postponement or adjournment of that hearing has been caused by the Respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the Claimant was dismissed or of comparable or suitable employment.*
>
> *(4) A Tribunal may make a costs order of the kind described in rule 75(1)(b) where a party has paid a Tribunal fee in respect of a claim, employer's contract claim or application and that claim, counterclaim or application is decided in whole, or in part, in favour of that party.*
>
> *(5) A Tribunal may make a costs order of the kind described in rule 75(1)(c) on the application of a party or the witness in question, or on its own initiative, where a witness has attended or has been ordered to attend to give oral evidence at a hearing.*

98 The amount of a costs order

78.—(1) A costs order may—

(a) order the paying party to pay the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party;

(b)order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined, in England and Wales, by way of detailed assessment carried out either by a county court in accordance with the Civil Procedure Rules 1998, or by an Employment Judge applying the same principles; or, in Scotland, by way of taxation carried out either by the auditor of court in accordance with the Act of Sederunt (Fees of Solicitors in the Sheriff Court)(Amendment and Further Provisions) 1993(23), or by an Employment Judge applying the same principles;

(c)order the paying party to pay the receiving party a specified amount as reimbursement of all or part of a Tribunal fee paid by the receiving party;

(d)order the paying party to pay another party or a witness, as appropriate, a specified amount in respect of necessary and reasonably incurred expenses (of the kind described in rule 75(1)(c)); or

(e)if the paying party and the receiving party agree as to the amount payable, be made in that amount.

(2) Where the costs order includes an amount in respect of fees charged by a lay representative, for the purposes of the calculation of the order, the hourly rate applicable for the fees of the lay representative shall be no higher than the rate under rule 79(2).

(3) For the avoidance of doubt, the amount of a costs order under sub-paragraphs (b) to (e) of paragraph (1) may exceed £20,000.

99 Rule 84 of the Employment Tribunal rules sets out that the Tribunal may have regard to the paying party's ability to pay when deciding whether to make a costs order.

100 The Tribunal had regard to the structured approach set out in the case of Millan v Capsticks Solicitors LLP & Others UKEAT/0093/14/RN where the then President of the EAT, Langstaff J, described the exercise to be undertaken by the Tribunal as a 3 stage exercise at paragraphs 52:

There are thus three stages to the process of determining upon a costs order in a particular amount. First, the Tribunal must be of the opinion that the paying party has behaved in a manner referred to in Rule 40(3); but if of that opinion, does not have to make a costs order. It has still to decide whether, as a second stage, it is "appropriate" to do so. In reaching that decision it may take account of the ability of the paying party to pay. Having decided that there should be a costs order in some amount, the third stage is to determine what that amount

should be. Here, covered by Rule 41, the Tribunal has the option of ordering the paying party to pay an amount to be determined by way of detailed assessment in a county court.

101 The Tribunal therefore considered the following issues:

1. Has the putative paying party behaved in the manner proscribed by the rules?

2. If so, it must then exercise its discretion as to whether or not it is appropriate to make a costs order, (it may take into account ability to pay in making that decision).

3. If it decides that a costs order should be made, it must decide what amount should be paid or whether the matter should be referred for assessment, (again the Tribunal may take into account the paying party's ability to pay).

Conclusions on costs application

102 During the hearing the Tribunal spent time considering the Claimant's disability discrimination claims and determined them on the limited evidence put forward. The claims were not withdrawn or conceded. The Claimant paid the deposits totalling £800 and there were clear warnings but he continued with the claims. The claims did not succeed, for similar reasons given by REJ Taylor. The Claimant was therefore unreasonable in maintaining the claims in spite of the deposit. Therefore, the first condition of whether costs should be awarded is met.

103 We then considered whether it is appropriate to exercise our discretion to award costs. Having regard to the deposit order, the costs warning letter the Respondent sent and the late disavowal of bringing any disability discrimination complaint leads us to conclude that it is appropriate to exercise our discretion to award costs.

104 We had regard to the Claimant's ability to pay, he stated that he is not working he has no assets and receives benefits of universal credits of £341 per month, housing benefit of £439 per month. He therefore has very limited income to discharge any costs award.

105 Having said that the Claimant has paid £800 in respect of deposits and he is also entitled to receive nearly £11,000 in compensation from the Respondent for his unfair dismissal claim compensation.

106 In these circumstances the Tribunal concludes that it is appropriate to order the Claimant to pay the Respondent the sum of £11,400 for legal costs. If an unfair dismissal award is paid or set off the Claimant will have the ability to discharge a costs award of £11,400. This includes the £800 that the Claimant has already paid for deposits.

107 Alternatively, given the Claimant's limited means, if the unfair dismissal compensation sum is not paid by the Respondent or set off, the Tribunal limits the costs award to the deposits paid of £800.

Employment Judge Burgher
Date: 9 April 2021