EMPLOYMENT TRIBUNALS

Claimant: Mr F Saleem

Respondent: Menzies Aviation (UK) Limited

Heard at: Manchester **On:** 10-14 February 2020

Before: Employment Judge Whittaker
Mrs A Jarvis
Mr P Stowe

REPRESENTATION:

Claimant: Mr M Broomhead (Employment Rights Adviser)
Respondent: Ms S Cowen (Counsel)

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim that he was unfairly/constructively dismissed contrary to the Employment Rights Act 1996 fails and is dismissed.

2. The claimant's eight claims in an amended Schedule B of his claim form alleging victimisation contrary to section 27 of the Equality Act 2010 fail and are dismissed.

REASONS

Introduction

1. The claimant submitted his claim form to the Employment Tribunal in Manchester and it was marked as "received" on 18 June 2018. In that claim, the claimant raised allegations of constructive/unfair dismissal and seven identified claims of victimisation contrary to section 27 of the Equality Act 2010. Rather curiously in that schedule the claimant's representative, Mr Broomhead, had suggested that the appropriate comparator for each of the seven allegations of discrimination then identified was "an hypothetical comparator who had not brought proceedings against the respondent". No comparator is required for a claim of victimisation, and so no discussions ever took place with Mr Broomhead about the characteristics of the

hypothetical comparator whom he proposed the Tribunal should consider when reaching a judgment in respect of the claims of victimisation.

2. At a preliminary hearing on 7 January 2019 before Employment Judge Porter the claims of the claimant were discussed and identified. They were then summarised in a written summary which was sent to the parties on 16 January 2019. This written summary is of importance because at paragraph 7 the claims of the claimant are clarified following discussion with Mr Broomhead who represented the claimant at that hearing. It is confirmed that the claimant, in respect of his seven identified claims of victimisation, is relying upon "one protected act, namely the claim under case number 2402549/25". Clearly this was a mistake as the date was actually 2015. That is not in dispute. That claim was heard to a conclusion in the Manchester Employment Tribunal before Employment Judge Franey, who is now Regional Employment Judge Franey, in January and February 2017. In that claim the claimant pursued 24 separate allegations of victimisation. It was the act of bringing his own Tribunal claim against the respondents which formed the single protected act now relied upon by the Claimant.

3. Returning to the preliminary hearing by way of case management on 7 January 2019, there was a suggestion by Mr Broomhead that the claimant wished to rely upon three additional protected acts in addition to the protected act of having brought a claim under case number 2402549/15. However, it was clarified with Mr Broomhead at that hearing in January 2019 that the claimant was not relying upon any other protected acts. That is noted very clearly at paragraph 7.4 of the written summary. Indeed at paragraph 7.5 Employment Judge Porter goes on to confirm that the claimant is relying upon "the" in other words a singular, protected act.

4. In written submissions which Mr Broomhead submitted to this Tribunal on behalf of the claimant at the conclusion of these claims in February 2020, Mr Broomhead set out at paragraph 4 of his written submissions no fewer than five separate protected acts upon which he now stated that the claimant was relying upon. This was not how the claims of the claimant had been previously presented, and it was entirely contrary to the detailed discussions which had been held with Mr Broomhead on behalf of the claimant at the preliminary hearing in 2019. At the conclusion of all the evidence, and after Mr Broomhead had submitted these written submissions to the Tribunal, it was pointed out to Mr Broomhead that he now appeared to seek to rely upon five protected acts and not one single protected act. It was pointed out to Mr Broomhead by the Tribunal that he himself had personally agreed at the hearing in January 2019 that the claimant was in fact relying upon one single protected act. The Tribunal pointed out to Mr Broomhead that he now appeared to be seeking to attempt to rely upon five protected acts. The Tribunal pointed out to Mr Broomhead that he now appeared to be seeking to present an entirely different case with an entirely different focus and that he was attempting to do so for the first time in closing submissions, after the Tribunal had been dealing with the case for 3½ days. It was therefore pointed out to Mr Broomhead that the Tribunal intended to take into account only one single protected act, namely the one identified and agreed with Mr Broomhead at the preliminary hearing in January 2019 – the claim under case number 2402549/15. The Tribunal made a careful note of the response from Mr Broomhead. Mr Broomhead told the Tribunal "I'm happy with that Sir". The Tribunal therefore proceeded on that basis in connection with the claims of alleged victimisation.

5. At a further preliminary hearing which was held on 23 January 2020 the claimant was allowed to add an eighth allegation of victimisation, namely that on 14 March 2019 and continuing thereafter the respondent had failed to consent to a Judgment dated 19 May 2016 which had been entered by the respondent against the claimant in the County Court for a money Judgment to be set aside. Furthermore, the Tribunal was told by Mr Broomhead that the claimant relied upon the same single protected act, namely that the claimant had brought proceedings against the respondent in case number 2402549/2015. This hearing took place only approximately two weeks before the final hearing in February 2020, and yet at that preliminary hearing Mr Broomhead raised no suggestion that the claimant would in fact be seeking to rely upon five protected acts instead of the single protected act which had been identified and agreed since 2019. This was suggested by Mr Broomhead for the very first time in written submissions at the conclusion of this tribunal hearing.

6. In respect of his single claim of constructive/unfair dismissal, there was agreement that the claimant had resigned his employment. The claimant relied upon each of the eight allegations of victimisation as being individual breaches of his contract of employment. Mr Broomhead said that the claimant was relying upon one single term of his contract of employment, that of the implied term of trust and confidence. The claimant alleged that as a result of the actions of the respondent that this term had been breached, and as that term is recognised as a fundamental term of any contract of employment, that the claimant was therefore entitled to resign as a result of the conduct of the respondent and treat himself as unfairly dismissed.

7. Mr Broomhead confirmed that the claimant relied upon two events which were the “last straw” for the claimant prior to his resignation. The first alleged a failure on the part of the respondent to engage in early conciliation through ACAS with the claimant and/or Mr Broomhead, and secondly the claimant alleges that the steps which were taken by the respondent to engage him in consultation regarding a potential TUPE transfer of his contract of employment also amounted to a breach of the implied term of trust and confidence. The claimant therefore made it very clear to the Tribunal through Mr Broomhead that these were the two steps which the claimant regarded as the “last straw” which then justified the claimant resigning from his employment with the respondent.

8. A meeting took place between the claimant and the respondent on 8 September 2017. The respondent alleged that this was entitled to “without prejudice” protection and should therefore be disregarded by the Tribunal when making findings of fact relevant to the claims of the claimant. The claimant alleged through Mr Broomhead that when the Tribunal considered the facts relating to that meeting, and equally considered the relevant legal principles relating to “without prejudice” protection, that the Tribunal should conclude that the respondent was not entitled to “without prejudice” protection in connection with that meeting.

9. Finally, the respondent argued that a number of the allegations of victimisation brought by the claimant were substantially out of time. Referring again to the Schedule of Claims which had been submitted by Mr Broomhead on behalf of the claimant with his claim form, this schedule was subsequently amended and the Tribunal considered the document headed “Amended Schedule B”. This however required further clarification and amendment at the hearing in February 2020 because as a result of

evidence which was given to the Tribunal it was clear that some of the dates were inaccurate and changes were made with the agreement of the parties.

10. As has already been indicated, the claim form of the claimant was submitted to the Tribunal on 18 June 2018. The first allegation of victimisation was, by agreement, relating to the period between 7 August 2017 and 8 September 2017. That was clearly some significant period of time prior to the date of the claim form. The second allegation was dated 8 September 2017. The Tribunal will in the course of these Reasons refer to other dates, but these two dates are simply given by way of explanation as to how the Tribunal was required to consider issues relating to time limits in connection with the claims of victimisation.

Detriment/Victimisation Allegations

11. This is a typed summary of the amended Schedule B but it also incorporates the amendments which were made with the agreement of the parties, specifically Mr Broomhead, during the course of the hearing when it became clear that the dates which had been specified by Mr Broomhead, even in the amended schedule, were not accurate.

(1) Between 8 September 2017 to 20 March 2018 when the claimant was again off sick, the claimant alleges that there was a failure by Neil Pritchard to assist the claimant back to work.

(2) On 8 September 2017 Neil Pritchard conducted a meeting with the claimant which was both improper and intimidating towards the claimant.

(3) Between a grievance meeting on 26 September 2017 and the claimant being given the outcome of that grievance meeting on 6 October 2017, Paul Bowden failed to carry out that grievance hearing and grievance process in good faith.

(4) The claimant appealed against the outcome of that grievance. Paul Martland held an appeal meeting with the claimant on 2 November 2017. The claimant alleges that Paul Martland failed to carry out the appeal either adequately or in good faith.

(5) Between 16 January 2018 and 2 March 2018 Neil Pritchard on behalf of the respondent failed to engage with ACAS in Early Conciliation.

(6) On 13 March 2018 Nail Pritchard told the claimant that his employment would be transferred under TUPE to Airline Services Limited.

(7) On 19 March 2019, as a result of the two “last straws” which have been discussed above, the claimant resigned his employment. The claimant alleges that he was dismissed and that this was a detriment/act of victimisation.

(8) From 14 March 2019 and onwards the respondent failed/refused to consent to the setting aside of a money Judgment which had been entered against the claimant by the respondent in the County Court. The claimant

requested that it be set aside once he had satisfied the money which was due under the terms of that Judgment.

Process and Procedures

12. On the first morning of the hearing in February 2020 the Tribunal took the opportunity to consider the witness statements which had been submitted and to consider the documents which were identified in those witness statements. The claimant submitted a written witness statement, as did Lisa Gumbhir on his behalf. For the respondent the Tribunal received witness statements from Neil Pritchard and Paul Bowden. The Tribunal was also handed a paginated bundle of documents comprising 153 pages. Five days had been allocated to complete the hearing of all the claims of the claimant and, if necessary, to decide what remedy should be made in favour of the claimant if any or all of his claims were successful.

13. It was necessary during the course of the hearing for the Tribunal to discuss the time which was being taken by both representatives when cross examining either the claimant or cross examining the witnesses for the respondent. Following those discussions with the Tribunal both representatives were happy to note the observations of the Tribunal, although certain of the time limits which were imposed were not abided by. The claimant gave evidence between 2.00pm on the first day and 12.30pm on the second day. Ms Gumbhir gave evidence between 12.37pm and 1.04pm on the second day. Mr Bowden then gave evidence between 2.20pm on Tuesday until approximately 2.20pm on Wednesday. Mr Pritchard then gave evidence between 2.24pm on Wednesday until 12.30pm on Thursday. By now the Tribunal was seriously concerned about the time which was left for the Tribunal to consider the detailed allegations of the claimant and come to a reasoned judgment. The parties were therefore told that they would have 30 minutes in which to make their submissions. Both parties had written submissions and they were urged not to then orally repeat those but to attempt to concentrate on the salient points. Mr Broomhead was given between 1.35pm and 2.05pm but did not finish until 2.12pm. Counsel for the respondent was again allocated 30 minutes but took between 2.12pm and 2.55pm. Submissions therefore lasted 20 minutes longer than the parties had been instructed and indeed had agreed to take.

14. It was not possible for the Tribunal, for obvious reasons, to come to any judgment on Thursday afternoon, and indeed it was not until very late in the afternoon on Friday that the Tribunal was able to indicate to the parties that it had reached a judgment on all the claims of the claimant. When giving the oral judgment the Employment Judge referred, in detail, to some 34 pages of handwritten notes and referred in detail to those notes and the reasoning of the Tribunal. The Tribunal recalls that the oral judgment and detailed explanations given to the parties lasted some 45/50 minutes. The judgment of the Tribunal was that all the claims of the claimant should be dismissed, and it was felt important after five days of hearing that a detailed oral explanation should be given to the parties, in particular the claimant and his representative, so that they would understand the reasons why the claims of the claimant had been dismissed.

15. Returning to that phrase “reason why”, it was agreed with both representatives at the outset of the hearing that insofar as the claims of victimisation were concerned that it would be for the Tribunal to decide the “reason why” the respondent had made

the decisions that they had and spoken to the claimant in the way that it was alleged in order to determine whether the reasons were substantially connected to the single protected act on which the claimant relied or whether, in the alternative, there were other reasons for the respondent acting in the way that they did which were entirely unconnected with the single protected act, in which case the claims of victimisation would fail.

16. One final point of clarification is that all four witnesses either took the oath or affirmed. They confirmed the content of their witness statements to be true, and they were then cross examined on the basis of those statements and the content of the bundle of documents where relevant.

The Law

Jurisdiction

17. The complaints of victimisation were brought under the Equality Act 2010. Section 39(4) prohibits victimisation of an employee by an employer subjecting him to a detriment.

Detriment

18. Something amounts to a detriment if the treatment is of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment – see paragraphs 31-37 of the speech of Lord Hope in **Shamoon v Chief Constable of the RUC [2013] ICR 337.**

Victimisation

19. Victimisation in this context has a specific legal meaning defined by section 27:

> **(1) A person (A) victimises another person (B) if A subjects B to a detriment because--**
>
> **(a) B does a protected act, or**
>
> **(b) A believes that B has done, or may do, a protected act.**
>
> **(2) Each of the following is a protected act--**
>
> **(a) bringing proceedings under this Act;**
>
> **(b) giving evidence or information in connection with proceedings under this Act;**
>
> **(c) doing any other thing for the purposes of or in connection with this Act;**
>
> **(d) making an allegation (whether or not express) that A or another person has contravened this Act.**
>
> **(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.**

20. This provision does not require any form of comparison. If it is shown that a protected act has taken place and the claimant has been subjected to a detriment, it

is essentially a question of the "reason why". The Employment Appeal Tribunal and appellate courts have emphasised in a number of cases, including **Amnesty International v Ahmed [2009] IRLR 884**, that answering that question involves consideration of the mental processes (whether conscious or subconscious) of the alleged discriminator to see whether the protected act had any material influence on the detrimental treatment.

21. The mental processes at issue are those of the decision maker alone. There is no room in Equality Act cases for the "composite approach" of imputing to the decision maker a motivation in the mind of another person, no matter how influential that person might have been in the formation of the material on which the decision is based: see the decision of the Court of Appeal in **CLFIS (UK) Limited v Reynolds [2015] EWCA Civ 439.**

Burden of Proof

22. Section 136 so far as material provides as follows:

> **"(2) If there are facts from which the Court could decide in the absence of any other explanation that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred.**
>
> **(3) But subsection (2) does not apply if A shows that A did not contravene the provision."**

The section goes on to make it clear that a reference to the Court includes an Employment Tribunal.

23. Consequently it is for a claimant to establish facts from which the Tribunal can reasonable conclude that there has been a contravention of the Act. If the claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention by, for example, identifying a different reason for the treatment.

24. In **Hewage v Grampian Health Board [2012] IRLR 870** the Supreme Court approved guidance previously given by the Court of Appeal on how the burden of proof provision should apply. That guidance appears in **Igen Limited v Wong [2005] ICR 931** and was supplemented in **Madarassy v Nomura International PLC [2007] ICR 867**. Although the concept of the shifting burden of proof involves a two stage process, that analysis should only be conducted once the Tribunal has heard all the evidence, including any explanation offered by the employer for the treatment in question. However, if in practice the Tribunal is able to make a firm finding as to the reason why a decision or action was taken, the burden of proof provision is unlikely to be material.

Time limits

25. The time limit for Equality Act claims appears in section 123 as follows:

> **"(1) Proceedings on a complaint within section 120 may not be brought after the end of –**
>
> **(a) the period of three months starting with the date of the act to which the complaint relates, or**

> **(b) such other period as the Employment Tribunal thinks just and equitable…**
>
> **(2) …**
>
> **(3) For the purposes of this section –**
>
> **(a) conduct extending over a period is to be treated as done at the end of the period;**
>
> **(b) failure to do something is to be treated as occurring when the person in question decided on it".**

Without Prejudice

26. The legal principles relevant to "without prejudice" relating to a meeting which was held on 8 September 2017. The Tribunal was assisted by the written submissions of counsel for the respondent in that those submissions contained a summary of the relevant legal principles which was accepted and agreed by Mr Broomhead. In his own written submissions Mr Broomhead confirmed that the case of the claimant was that even if the well-recognised principles relating to "without prejudice" protection applied, the claimant was alleging that the conduct of the meeting on 8 September amounted to "unambiguous impropriety". At paragraph 13 of his written submissions Mr Broomhead summarised that the facts which in his opinion on behalf of the claimant amounted to unambiguous impropriety were:-

(1) The ambush of the claimant during that meeting;

(2) The withdrawal of the victimisation proceedings;

(3) Comments which were made about Martin Broomhead;

(4) The threat of costs made against the claimant;

(5) The effect of the meeting on the claimant.

27. The relevant legal principles and the approach which the Tribunal should take were summarised at paragraphs 24-38 of the written submissions of counsel for the respondent. The Tribunal does not believe that it is necessary or helpful for those to be further summarised in the written body of these Reasons. The principles to be applied by the Tribunal were agreed by the representatives of both parties, as has been indicated above. It was then the responsibility of the Tribunal to make appropriate findings of fact in order to determine the judgment of the Tribunal in respect of the meeting of 8 September 2017.

Last Straw

28. On behalf of the respondent in her written submissions Ms Cowen, at paragraphs 7 and 8, referred to two legal cases relating to the "last straw" doctrine. These were the cases of **Omilaju** and **Kaur**. The full references are set out in the written submissions art paragraphs 7 and 8. At paragraphs 41-42 the Tribunal was reminded that if the claimant fails to establish that the "last straws" relied upon by the claimant to justify his resignation properly amounted to "last straws", or more

accurately properly amounted to final breaches of the implied term of trust and confidence on the part of the respondent, that the claim of unfair/constructive dismissal of the claimant would be bound to fail and it would then be inappropriate for the Tribunal to seek to justify the resignation of the claimant by considering the earlier history of alleged breaches of the implied term which were specified by the claimant in his evidence. Again, no objection to the legal principles outlined by Ms Cowen was raised by Mr Broomhead, and those principles were therefore adopted by and considered by the Tribunal.

Findings of Fact

29. The claimant was employed by the respondent as an Administrative Assistant between 8 November 2013 and 2 March 2017.

30. During the course of his employment the claimant brought proceedings against the respondent in the Employment Tribunal under case number 2402549/2015. The claimant relies upon the issuing of those proceedings as being a protected act by virtue of section 27(2)(a) of the Equality Act 2010. The claimant then alleges that as a result of issuing those proceedings the claimant suffered victimisation on eight separate occasions as listed above under section 27(1) of the Equality Act 2010. It is a matter of fact that all the claims of the claimant under the above case number were dismissed.

31. The claimant was off sick from around March 2014 until 7 August 2017, a period of approximately 3½ years. The latest sick note which was issued to the claimant expired on 7 August 2017. The parties had included in the original bundle of documents some exchanges between representatives of the respondent and the claimant in early August 2017. Additional pages which were numbered 70A(1)-70A(4) were then submitted to the Tribunal during the course of the hearing. These were important because as the Tribunal has indicated above, the first allegation of victimisation was confirmed during the course of the hearing to relate to the period between 8 September 2017 to 20 March 2018 when the claimant returned to work. It was agreed between the parties that the claimant returned to work on 7 August but was then off again by 8 September 2017.

32. The first allegation of victimisation is that during this period, 8 September 2017 to 20 March 2018, Neil Pritchard failed to assist the claimant back to work. At the time that the claimant returned to work in early August 2017 the position of the respondent with regard to the earlier Employment Tribunal proceedings which had been issued by the claimant as that it was all done and dusted. The original Judgment had been sent to the parties on 21 February 2017 dismissing all the claims of the claimant. The claimant had appealed, but that appeal had been rejected by the Employment Appeal Tribunal by 2 August 2017 and the respondent, specifically Mr Pritchard, was aware of that. At page 70A/70B of the bundle Mr Pritchard wrote to the claimant confirming that as far as the respondent was concerned his Tribunal claim was concluded and that his appeal to the EAT had been rejected. The Tribunal was told that the appeal was rejected on the "sift". Mr Pritchard noted that so far as the respondent was concerned they were "unaware of any ongoing matters".

33. Prior to going off sick in 2014 the claimant had been employed at Manchester Airport in Terminal 1. However, during the sickness absence of the claimant for well over three years, almost 3½ years, the circumstances of the respondent and its

contractual arrangements with its customers at Manchester Airport had significantly changed. The claimant was, by the time he returned to work, employed by the respondent as a Senior Agent. At that time the ongoing need of the respondent for somebody of the position of a Senior Agent was at Terminal 3 and not at Terminal One. Some additional documents were submitted to the Tribunal for consideration during the course of the hearing and these were numbered 70A(1)-70A(4). In these documents there is clearly discussion between Mr Pritchard, Mr Bowden and the claimant about the arrangements for his return to work and in particular where it was suggested that he would be working and why. In an email dated 2 August 2017 at page 70A Mr Pritchard wrote to the claimant to tell him that during his sickness absence there had been a redundancy situation which the claimant was well aware of. The claimant had applied for and accepted alternative employment as an alternative to redundancy, and in that email Mr Pritchard confirmed that the position which the claimant had accepted was as a Senior Agent. Mr Pritchard was of the view that it had been explained to the claimant that when he returned to work in that capacity that the needs of the respondent company would be for him to work at Terminal 3 “as our operational requirements are there”. They confirmed that they had an ongoing requirement for a Senior Agent to service the contract that the respondent had with KLM/Air France. Clearly, having been away from work for such a length of time Mr Pritchard told the claimant that he would need to “undergo a full retraining programme”.

34. The claimant, however, was unhappy at the suggestion that he should work at Terminal 3. The matters that he had complained about to the Tribunal Employment related to his employment at Terminal 1, however, and to certain individuals who then were employed at Terminal 1. However, the claimant had indicated in an email dated 27 July (70B) that he would still like to return to Terminal 1. The position of the respondent was that there was no position for a Senior Agent at Terminal 1 but they had an ongoing requirement for someone to work at Terminal 3. A meeting then took place between Mr Pritchard and the claimant on 10 August when all these matters were fully aired and discussed once again.

35. In an email dated 12 September (page 71) Mr Pritchard summarised the events of recent weeks. He confirmed that in the period of five weeks since the claimant's return to work the majority of time had been spent on product familiarisation and refresher training. It confirmed that the claimant had also had some time off work. The company confirmed that the role of Senior Agent was the role which the claimant had accepted during the redundancy process and was the position which the claimant held at the time of his return to work. Mr Pritchard referred to the “Flybe” product. By this he was referring to the work under the contract which the respondent held with Flybe at Terminal 3. That remained the position of the respondent. The respondent also made its position very clear so far as potential redundancy was concerned. The respondent was adamant that there was no redundancy situation and that they had an ongoing requirement for the claimant to work as a Senior Agent at Terminal 3. Nevertheless the claimant, on 25 August (page 76) had specifically asked for details of redundancy and a breakdown of redundancy payments, and this was supplied to the claimant in writing on 11 September (page 72). The claimant told the Tribunal that he was aware when he accepted the position of Senior Agent as an alternative to redundancy and that the job in that capacity was at Terminal 3 with Flybe. He confirmed that is what he had been told and that he also understood that the contract that the respondent held with KLM/Air France was also another Terminal 3 job.

36. In the few weeks following the claimant's return to work in early August 2017 the claimant formed the view that the work at Terminal 3 in connection with the Flybe contract was, in his opinion, just not going to work out. Flybe operated different systems and had different policies and procedures. He confirmed to the Tribunal that he had received training in these but it was clear that the claimant was unhappy at having to work at Terminal 3, and this led to him raising questions about potential redundancy and the value of any redundancy payment which he might receive. The claimant was told that if he wanted financial information about potential redundancy that he should put that request in writing, and as indicated above the claimant did that and he received a written response from the respondent.

37. Turning again to the schedule of alleged claims of victimisation, the first allegation relates to periods between 6 September 2017 and 20 March 2018 when the claimant says that Neil Pritchard failed to assist the claimant back to work. The claimant purports to deal with this allegation under the heading of "allegation No 1" in paragraphs 9-26 of his witness statement. However, in that witness statement the claimant does not deal at all with the period between 6 September and 20 March 2018. Indeed the final paragraph, paragraph 26, relates to an email dated 6 August 2017 and confirms that in any event the claimant returned to work on 7 August 2017. The claimant does not describe in his witness statement any attempts which he made to return to work and neither does he describe what he suggests should have been the efforts which should have been made by Mr Pritchard to assist the claimant back to work. Nevertheless that remains the stated allegation of victimisation and breach of contract but in the claimant's witness statement he does not deal with the stated period of time, namely 8 September 2017 to 20 March 2018.

38. The evidence of the claimant in his witness statement then moves on to the second allegation, which is in respect of a meeting on 8 September 2017. It is this meeting which the respondent says is entitled to "without prejudice" protection. Notes of that meeting appeared in the bundle at pages 77-83 inclusive. They are signed by Mr Pritchard who was the HR Manager of the respondent at the time. The claimant has also signed the notes to say that they represent a true account of the issues which were discussed. The notetaker, Mr Shuttleworth, has also signed to indicate that they represent an accurate record of the issues discussed. When giving evidence it was pointed out to the claimant that he had signed each page to indicate that they represented a true account of the issues discussed, and he confirmed specifically that he had been told that that was what he was being asked to do and that was what he was being asked to sign to say. He confirmed that he had read the notes before signing them. He confirmed that he raised no objection to the notes which had been taken and that he raised no objection to what had been said during the course of this meeting. The claimant then sought to clarify his evidence by saying that he did not actually read the notes and that he just signed them. However, he confirmed that he had been told that he was being asked to read them and that he was being asked to then sign them as being a true record of the content of that meeting. The claimant was specifically asked by one of the Tribunal members to point out to the Tribunal which parts of the notes the claimant said were inaccurate and did not accurately represent the content of the meeting. The claimant then confirmed in reply to that question that in fact the claimant was perfectly satisfied with the content of the notes. What the claimant said to the Tribunal was that he was unhappy with the procedure which was being adopted because he felt that it was too formal and that there was a

notetaker, and that this was not the type of meeting that he had been expecting. The Tribunal accepted the written notes as being an accurate summary of the meeting.

39. The respondent began the meeting by confirming that so far as they were concerned it was a meeting which was being held both "without prejudice" and also under the protection afforded by section 111A of the Employment Rights Act 1996. The respondent went on in the meeting to confirm that it was being held against the background of the discussions which had taken place between the parties in recent weeks and which was evidenced by the emails to which the Tribunal has referred above. On the basis that the claimant did not point to any part of the notes which he said were inaccurate, the Tribunal accepted the notes as an entirely accurate record of the tone and content of the meeting. It was obvious that the respondent wanted the claimant's return to work to be successful and indeed told the claimant that they were reluctant to offer redundancy. However, despite the appeal of the claimant against the Judgment of the Employment Tribunal sent to the parties in February 2017 being rejected at the "sift", it would appear that further representations had been made and that by the date of this meeting in September 2017 the claimant had been offered the opportunity of an "in person" hearing at the Employment Tribunal. Mr Pritchard at page 78 made it clear that the respondent was aware of this and Mr Pritchard told the claimant, "so there are still ongoing matters". The claimant did not deny this but responded by saying that he believed that that was a separate issue. The position of the respondent remained that so far as they were concerned that the claimant had applied for and accepted an alternative position to redundancy. The respondent had an ongoing requirement for somebody at that level and in their opinion, therefore, the claimant was simply not redundant. Whilst acknowledging that some of the procedures of Flybe were not the ones that the claimant was used to, the position of the respondent was that with training and with time the claimant would soon become able to operate them successfully.

40. At the top of page 79, presumably acknowledging what had been said to him by the respondent about their reluctance to become involved in discussions about redundancy, the claimant said that he wanted the meeting to proceed in a particular manner. He told Mr Pritchard that "want it done without prejudice". This was a suggestion which was made by the claimant to the respondent. Somewhat confusingly, the claimant then was asked by Mr Pritchard if he wanted numbers to be put to him, but the claimant then said, "not without prejudice". Mr Pritchard responded by saying that it would be "without prejudice" and that in his opinion those discussions could not be used in a Tribunal. He went on to explain to the claimant that in his opinion any conversation cannot be taken anywhere. He repeated that the position of the respondent was that they were committed to assisting the claimant back into the business. Nevertheless the claimant had asked for financial information and that was then provided to the claimant by Mr Pritchard, and the content of that discussion and the figures in question are recorded at page 79. It was offered to the claimant on the basis that the "ongoing Tribunal stops". Mr Pritchard went on to say that the advice which they had received from their legal representatives (he confirmed this in evidence) was that the claimant's appeal had little prospects of being allowed to go forward. An order for legal costs in favour of the respondent had also been made against the claimant, and Mr Pritchard told the claimant that if he accepted the money which was being offered that the respondent would write that off if the claimant accepted the package which was being offered. No pressure whatsoever was placed

on the claimant to accept the offer. Indeed Mr Pritchard told the claimant that he should get legal advice if he was considering what was being offered, and indeed the respondent said that they would pay for that legal advice.

41. At the same time Mr Pritchard indicated that the respondent would not be prepared to pay for the claimant receiving advice from Martin Broomhead because the respondent did not believe that he was a solicitor or that he held any other capacity in which he would be able to sign a Settlement Agreement in order for it to be binding on both parties.

42. Furthermore, Mr Pritchard went on to say that if the claimant did not want to accept the amount in question the company would take it off the table. He urged the claimant to be "honest with the person you get advice off". Mr Pritchard went on to comment that in his opinion Mr Broomhead did have a vested interested in view of the ongoing appeal at the Employment Appeal Tribunal. Mr Pritchard indicated to the claimant that he was happy to allow him ten days in which to take advice and think matters over and confirmed that that would be until Monday 18 September. He furthermore said that he would square it for the claimant to have some time off from work to get legal advice if that was required in order to visit a solicitor. Mr Pritchard asked the claimant whether or not he was going to take the offer away and get some advice about it, and the claimant confirmed that he was. Again Mr Pritchard confirmed that the respondent would be prepared to pay £350 excluding VAT for the claimant to get legal advice. Mr Pritchard even went on to say that if the claimant refused to accept the financial terms which were being offered that the claimant's suggestion that he was redundant would continue to be discussed but that the likely approach of the respondent was going to be that the claimant had been offered suitable alternative employment.

43. There was then a discussion about extending the 28 day statutory trial period which applies in connection with alternative employment in redundancy situations. Mr Pritchard made it clear to the respondent that the respondent would probably be prepared to extend that 28 day period. However, Mr Pritchard also told the respondent that on the information that was currently available to them that if the claimant subsequently said that he did not believe that the post at Terminal 3 was suitable alternative employment that the position of the respondent would be that it was suitable alternative employment. Mr Pritchard again reminded the claimant that included in the financial terms which were being offered was an offer from the respondent to drop the claim for costs in the sum of £1,500 which the claimant had been ordered to pay to the respondent.

44. The meeting was adjourned at 13:10 and resumed again at 13:17. The adjournment was to allow the claimant to have a short think about what had been discussed. At 13:17 (page 82) the claimant returned to the meeting to say that he is not happy with the circumstances surrounding the meeting. Although he does not include that in any part of his witness statement, the claimant confirmed that in the short adjournment the claimant telephoned Mr Broomhead, his representative. That telephone discussion with Mr Broomhead is omitted entirely from the claimant's witness statement. The claimant confirmed that up until the adjournment the notes of the meeting (which the claimant confirmed were accurate) did not reveal any dissatisfaction on the part of the claimant at all with any aspect of the meeting. The claimant confirmed that he had raised no complaint about the meeting. However, after

the short adjournment during which the claimant spoke to Mr Broomhead, the claimant confirmed to the Tribunal, on oath, that he had received advice from Mr Broomhead that he should now terminate the meeting. There was an abrupt change of tone on the part of the claimant after the telephone discussion with Mr Broomhead. In paragraph 33 of his witness statement the claimant says that now he feels that he had been "ambushed". He goes on in his witness statement to say that he did not believe that the meeting was a protected conversation, although the claimant gave no indication whatsoever as to what he believed the phrase "protected conversation" actually meant. As already indicated above, the phrase "without prejudice" had actually been first introduced to the meeting by the claimant and not by the respondent. The claimant was asked by the Tribunal when giving evidence why he had used that phrase and what he meant by it. The claimant's response was that he could not remember why he had used those words or that phrase.

45. The claimant when giving evidence confirmed that he knew that the terms which were being offered to him would include that the ongoing appeal to the EAT would come to an end and that the order for costs in the sum of £1,500 which the claimant had to pay to the respondent would also be dropped. The claimant told the Tribunal that he fully understood that those were terms which were being included by the respondent. The claimant also told the Tribunal that he fully understood that he was being given ten days in which to carefully consider everything that had been said and that he was being given that time, including time off work, to obtain independent legal advice about the impact of the terms which were being offered by the respondent. Furthermore, he understood that the respondent had explained very clearly to the claimant what would happen if the terms were rejected (see bottom of page 80). Furthermore, Mr Pritchard had said very clearly to the claimant that it "falls on you to make the decision". The meeting concludes by the claimant being asked if he had any questions, and the claimant confirmed that he had no such questions.

46. The meeting ended very quickly. It resumed after the adjournment at 13:17 and finished only eight minutes later at 13:25.

47. Following the telephone discussion with Mr Broomhead and in the remaining eight minutes of the meeting it was very clear that the tone and attitude of the claimant had changed abruptly. During those eight minutes the claimant was being difficult and challenging. Indeed the last thing he said was that "the truth will come out", and he said to Mr Pritchard that he would not leave the company until it does. Those were the parting words of the claimant at the conclusion of the meeting.

48. On 30 August the respondents were told by their solicitors that the EAT had received an application by Mr Broomhead on behalf of the claimant for an oral hearing in an attempt to persuade the EAT to overturn the initial refusal of the claimant's appeal at the sift stage. Mr Pritchard then discussed this with the respondents' solicitors and it was clear to him and to the solicitors that the litigation in respect of the original claim, which was heard to a conclusion in January/February 2017, was now again "ongoing". Mr Pritchard then spoke to his boss, Mr Hough, who was the Vice President of HR for UK and Ireland. Mr Pritchard also involved the internal Legal Department of the respondents in these discussions, namely Juliet Thompson. The first concern of the respondents, in the opinion of the Tribunal, was still to concentrate on successfully rehabilitating the claimant back to work. Everyone within the respondent company agreed that the claimant returning to work in Terminal 3 was suitable alternative

employment which at the end of the trial period was refused by the claimant that the respondent might well then be in a position where it chose to dismiss the claimant. The Tribunal finds that there were numerous telephone calls between these different company representatives and others. Ultimately Mr Hough, the Vice President, decided that Mr Pritchard should hold a meeting with the claimant on a "without prejudice" basis, and that by doing so it would also be a meeting which had the protection of section 111 of the Employment Rights Act 1996. The respondents were of the view that such a meeting would be entitled to "without prejudice" protection because the company clearly understood that the original claim was still ongoing because of the application which had been made for an oral hearing. Furthermore, the company believed that work at Terminal 3 was suitable alternative employment and that it was not redundancy, but they clearly anticipated that if they adopted that position that it would find itself in real disagreement with the claimant, bearing in mind what he had said about working at Terminal 3 and working at Terminal 1. The Tribunal finds, therefore, that this was the position of the respondents immediately before the meeting which was held on 8 September. The respondents were equally aware that the claimant had requested information about the value of any redundancy payment even though it was the clear view of the respondents that redundancy was not an option. Nevertheless it was equally clear that the claimant would want to take account of the amounts which he would get if (and only if) he was made redundant in connection with any settlement discussions.

49. The claimant denied that he was given a copy of a draft Settlement Agreement at the meeting on 8 September. Mr Pritchard, however, was adamant that a Settlement Agreement had been prepared in advance of that meeting, and that it had been prepared by the company's legal advisers. He was adamant that a copy of that Settlement Agreement had been given to the claimant so that he could take it away and take advice about its contents, as after all if he was going to reach an agreement with the respondents he would have to agree to all the terms of the Settlement Agreement. The Tribunal accepted the evidence of Mr Pritchard in preference to the evidence of the claimant. The respondents had clearly taken careful steps to consider their position, including taking legal advice and taking advice from the Vice President of HR. There was clear reference in the notes of the meeting to the claimant needing to take legal advice, and after all what was the claimant going to take legal advice about if he did not have a Settlement Agreement to present to them? In the unanimous opinion of the Tribunal, therefore, the claimant was presented with a draft Settlement Agreement and he was allowed to take that away with him at the conclusion of the meeting in order to take advice about its contents and the terms that it offered to the claimant.

50. Following the conclusion of that meeting the claimant wrote to the respondent and submitted what he said was a formal grievance. He did so in an email darted 15 September, and addressed it to Craig Burrows. In that grievance the claimant raised the following issues:

(1) He repeated his desire to work in Terminal 1 and not in Terminal 3.

(2) He raised the question of outstanding holidays.

(3) He complained that he had been "ambushed" at the meeting on 8 September with Neil Pritchard, and that "various threats" had been made against him which he said amounted to harassment and/or victimisation.

51. The claimant went on to allege that the meeting was not protected by subsections (3)-(5) of section 111A of the Employment Rights Act 1996, but he did not in any way expand on that and neither did he explain his understanding of that legislation and how it may or may not apply to the meeting which was held on 8 September.

52. The respondent appointed Paul Bowden to conduct the grievance. Mr Bowden was the Head of Operations. He had received training on disciplinary and grievance matters during a previous period of employment with the respondent company.

53. Mr Bowden met with the claimant at a first grievance meeting on 26 September and notes of that meeting appeared at pages 85A-85E inclusive. These had not been included in the original bundle but after enquiries made by the Tribunal they were produced during the hearing and entered into the bundle. Mr Bowden then sent his decision in a letter dated 6 October 2017 at pages 86 and 87. In the outcome letter Mr Bowden also refers to a meeting which he had held with the claimant on 10 August 2017. That was described to the Tribunal in evidence as being a welfare meeting. Mr Bowden had at that stage offered to personally sponsor the claimant during his return to work, and had specifically invited the claimant to contact him at any time to inform him of any concerns that he had. The claimant confirmed in evidence that he had never approached Mr Bowden for any assistance or to raise any complaints, and in his letter of 6 October Mr Bowden confirmed that to the claimant. He did, however, equally promise the claimant that he would continue to work with him to address any ongoing concerns which may arise in the future in order that the claimant was able "to make a success of your role as a Senior Agent".

54. During the course of his consideration of the grievances raised by the claimant Mr Bowden investigated the issues relating to holidays and was satisfied that this had been resolved by agreement with the claimant. This was therefore not an outstanding issue. Equally during his investigation Mr Bowden interviewed Mr Pritchard and Mr Shuttleworth, who were the two people present at the meeting on 8 September that the claimant was complaining about. Mr Bowden noted that the claimant had signed each of the pages of notes of that meeting to accept that they were a true record of what had happened. Again when giving evidence Mr Bowden confirmed that the welfare meeting in August had lasted about 30/40 minutes and that since then he had had no meetings or discussions with the claimant despite inviting the claimant to contact him if he wished to do so.

55. Mr Bowden was unable to say how the welfare meeting had arisen. The handwritten notes of the meeting appeared at pages 77A-77C. They are the handwriting of Mr Bowden. The tone of that meeting was very much a determination on the part of Mr Bowden to draw a line in the sand and to look forward and not to look backwards because, as Mr Bowden told the Tribunal, he was not in any way able to influence what had happened in the past but he did feel confident about being able to influence what happened in the future going forward.

56. At paragraph 17 of his witness statement Mr Bowden said, on oath, that prior to the grievance meeting that he had never met the claimant previously. That was not true. When questioned about this Mr Bowden was unable to offer any explanation as to why he had not changed that, but he was adamant that he had noticed that it was wrong approximately 15 minutes before the hearing but he could not offer any explanation as to why he had not told the Tribunal when taking the oath that he wished to alter that paragraph because it was not true. In any event, nothing much came of this because there was no disagreement between the parties about the fact that there had been two meetings between the claimant and Mr Bowden. Mr Bowden was adamant that there was no role for a Senior Agent in Terminal 1 but that the company had a real ongoing need for a Senior Agent to service the Flybe contract at Terminal 3. He described the relationship between the company and Flybe as being especially good for the previous 18 months, and that the respondent was on the "crest of a wave" with Flybe. Mr Bowden was adamant that there was no Senior Agent role for the claimant to fulfil at Terminal 1 and that the company had a real pressing business need for the claimant to carry out that role at Terminal 3.

57. There was, however, a history between the respondent and Flybe which had not always been positive. Indeed Flybe had issued the respondent with an Improvement Notice around Easter 2017, and that then required the respondent to demonstrate that they were able to fulfil the terms of their contract. Flybe demanded a dedicated workforce model, meaning that they wanted employees of the respondent to be dedicated to the terms of the contract with Flybe. The respondent company had responded immediately to the Improvement Notice and had no further difficulties. Changes and improvements were implemented to everyone's mutual satisfaction and eventually, as Mr Bowden described to the Tribunal, relationships then improved dramatically.

58. Mr Bowden knew very little, if anything, about the history of the previous tribunal claim which had been issued by the claimant. He only learned about it during the course of the meetings with the claimant and in effect from what the claimant told him. Mr Bowden was however satisfied that any personal issues with other members of staff could be easily resolved, and it was for that reason that he had offered to be the point of contact for the claimant in the meeting in August 2017. As already indicated in these Reasons, the claimant had never at any time contacted Mr Bowden to raise any such issues having returned to work on 7 August 2017 before once again going off work on 8 September 2017.

59. In his witness statement at paragraph 36 the claimant had alleged that Mr Bowden was "totally unsuitable and ill qualified to carry out the grievance hearing". However, Mr Bowden told the Tribunal that by then he had conducted over 50 grievances and that several of those had been complicated and serious. He confirmed that he had also received training in respect of disciplinary and grievance issues during his previous employment with the respondent. He held a senior position with the company as Head of Operations.

60. Equally at paragraph 36 of the claimant's witness statement it was alleged by the claimant that Mr Bowden failed to carry out a reasonable or proper investigation. However, Mr Bowden did speak to both Mr Pritchard and Mr Shuttleworth about the details of the meeting on 8 September 2017. In his position as Head of Operations Mr Bowden clearly had a detailed understanding of the contract with Flybe and the work

which was required to fulfil the terms of that contract. He was equally aware of the need for employees to fulfil that role in Terminal 3 but not in Terminal 1. It was clear that Mr Bowden had the required knowledge in his senior position of the workings of the company within both Terminal 1 and Terminal 3, and furthermore he had offered himself to the claimant since August 2017 as a personal and individual point of contact for any issues or challenges which arose, and in the short period that the claimant was back at work the claimant did not raise any such issues with Mr Bowden at all. The Tribunal was satisfied, therefore, that Mr Bowden most certainly was qualified and experienced in dealing with grievances, and had the necessary knowledge of the issues raised by the claimant to provide an informed and educated response. Insofar as the meeting on 8 September is concerned, he interviewed both managers who were present and he noted the tone and content of the written notes which had been maintained of that meeting, including the fact that each of the pages was headed "without prejudice".

61. Mr Bowden explained to the Tribunal that his understanding of the phrase "protected conversation" had come from Mr Pritchard who had told him that what it meant was that the content of that meeting could not be raised in any subsequent claim that the claimant may raise against the company. Mr Bowden concluded that the claimant was fully aware that the whole of the meeting was being conducted on a "without prejudice" basis, and indeed noted that it was the claimant who had first used that phrase. Furthermore, the claimant had signed the notes and had not at any time prior to the adjournment raised any issues or concerns about the tone or content of the meeting whatsoever. Mr Bowden therefore felt satisfied that the tone and content of the meeting had met with the approval of the claimant until such time as he had spoken to Mr Broomhead by telephone, following which his tone and attitude towards the meeting changed remarkably and abruptly. Mr Bowden confirmed to the Tribunal that he did not make any detailed enquiries as to the meaning or effect of section 111A of the Employment Rights Act 1996. He felt that he did not need to do so as he felt comfortable in accepting the broad explanation which had been offered to him by Mr Pritchard.

62. Mr Bowden did not believe that the grievance was about any detailed or legal understanding of the effect of "without prejudice" or section 111A. Mr Bowden felt that it was satisfactory for him to know that it was the claimant who had introduced the phrase "without prejudice" and that the explanation offered by Mr Pritchard indicating that what it really meant was that the content of the meeting could not be used or repeated in any claim against the company was sufficient for him to be able to conclude the grievance. Mr Bowden was satisfied that the claimant knew very well that the meeting was being conducted on a "without prejudice" basis and did not feel that any reference to section 111A made any difference to that. He was however fully satisfied after reading the notes, holding the discussions with the claimant during the course of the grievance meeting and speaking to Mr Pritchard and Mr Shuttleworth, that the claimant was fully aware of the tone of the meeting and the reasons why it was being held on a "without prejudice" basis.

63. It was put to Mr Bowden that it was an unreasonable threat to suggest to the claimant that if he refused the terms which were being offered that the offer would be taken off the table. Mr Bowden told the Tribunal that he did not believe that that was a threat. It was simply what would happen. It was a statement of fact and Mr Bowden felt that it was important that the claimant understood fully the implications of rejecting

the offer which was being made to him. Mr Bowden felt that was important, but did not consider that there was anything threatening in it at all.

64. During cross examination from Mr Broomhead it was put to Mr Bowden that he had made a "pig's ear of the investigation". It was put to him that this description was justified on the basis that no notes were available to the Tribunal of the discussions which Mr Bowden had held with Mr Pritchard and Mr Shuttleworth. Mr Bowden was very firm in indicating that notes had been taken. It was put to Mr Bowden that he had since lost the notes but Mr Bowden did not accept that he was responsible for their safekeeping. That was the responsibility of others to whom he had handed the notes that were taken. He was adamant that notes had been taken but they were certainly not available for consideration by the Tribunal - at this stage of the hearing. The Tribunal accepted his evidence about that.

65. During cross examination it was suggested to Mr Bowden for the first time that the claimant was now suggesting that the words "without prejudice" which appeared at the top of the notes of the meeting held on 8 September were not actually present at the time that the claimant had read the notes and signed them as being accurate. It was however pointed out to Mr Broomhead that the claimant had never suggested this previously and most importantly that allegation was not included in his witness statement either. Mr Bowden said that he had first heard of that allegation when it was being put to him under cross examination and it was certainly not part of the grievance which he was considering. When Mr Bowden asked the claimant why he had signed the notes to say that they were accurate if he was then suggesting that they were not, he said that the claimant had told him that "I don't know". Mr Bowden was adamant in cross examination that he did not believe that there was anything threatening about the tone or content of the meeting on 8 September. He did not accept that matters were being put to the claimant in a repetitive manner or that there were any threats or any sense of aggression on the part of Mr Pritchard. He did not believe that anything could be interpreted as being either harassment or victimisation. He accepted that it might have been an uncomfortable position, but he felt that it was an uncomfortable position for both Mr Pritchard and the claimant, not just for the claimant. The Tribunal accepted this was the summary of the meeting expressed by Mr Bowden as what he believed was an accurate summary of the meeting

66. As already indicated, Mr Bowden wrote to the claimant in a letter dated 6 October at pages 86 and 87 dismissing the grievance. The issue relating to holidays had already been resolved. Mr Bowden was satisfied that there were proper business reasons for requiring the claimant to work at Terminal 3, and that having offered himself as a personal mentor and point of contact to the claimant that he was offering personal safeguards if any issues did arise. Mr Bowden also took into account that during the short period that the claimant returned to work not once did the claimant ever contact Mr Bowden to raise any issues at all. Mr Bowden had interviewed Mr Pritchard and Mr Shuttleworth. There was no-one else present apart from the claimant. Mr Bowden concluded that there was no evidence to support the strength and nature of the allegations which were being made about the meeting on 8 September. There were no facts to support the claimant's version of events, but the written notes which the claimant had signed were a clear indication to support the description of the meeting which had been maintained by both Mr Pritchard and Mr Shuttleworth when they were interviewed by Mr Bowden.

67. Mr Bowden left the employment of the respondent in or about January/February 2018.

68. It is important for the Tribunal to record that the notes of the grievance meeting which took place on 26 September 2017 were not available to the Tribunal during the period that Mr Bowden was present to be cross examined. They were only produced to the Tribunal, by the claimant, after Mr Bowden had finished his evidence. He was no longer an employee of the company and he was not available to answer any further questions about it. A great deal of the questioning of Mr Bowden had been about not conducting the grievance meeting in a proper manner by not using a template and not taking notes. It now transpired that in fact those notes were in the possession of the claimant. Mr Broomhead explained to the Tribunal that the claimant had discovered those notes on his phone at lunchtime and that they had then been produced and copied. However, it was not possible for Mr Broomhead to go through those notes or to comment on them because Mr Bowden was not there to answer questions about them by the time that they disclosed by the claimant. No satisfactory explanation was given as to why, if those pages of documents were on the claimant's phone at all time, they had not been produced during the course of the disclosure process. That issue remained a mystery to the Tribunal.

69. After the claimant had received the grievance outcome he then lodged an appeal against his grievance by writing to Paul Martland who was a member of management senior to Mr Bowden. The claimant wrote on 18 October to appeal, and his letter appeared at page 87B. He named only two grounds, namely:

(1) "that the outcome could not be justified in view of the facts relating to my grievance"; and

(2) that the said investigation was not carried out in good faith.

70. Mr Martland was not present to give evidence and neither did he provide a witness statement to the Tribunal. The respondent relied upon notes of a discussion between Mr Pritchard and Mr Bowden which took place on 3 November (page 89) and notes of a meeting with Mr Pritchard which took place on 10 November (page 91).

71. There was an appeal hearing with the claimant on 2 November but no notes of that meeting were available to the Tribunal. That date was confirmed in the outcome letter which was sent by Mr Martland to the claimant (page 93). That suggested that it had been sent on 22 September 2018 but it was recognised and accepted by all that that date was incorrect and was probably the date that it had been printed for the purposes of disclosure. It was recognised and accepted by all parties that the correct date for that letter was in fact 13 November 2017. Mr Martland rejected the appeals of the claimant. The appeal letter of the claimant had given no grounds or details of the appeal other than to say that the outcome was not justified and that the investigation had not been carried out in good faith. It was not suggested that the investigation had been inadequate and neither were any details whatsoever given by the claimant as to why, in the opinion of the claimant, the investigation was not carried out in good faith, nor why the outcome notified to the claimant by Mr Bowden could not be justified in view of the facts relating to his grievance. The claimant simply relied on his two lines and two grounds of appeal which appeared in the bundle at page 87B.

72. Even in his witness statement at paragraph 37 the claimant did not enlarge upon his grounds for appeal. He simply described the appeal as having been inadequately carried out but provided no indication as to the reasons why the claimant came to that conclusion. It was simply a bland statement by the claimant in his witness statement. Furthermore, the claimant went on in paragraph 37 of his witness statement to assert that the reason for the rejection of his appeal was the fact that he had brought the earlier Tribunal proceedings which amounted to the protected act. However, the claimant gave no reasons or explanations as to how the decision by Mr Martland had in any way been influenced by those proceedings. The claimant simply made that statement without putting forward any evidence or grounds or explanations as to how or why the rejection of his appeal could in any way be linked to the protected act.

73. At paragraph 38 of the claimant's witness statement the claimant made statements which were largely incomprehensible. He recognised that Mr Martland had spoken to Mr Bowden and spoken to Mr Pritchard about their understanding of the issues which they had dealt with and the decisions which they had made, and it was clear from the outcome letter sent by Mr Martland that his conclusions reflected the views of Mr Pritchard and Mr Bowden. The content of the letter of 13 November at pages 93 and 94 is self-explanatory. Mr Martland therefore informed the claimant that in accordance with the company's grievance procedures that their internal processes were now at a close.

74. The claimant remained off sick and on 16 January 2018 engaged with ACAS in the Early Conciliation process with a view to bringing a claim against the respondent company.

75. The fifth allegation of victimisation described by the claimant alleges a failure to engage with ACAS in Early Conciliation and names Mr Pritchard as the alleged perpetrator of less favourable treatment. Mr Pritchard's witness statement says nothing at all about being involved in any Early Conciliation process, either as alleged or at all. Furthermore, the claimant's witness statement when describing allegation number 5 (paragraphs 41/41/42), equally provides no evidence whatsoever to show that Mr Pritchard was in any way involved with or associated with any ACAS Early Conciliation process involving the claimant. Although the claimant had included paragraphs 41, 42 and 43 in his witness statement relating to this allegation, he did not in that witness statement supply any details at all about the actual process of conciliation, what was done and by whom and when, and most importantly did not include in his witness statement any evidence at all to support the allegation of victimisation made against Mr Pritchard. Furthermore, when giving evidence the claimant did not provide any further evidence either. The only evidence, therefore, supplied by the claimant was the evidence included in paragraphs 41, 42 and 43 of his witness statement. The Tribunal, however, noted that there were documents included in the bundle to which the claimant had not made any reference in his statement. These were the documents at pages 142-151. From these documents it was clear that Mr Pritchard had been involved with ACAS during the conciliation process. At page 151 there are personal emails sent by Mr Prichard and to Mr Pritchard by ACAS on 22 February. In an email which Mr Pritchard send to ACAS he asks whether ACAS have received any further particulars from the" other side" regarding the grounds for their alleged discrimination claim. He ends that email saying, "Regards, Neil". The Tribunal found that Mr Pritchard had been the point of

contact for the respondents in connection with conciliation. Somebody had obviously agreed to a 14 day extension and that is referred to in the pages referred to above. The Tribunal finds on the balance of probabilities that that extension must have been discussed with and agreed by Mr Pritchard because all correspondence sent by ACAS to the respondents was directed to Mr Pritchard.

76. The Tribunal noted that the response from ACAS to the request for clarification of the claims of the claimant was set out in an email directed to Mr Pritchard at the top of page 151 on 22 February. The Tribunal found the content of this email to be extremely unhelpful. It simply told Mr Pritchard that the ACAS officer had spoken further with the other party and that they have indicated that this is a potential claim of victimisation following a previous Tribunal hearing. It did not, however, contain any details at all of the allegations of victimisation. There were no dates, no names of people and no description of any events which the claimant was going to suggest amounted to victimisation. This information would not, in the opinion of the Tribunal, enable Mr Pritchard or the respondents to assess the strengths and weaknesses of the claims of the claimant and make an informed decision as to whether to engage further with ACAS in seeking to settle those claims as opposed to defending them in an Employment Tribunal. No further documentation was included in the bundle to tell the Tribunal what happened after that email. As has already been set out above, neither the witness statements of Mr Pritchard nor the witness statement of the claimant included any further relevant information. The Tribunal noted that the specific allegation made against Mr Pritchard in amended Schedule B was "failing to engage with ACAS Early Conciliation". The allegation therefore made against Mr Pritchard was a straightforward allegation of failure to engage. There was no suggestion of failing to engage adequately or reasonably or in any meaningful manner. It was an allegation simply of "failing to engage".

77. Furthermore, the claimant presented no evidence whatsoever to seek to establish any link between Early Conciliation in early 2018, the curtailment of that conciliation and the single protected act of the claimant having brought earlier Employment Tribunal proceedings. There was no attempt made by the claimant at all to link that protected act with this period of Early Conciliation. The claimant presented no evidence whatsoever to even seek to establish such a link.

78. The respondent company was subsequently unsuccessful in retaining its commercial contract to supply services to Flybe. In paragraph 54 of Mr Pritchard's witness statement he says that this was in or about March 2017, but it was clearly agreed by all parties that this was a mistake and that in fact it was March 2018. What Mr Pritchard described to the Tribunal was clearly a transfer of service provision under the auspices of the Transfer of Undertakings Regulations. The contract for the supply of the services was going to be awarded to a company by the name of Airline Services Limited in place of the respondent company. As Mr Pritchard confirmed in his witness statement, at this moment in time the claimant was still off sick and there had been no change in his circumstances. The view of Mr Pritchard was that the claimant was one of the members of staff who was assigned to work on the Flybe contract at Terminal 3 and he was not assigned or working at Terminal 1 at any time during the period that he returned to work in August/September 2017. The majority of that time in any event had been spent in retraining for work to be carried out at Terminal 3. Since early September 2017 the claimant had been continuously off sick. The view of the respondent, therefore, and of Mr Pritchard was that the claimant was assigned to the

contract with Flybe which operated from Terminal 3. The company therefore believed that the employment of the claimant would be transferred from the respondent to Airline Services Limited as a service provision change under the TUPE regulations. In view of this, on Tuesday 13 March 2018, the company wrote to the claimant and to other members of the team of employees whom they regarded as assigned to the Flybe contract. The letter was written by Mr Pritchard. It confirmed that the view of the respondent company was that the employment of the claimant was eligible to be transferred to Airline Services Limited and the company noted that they were "required" under the TUPE regulations to provide certain information. That information was set out in that letter. The letter also enclosed a document containing some frequently asked questions in relation to TUPE. It also promised that there would be meetings with Airline Services Limited management to discuss the consultation of information process, and that the company would be providing the claimant and other employees with further information as it became available. The Q & A document appeared in the document at pages 68A-68D. Again this is a document which was not originally included in the bundle but was supplied at the specific request of Tribunal.

79. That letter was dated 13 March 2018. That date is important. Six days later, 19 March, at 3.49pm the claimant wrote to Mr Pritchard. He said that he had received the letter dated 13 March 2018 informing him of the proposed transfer to Airline Services Limited, and he said that he felt that he had no alternative but to resign his employment to take effect forthwith. The claimant said that this was after a course of conduct comprising of a series of incidents "carried by you with the intention of breaching my contract of employment for bringing proceedings against you for victimisation". The claimant asked for his P45 and notification of his remaining holiday entitlement. The respondent wrote to the claimant accepting his resignation the following day, 20 March 2018. The Tribunal noted that the sixth allegation of victimisation which was made against the respondent company was that Mr Pritchard, as an act of victimisation, had informed the claimant that his employment would be transferred to Airline Services Limited. The Tribunal believed it important to consider carefully the wording of the letter. The heading to the letter suggested a "proposed" transfer. It did not confirm that the claimant's employment would be transferred, which is the language used by the claimant in his Schedule of Claims. Furthermore, the first sentence in the letter went on to say that the respondents "believe" that your employment "is eligible" for transfer. Furthermore, the letter goes on to say that it is "envisaged" that the transfer will take place on 10 April but it does not say that the transfer will and is certain to take place. Furthermore, Mr Pritchard said at paragraph 57 of his statement that the correspondence was sent out to over 100 people including other Senior Agents. The claimant was therefore not singled out for this correspondence but was in fact one of over 100 people whom at that time the respondent believed were people who serviced the contract with Flybe, and whose employment they believed was "eligible" for transfer to Airline Services Limited.

80. However, in the Q & A document which was produced at the request of the Tribunal it begins by indicating that at 10 April 2018 that the employment of the claimant "will" transfer to Airline Services Limited under the TUPE regulations. This was in contrast, however, to the respondent repeating at the foot of page 68A that this would only happen if the claimant was "eligible" to transfer. Furthermore, at the top of page 68B it was made clear that the respondent company had opportunities for skilled

employees to remain with the business and that if anyone receiving the letter was interested in remaining with the respondent company that they should register their interest by completing an attached form and that they should do so by Wednesday 14 March 2017. That is again an unfortunate error in dates on the part of the respondent, as clearly this was 2018 not 2017. The claimant, along with the other employees affected, was told that Department Managers would then review all applications to remain and decisions would be made and notified to the employees in question. Employees were also told that they could apply as normal for any other vacancies within the respondent company. Furthermore the claimant was told, as were all other employees, that he if he was not formally offered a position to remain with Menzies that the claimant still have the right to opt out of the transfer to Airline Services Limited, although it was pointed out to the claimant that this would be treated as a resignation.

81. The Q & A document at page 68B went on to confirm that the operation of the respondent company would continue right up until the transfer date, and that there would continue to be close liaison between the management of Airline Services Limited and the respondent company, and that the companies would be meeting to discuss other details in relation to the transfer of employment and that the claimant, together with all other employees, would be consulted on an ongoing basis to ensure that they were kept fully abreast of all developments. In his witness statement the claimant did not put forward any evidence or reasoning or justification as to why the letter sent about the proposed transfer to Airline Services Limited directed to the claimant was in any way associated with or connected with the earlier Employment Tribunal proceedings which the claimant had relied upon as his protected act in connection with this individual claim of victimisation. In his witness statement he says at paragraph 43 that receipt of the notice meant that he definitely had no future at Menzies but this was despite the opportunities and options which had been clearly described in the Q & A document, in particular at the top of page 68B. The claimant, however, confirmed that he treated the receipt of the letter dated 13 March as the “last straw” which justified his resignation from the employment of the company. Indeed he confirmed that in his letter of resignation.

82. The Tribunal now records it findings of fact in respect of the eighth allegation of victimisation and/or breach of contract, which was that from 14 March 2019 and continuing the respondent failed to consent to a Judgment dated 19 May 2016 being set aside. Again, quite specifically, the allegation of victimisation in the Amended Schedule refers to this being a failure on the part of “the respondent” not an individual failure on the part of Mr Pritchard. The only evidence given about this specific allegation on behalf of the respondent was at paragraph 59 of Mr Pritchard’s witness statement. However, that paragraph is completely silent about the specific allegation of failing to agree to set aside a Judgment. However, when cross examined Mr Pritchard told the Tribunal that the decision making in connection with the enforcement of the Judgment and the refusal to set aside the Judgment which was entered against the claimant was something which was “being dealt with by solicitors”. The conclusion the Tribunal is that this statement clearly represented the facts. At pages 121/122 it is clear that all correspondence relating to the enforcement of the Judgment against the claimant was coming from the respondents’ solicitors. It was they who had written to Mr Broomhead on behalf of the respondents requesting financial information, and it is they who were dealing with the matter on behalf of the respondents. That continued

to be the case when the respondents decided to take enforcement action (pages 124/125).

83. Furthermore, Mr Broomhead engaged in all correspondence about the proposal that the Judgment should be set aside by writing to the respondents' solicitors and not writing to the respondents at all. He wrote first of all – page 128 – to the respondents' solicitors. It was in that letter that he said that, "We therefore require confirmation that firstly the Judgment debt has been paid, and secondly that you will consent to the said Judgment being set aside". It was the respondents' solicitors, Dentons, who replied, again on page 128. They commented that they were not sure why the Employment Tribunal Judgment would be required to be set aside once it has been complied with. They commented that they did not see any reason or indeed how any such application could be made, or why they would agree that the Judgment should be set aside when it was properly and lawfully entered at a time when the claimant accepted that he owed the money which he had been ordered to pay, and at a time when the money had not been paid. There was never any question but that the Judgment was properly and lawfully entered against the claimant.

84. Correspondence relating to this matter continued to be exchanged between Mr Broomhead and the respondents' solicitors, but not with any representative of the respondents. Further correspondence was included at page 131 in July 2019. It was at this point, quite understandably in the opinion of the Tribunal, that the respondents' solicitors began to take issue with the suggestion that the Judgment should be set aside, and at page 131 raised the possibility that Mr Broomhead was perhaps mistaken in his use of terminology. Clearly, the Judgment had been properly entered and there were no grounds for it to be set aside. Once the Judgment was paid, and as the respondents' solicitors pointed out at page 131, then they could apply for a certificate to show that the Judgment had been settled. Quite properly they clearly pointed out that setting aside a Judgment was a different issue and that the respondents' solicitors had not seen anything which suggested that that is what was going to be achieved. Again understandably the respondents' solicitors pointed out that a certificate of satisfaction was something which the respondents would not oppose but that that was completely different to setting aside the original Judgment. However, when writing to the respondents' solicitors at page 132 Mr Broomhead had made it clear that he required "the County Court Judgment enforcing the said ET Judgment" to be set aside.

85. Ultimately, the respondents did not agree to the Judgment properly and lawfully entered against the claimant being set aside, and this remained the basis of an allegation of victimisation contrary to section 27. The Tribunal noted, however, that no evidence whatsoever was produced by the claimant, either in his witness statement or in any of the documents included in the bundle, to suggest that there was any link whatsoever between that refusal and the "protected act" that the claimant relied on in support of a claim of victimisation. In short, the claimant completely ignored the requirement to establish that link with the protected act in order to succeed in a claim of victimisation.

86. Finally –the (seventh) allegation of victimisation was that it was an act of victimisation to have dismissed the claimant. Bearing in mind that the claimant had resigned then the only way in which the claimant could establish that he had been "dismissed" was pursuant to section 95C of the Employment Rights Act 1996. The Tribunal could not see, therefore, how this single claim of

> victimisation could be established as a stand alone claim of victimisation. The dismissal of the claimant, as a constructive dismissal, could only be established if the claimant was able to prove a series of events which either individually or cumulatively amounted to a breach of the implied term of trust and confidence. It was those individual actions and individual allegations which had to amount to allegations of victimisation. The Tribunal was therefore unable to understand the basis upon which the claimant was putting the seventh allegation forward as a stand alone allegation.

87. The Tribunal, when considering what facts it ought to find in connection with this allegation, revisited the written submissions of Mr Broomhead at the conclusion of the Tribunal hearing. Examining allegation seven, his written submissions simply say that the Tribunal is referred to paragraphs 48-57 of the claimant's witness statement. They do not enlarge in any way upon that allegation. Looking again at paragraphs 48-57 of the claimant's witness statement, the Tribunal finds that that is not actually true at all. The only paragraph of the claimant's witness statement which refers to this seventh allegation is a single paragraph at number 47 consisting of just over two lines. That paragraph reads:

> "Therefore on 19 March 2018 I accepted the said repudiation by terminating my contract of employment by a letter dated 19 March 2018. See page and decided to work full-time for OVO Energy."

88. The Tribunal noted that the words used in the final sentence of that paragraph did not make any sense but they were not clarified in any way by the claimant.

89. Paragraphs 48-57 of the claimant's witness statement actually related to allegation number 8 when the Tribunal looked carefully at the witness statement of the claimant. That is the final allegation relating to the refusal of the respondents to set aside the money judgment which had been entered against the claimant.

90. In short, therefore, the Tribunal was left in a position where it was unable to understand what was meant by the seventh allegation of victimisation. It did not seem to the Tribunal that they could or should make any findings of fact in respect of that single allegation. The paragraphs of the claimant's witness statement to which Mr Broomhead referred the Tribunal did not refer to this allegation, and the only single paragraph which did consisted of 2½ lines at paragraph 47. In short, therefore, the Tribunal was not presented with any evidence by the claimant in his witness statement and neither was it referred to any specific documents in the bundle by Mr Broomhead in support of this seventh allegation of victimisation, which of course was also a stand alone allegation of breach of contract to substantiate the claimant's resignation.

Discussion and Conclusions – Detriment Allegations

Self-Direction

91. In considering each of the twenty four allegations of victimisation the Tribunal bore in mind the legal framework summarised above.

92. As it was established that the claimant had done protected acts, the question for us was whether the respondent had subjected him to a detriment because of any

of those protected acts in the sense that any of the protected acts had any material influence on subsequent detriment treatment. That required consideration of the mental processes of the decision maker in each instance. Because of the Court of Appeal decision in **Reynolds** it was not possible to impute to the decision maker any motivation on the part of other people.

93. However, that exercise had to be approached in accordance with the burden of proof. If the claimant proved facts from which the Tribunal could reasonably conclude that any of his protected acts had a material influence on subsequent detrimental treatment, his case would succeed unless the respondent could establish a non-discriminatory reason for that treatment. We approached that exercise having considered all the evidence before us.

94. It followed that if the Tribunal concluded that a protected act played no part in the treatment of the claimant, the victimisation complaint would fail even if that treatment was otherwise unreasonable, harsh or inappropriate. It is well established that unreasonable behaviour itself does not necessarily give rise to any inference that there has been discriminatory treatment. Further, where there are errors or mistakes which affect a number of people as well as the individual claimant, there is no necessary connection between such errors and any discriminatory approach. However, where errors affect only the claimant the Tribunal must be particularly careful in its scrutiny of the decision making process to see whether the respondent's explanation withstands that scrutiny, or whether the error in truth masks a discriminatory decision making process.

95. In considering each of the allegations we bore in mind that we had first to resolve any disputed facts, then decide whether the treatment in question could reasonably be seen by the claimant as a detriment, and finally deal with the question of causation in the mind of the decision maker(s).

96. The Tribunal reminded itself that it was dealing with eight stand alone allegations of victimisation as set out in amended Schedule B. However, the Tribunal was at the same time considering each of those allegations as individual allegations of conduct on the part of the respondents which in the opinion of the claimant amounted to breaches of the implied term of trust and confidence and which ultimately justified the claimant resigning and claiming constructive dismissal. The Tribunal was therefore required to consider each of the eight allegations on the basis of whether they were or were not breaches of the implied term, and whether or not individually they amounted to acts of victimisation contrary to section 27. The Tribunal reminded itself at all times that the claimant was bringing allegations of victimisation based on one single protected act, namely that the claimant had brought proceedings against the respondent for victimisation in claim number 2402549/2015 which was concluded in the Manchester Employment Tribunal in early 2017. The Tribunal also reminded itself that it was not sufficient for the claimant simply to assert or claim or suggest that the "reason why" the respondents behaved as they did was because of the protected act. There was a clear burden of proof imposed on the claimant to be able to demonstrate to the satisfaction of the Tribunal that the actions of the respondent were because of the protected act in order to succeed in any of the claims of victimisation.

97.

Allegation 1 – 3 September 2017 to 20 March 2018 – Failing to assist the claimant back to work

98. The judgment of the Tribunal is that this does not amount to an allegation of victimisation and it is dismissed. Furthermore, the Tribunal does not accept that this was a breach of the implied term of trust and confidence and therefore does not amount to a breach of contract entitling the claimant to resign. Furthermore, it therefore could not and did not contribute to any cumulative series of events which entitled the claimant to resign his employment and claim that he had been "dismissed". As the Tribunal has already recorded in these Reasons (paragraphs 32-37), the claimant did not actually provide the Tribunal with any evidence on which it could make any findings of fact relating to this allegation, in particular the dates of this allegation. The claimant did not at any stage elaborate on what he meant by a failure to assist the claimant back into work. The claimant did not at any stage indicate what steps he believed that Mr Pritchard should have taken which he did not take. He did not indicate that any steps which were taken by Mr Pritchard were steps which he ought not to have taken. No evidence was put forward to the Tribunal to indicate that at any time during the dates in question was the claimant actually fit to return to work. He was at all times certified medically unfit for work. There was never any suggestion made by any medical practitioner on the part of the claimant that subject to some changes or adjustments that the claimant may be able to return to work. The only evidence available was that the claimant remained unfit for work during those periods of time. The Tribunal therefore was unable to identify any breaches of the implied term of trust and confidence relating to the suggested return to work of the claimant. There was no breach of contract.

99. Insofar as a victimisation claim is concerned, no attempt whatsoever was made by the claimant to link this alleged failure on the part of Mr Pritchard to the single protected act. The claimant did not provide any evidence at all to seek to establish a link with the protected act. In fact the existence of the protected act was completely ignored by the claimant. It amounted to nothing more than a claim or suggestion on the part of the claimant without any evidence being put forward to purport to establish a link with the protected act. In the absence of any link whatsoever with the protected act then it was obvious to the Tribunal that this single claim of victimisation must fail and be dismissed.

Allegation 2 – the conduct of the meeting on 8 September 2017

100. The claimant alleged that the conduct of this meeting was "both improper and intimidating towards the claimant". The Tribunal will first of all deal with whether or not this was a meeting which was entitled to "without prejudice" protection. The claimant says that it was not and that even if it was entitled to such protection that the respondents lost that protection because the conduct of the meeting amounted to "unambiguous impropriety".

101. The judgment of the Tribunal is that the meeting was entitled to "without prejudice" protection. The respondents were aware in advance of that meeting that the claimant was unhappy with working at Terminal 3. He had also asked for financial information about what he would receive if he were made redundant. The respondents had received notification from the EAT and confirmation from their own legal advisers on 30 August that the appeal of the claimant against the Tribunal Judgment which was

the “protected act” was still alive and was the subject of an application for an oral hearing. That claim, therefore, had not gone away.

102. There was significant agreement amongst senior representatives of the respondent that employing the claimant in Terminal 3 was suitable alternative employment. It was equally clear that the claimant was unhappy with working at Terminal 3 and still preferred to work at Terminal 1. The respondents were well aware of that view on the part of the claimant. There was, therefore, an obvious risk of significant disagreement between the claimant and the respondent about his place of work. There was an obvious and real risk that the company would continue to incur additional costs in connection with the appeal to the EAT. There was also the ongoing matter of the £1,500 costs which were ordered to be paid by the claimant to the respondents, and the fact that those remained outstanding. The respondents were of course perfectly entitled to enforce that as it was a Judgment of the Tribunal and then the County Court. They were equally aware that the claimant had maintained in a statement of means that he was unable to satisfy that Judgment.

103. The approach of the respondents was that they could reasonably and quite understandably foresee a number of ongoing disagreements between the claimant and the respondent on a number of different fronts. Senior representatives of the respondent, including their legal team, therefore saw an obvious advantage in reaching a one-off agreement with the claimant whereby all outstanding issues could be dealt with once and for all. The Tribunal has found as a fact that a draft Settlement Agreement was drawn up and that it was to be the basis of the discussions between Mr Pritchard and the claimant at the meeting which was held on 8 September. It was envisaged by the respondent to be an all-encompassing agreement which would bring an end to all areas of disagreement and potential disagreement between the claimant and the respondent.

104. The Tribunal was therefore unanimously satisfied that there were a number of ongoing existing disputes and disagreements between the claimant and the respondent immediately prior to the meeting which was held on 8 September. The Tribunal was fully and clearly satisfied that that requirement had been fully met by the respondent.

105. Mr Pritchard attended that meeting with the draft Settlement Agreement. He also attended with sheets numbered at pages 77-83 in the bundle on a company template with the introduction already written out and the purpose of the meeting already written out as well. The words “without prejudice” were pre-written in capitals on the first page and then on each subsequent page as the meeting progressed. The claimant confirmed during the meeting that he wanted to be told what his redundancy figures would be, and that he wanted to look at “options” including redundancy. Mr Pritchard confirmed that the respondents were aware of the change of circumstances relating to the earlier claim and the appeal to the EAT, and the claimant confirmed to Mr Pritchard that he was equally aware of that. Importantly, at page 79, it was the claimant who confirmed and introduced the phrase “without prejudice”. He actually said, “want it done without prejudice”. The Tribunal had found as a fact that the claimant did use those words and that he had made it very clear by the use of those words to the respondent that he wanted the discussions which he knew were going to take place to be “without prejudice”. The Tribunal found that Mr Pritchard reasonably explained what he understood by that phrase as meaning that the discussions could

not be used in a Tribunal and that they could not be referred to or taken elsewhere after the meeting came to an end. The Tribunal has found as a fact that the claimant signed each of the pages of notes to indicate that the notes were accurate, and that he was given a proper and reasonable opportunity to consider the contents before he signed the pages. Furthermore, when questioned at the Tribunal the claimant did not at any stage indicate that any aspect of the written notes which were taken by the respondents were inaccurate.

106. In the unanimous opinion of the Tribunal, therefore, the claimant was well aware of the meaning of "without prejudice" before he went to that meeting. Furthermore, it was he who introduced the fact that he wanted the meeting to be "without prejudice", and when he raised it Mr Pritchard indicated that he was happy to proceed on that basis and confirmed his understanding of what that phrase meant. The claimant did not disagree with what Mr Pritchard said.

107. Mr Broomhead on behalf of the claimant suggested to the Tribunal that the evidence suggested that there was no meeting of minds about whether the meeting would be on a "without prejudice" basis. The Tribunal unanimously rejected that suggested, and on the contrary found that there was an absolute meeting of minds that the meeting would be "without prejudice", and that there was very clearly mutual agreement and understanding that the meeting would only proceed on that basis. The unanimous judgment of the Tribunal, therefore, was that the meeting on 8 September was entitled to "without prejudice" protection unless it could be shown that there had been unambiguous impropriety on the part of Mr Pritchard.

108. Mr Broomhead said that the reasons for unambiguous impropriety were:

(a) It was wrong to introduce a threat to the claimant that if he did not reach agreement that the respondents would enforce the order for costs which had been made in their favour in the sum of £1,500. Indeed he went so far as to allege that raising that issue with the claimant amounted to "blackmail". However, the Tribunal unanimously rejected this as a amounting to unambiguous impropriety or indeed misconduct of any sort on the part of the respondents. All that the respondents said was that they would pursue those costs if the settlement was rejected. In the opinion of the Tribunal, it was important for the claimant to understand not only what the benefits of accepting the Settlement Agreement would be but also what would happen if he decided to reject the terms which were on offer. It was reasonable, in the opinion of the Tribunal, for the claimant to have this outlined to him. Furthermore, the Tribunal also considered that a more general discussion about costs had been raised by the respondents. The Tribunal accepted that this was in respect of costs relating to the proceedings in the EAT. All that the respondent said to the claimant was that these would be pursued if the appeal was rejected. There was no misrepresentation by the respondents. They did not say that they were, for example, "entitled to costs", no amount was mentioned. There was no demand for costs being made. The legal position of course was that the respondents would be entitled to make an application for costs if the appeal of the claimant was refused. That is all that they would be entitled to do, make an application. The unanimous judgment of the Tribunal was that the position with regard to costs of the proceedings in

the EAT was fairly and reasonably discussed with the claimant. The Tribunal found that statements made by the respondents were statements which were in accordance with the Rules of the Tribunal and properly reflected a discretion. It did not amount, as Mr Broomhead suggested, to a demand with menaces. To amount to unambiguous impropriety the conduct of the respondents would have to meet a threshold. The Tribunal found that the conduct of Mr Pritchard came nowhere near that threshold, and certainly nowhere near the suggestion made by Mr Broomhead that it amounted to blackmail.

(b) The second ground on which Mr Broomhead suggested that there had been unambiguous impropriety by the respondents was in his opinion the comment which had been made about Mr Broomhead not being independent. Mr Broomhead said to the Tribunal that in his opinion this amounted to both bad faith and defamation. The Tribunal, however, looked at all the words used by looking at all the circumstances and standing back and looking at the full picture. The respondents had made it clear that everything that was being discussed in the Settlement Agreement was bound and tied together. The approach of the respondents, agreed by senior managers, was that if agreement was to be reached with the claimant that it was to be reached under the terms of a Settlement Agreement and not, for example, under a COT3. The Tribunal found that the respondents were entitled to make that choice, and found that it was an extremely common choice amongst employers where the circumstances were far from straightforward. The Tribunal has already found that the claimant was given ten days in which to think matters over by Mr Pritchard, and that the company was perfectly happy to pay for the claimant to receive legal advice. However, that legal advice would have to be obtained from someone who was entitled to sign the Settlement Agreement and sign that they had been able to give independent legal advice to the claimant. Mr Broomhead at all times accepted that he was not in a position to do that.

(c) Mr Pritchard did indeed say that in his opinion and those of his other senior colleagues that Mr Broomhead had a vested interest. The unanimous view of the Tribunal was that that comment had to be taken and put into context. The Tribunal was required on its opinion to look at the full history and the full picture. There had already been a seven day hearing before the Employment Tribunal. That had been expensive both in terms of legal costs and management time. The respondents had been successful. Mr Broomhead had represented the claimant throughout those proceedings and at the hearing and was now representing the claimant in connection with the ongoing appeal to the EAT. He was not entitled to sign a Settlement Agreement, and in the opinion of the Tribunal that was the emphasis that was being placed on the need for the claimant to receive independent advice from someone who could look at the full picture, and look at it entirely independently, whilst at the same time then being in a position to sign the Settlement Agreement if the terms were agreed and accepted by the claimant. In the unanimous opinion of the Tribunal, the comments made about Mr Broomhead were simply comments which were

made by the respondents to emphasise the need for the claimant to receive independent advice in connection with the Settlement Agreement and to emphasise to him that that could not be obtained from Mr Broomhead.

(d) In those circumstances the Tribunal unanimously found that there was no conduct on the part of Mr Pritchard or Mr Shuttleworth at the meeting on 8 September which could in any way amount to unambiguous impropriety. The conclusion of the Tribunal, therefore, was that the meeting on 8 September was at all times entitled to "without prejudice" protection.

109. The Tribunal considered the alternative of section 111A of the Employment Rights Act 1996. That only allows protection in connection with claims of unfair dismissal. The Tribunal however was aware that the main thrust of the claims by the claimant in connection with the earlier proceedings were a substantial number of claims of victimisation contrary to the Equality Act. The respondents therefore were fully aware of that. Indeed they had spent days and days focussing on that at the Employment Tribunal. The view of the Tribunal was that it was not possible or appropriate to cut and dice parts of the meeting on 8 September as you might do with a salami. The main focus of the ongoing proceedings was in connection with claims of victimisation and not claims of unfair dismissal. Furthermore, the claim for £1,500 costs clearly emanated from those proceedings which related directly to victimisation. Any future costs which the respondents might incur at the EAT were equally in connection with claims of victimisation. Of course the Tribunal recognise that a great deal of the discussions on 8 September related to redundancy and potential dismissal for redundancy, but that was only part of the meeting and as the Tribunal has already said, it does not believe that it is appropriate to slice and dice that meeting. There was no attempt to do so by Mr Pritchard during the course of the meeting in order to very clearly identify parts which were and parts which were not protected by section 111A. In the unanimous decision of the Tribunal, therefore, the meeting held on 8 September was not entitled to protection under section 111A of the Employment Rights Act 1996.

110. Returning to the specific wording of this second allegation, the allegation was that the conduct of the meeting was both improper and intimidating towards the claimant. The unanimous decision of the Tribunal is that that allegation is rejected and dismissed. The Tribunal does not find that there was anything improper about the meeting which was held on 8 September with the claimant. Furthermore, it was very clear indeed to the Tribunal that there was nothing intimidating about it. As the Tribunal has found, the claimant made no complaint whatsoever during the course of the meeting until after he had taken a short break and then spoken to Mr Broomhead. The claimant may or may not have been influenced by comments made by Mr Broomhead, but there was certainly a stark difference in tone and approach of the claimant after that telephone discussion. However, the criticisms which led to this allegation of breach of contract and allegation of victimisation relate to what happened before the telephone discussion with Mr Broomhead, and so what may or may not have been said by Mr Broomhead was irrelevant. The unanimous view of the Tribunal, with the members in particular using their industrial experience, was that the meeting was a genuine attempt by the respondents to try to resolve a number of ongoing disputes and disagreements with the claimant and to avoid further unpleasantness and potentially pay to the claimant his redundancy, which was what

he was anxious to understand would be his financial entitlement. In the unanimous opinion of the Tribunal, the meeting was not improper but was indeed perfectly proper. There was nothing intimidating about the conduct of the meeting by Mr Pritchard and indeed from the notes of the meeting it was clear that the claimant was the one who introduced the idea that it would be held "without prejudice", and indeed the claimant during the hearing accepted that he did not raise or make any complaint whatsoever about any part of the meeting before he spoke to Mr Broomhead. In the opinion of the Tribunal, therefore, the claimant did not believe that there was anything improper or intimidating about it to the extent that he should complain. Indeed he made no such complaint whatsoever prior to speaking to Mr Broomhead. The conduct of that meeting, therefore, did not amount to a breach of the implied term of trust and confidence as alleged or at all.

111. Again, there was no attempt whatsoever by the claimant to seek to establish any link between the conduct and content of this meeting and the protected act which would be necessary in order to establish a claim of victimisation. No evidence whatsoever was led or produced by the claimant to seek to establish a link between the protected act and the tone and content of this meeting. In the absence of any such link, and in the absence of any such evidence, the claim of victimisation must fail and is dismissed.

Allegation 3 – Failure to carry out a grievance hearing in good faith

112. The Tribunal found that Mr Bowden was properly qualified and experienced to conduct a grievance of this sort. He had previously offered himself to be the personal champion of the claimant at a welfare meeting which he held with the claimant in August 2017, and the claimant accepted that there had never been any need for him to ask for the assistance of Mr Pritchard. The grievance of the claimant (page 84) was about five issues which were:

(a) The potential return to Terminal 1 and not working at Terminal 3;

(b) The ongoing concerns about one of his accusers in respect of the original Tribunal proceedings;

(c) His holidays;

(d) Being ambushed at the meeting on 8 September; and

(e) Unspecified threats which had been made against him.

113. The Tribunal found as a fact that Mr Bowden had spoken to Mr Pritchard about that meeting. He had accepted on reasonable grounds the notes of the meeting and had concluded on reasonable grounds that the meeting had been held on a "without prejudice" basis and that the claimant had been fully aware of that. The Tribunal has found that to be a fact. There was no tape recording. Mr Bowden therefore had to rely upon what he was told by Mr Pritchard and what he was able to read from the notes of the meeting. Mr Broomhead in his closing submissions on behalf of the claimant suggested that no investigation was carried out. The Tribunal found that there was an investigation because Mr Bowden interviewed the two people who were present, namely Mr Pritchard and Mr Shuttleworth. In his closing submissions Mr

Broomhead suggests that Mr Bowden in reaching his conclusions "relied solely" on the evidence of Mr Pritchard and Mr Shuttleworth. The tribunal finds that to be wrong as a fact. Mr Bowden, quite understandably, placed significant reliance upon the written notes of the meeting, which after all the claimant did not dispute. Furthermore, the claimant had signed each page of the notes to indicate that it was accurate as a record of what had taken place. The unanimous conclusion of the Tribunal, therefore, was that the investigation which was held by Mr Pritchard most certainly met the standard of a reasonable investigation. Indeed it was very difficult to see what else Mr Bowden could or should have done. As the Head of Operations he was in a position to fully understand the contractual relationships that the company had with its different airlines and the work which was available at Terminals 1 and 3. Whilst understanding the points raised by the claimant, Mr Bowden was equally aware of the ongoing need for someone of the claimant's status to be employed to serve the contract at Terminal 3. Mr Bowden was fully justified, in the opinion of the Tribunal, in concluding that the claimant had not been "ambushed" at the meeting on 8 September as Mr Broomhead alleged. The unanimous conclusion of the Tribunal, therefore, was that the conduct and the conclusions reached by Mr Bowden in connection with the grievances of the claimant were not improper and had been carried out perfectly adequately and in good faith, matching the requirement that it should be the reasonable investigation and reasonable conclusions of someone appointed to address the grievances of an employee.

114. In those circumstances the Tribunal did not find that allegation 3 amounted to a breach of the implied term of trust and confidence, and neither did it amount to an act of victimisation. Once again, the Tribunal would point out that no attempt was made by the claimant to link the alleged improper conduct of Mr Bowden in connection with the grievance to the single protected act of bringing the earlier Employment Tribunal claim against the respondents. The claimant simply produced no evidence whatsoever to support that necessary link. He did not address it in his witness statement and at no time during the hearing was the Tribunal referred to any evidence or any documentation to purport to suggest or prove a link with the protected act. This allegation therefore as a claim of victimisation was unanimously dismissed.

115. The Tribunal should however recognise in these Reasons that Mr Bowden was unable to produce any notes of the meetings/discussions which he had held with Mr Pritchard and Mr Shuttleworth about their conduct of the meeting on 9 September. Mr Bowden, however, was adamant that he had taken notes and that he had then handed them to HR as they were the custodian of records in connection with disciplinary and grievance meetings. The claimant did not suggest that notes had not been taken but Mr Bowden was unable to produce them. However, on the balance of probability the Tribunal accepted that notes were taken but that Mr Bowden had not been the person who had lost or misplaced them.

116. In the opinion of the Tribunal, nothing turned on this absence of records. In contrast, the Tribunal had before it the detailed notes of the grievance hearing which had been signed, page by page, by the claimant. It was more reasonable, in the opinion of the Tribunal, for Mr Bowden to reply upon those as well as the content of his discussions with Mr Pritchard and Mr Shuttleworth.

<u>Allegation 4 – Failing to carry out an appeal either adequately or in good faith</u>

117. The specific wording of the allegation is that Mr Martland failed "to carry out an appeal, either adequately or in good faith". In his evidence about this at paragraph 37 of his witness statement the claimant simply says that the appeal was inadequately carried out, without saying how it was inadequate in the opinion of the claimant.

118. The Tribunal has already referred to the very brief grounds of appeal which were lodged by the claimant and which were set out at page 87B of the bundle. They were that "the outcome could not be justified in view of the facts relating to my grievance" and "the investigation was not carried out in good faith". Those were the only grounds of appeal. It was accepted that Mr Martland was Mr Bowden's immediate superior and he was therefore, in the Tribunal's opinion, the obvious and reasonable choice to conduct the appeal. He conducted interviews with Mr Bowden (89/20) and with Mr Pritchard (91/92). He held an appeal hearing with the claimant on 2 November and yet the Tribunal recognise that no notes of that meeting were available for consideration by the Tribunal. It also recognised that Mr Pritchard had left the respondent company some time ago.

119. Mr Pritchard then set out his reasoned conclusions in a letter dated 13 November 2017 (correct date) which appeared at pages 93 and 94. When considering that letter the unanimous opinion of the Tribunal was that it set out a reasoned conclusion to the points which had been raised by the claimant. The claimant put forward no evidence to the Tribunal to say why or how Mr Martland had allegedly acted without good faith. There was nothing to substantiate that claim. In the opinion of the Tribunal, the outcome of the grievance was justified and for the reasons expressed by Mr Pritchard, the outcome of the appeal was equally justified for the reasons which the Tribunal has already set out above.

120. In the opinion of the Tribunal, therefore, allegation 4 could not and did not amount to a breach of the implied term of trust and confidence. Once again there was no attempt made by the claimant at any stage to produce or allude to any evidence to link this alleged conduct of Mr Martland to the single protected act. In the absence of any such evidence, and indeed in the absence of any attempt by the claimant to link the protected act to allegation 4, then it was dismissed as an act of victimisation.

<u>Allegation 5 – Failing to engage with ACAS Early Conciliation</u>

121. This allegation, taking the wording from the schedule of complaints, reads, "Failing to engage with ACAS Early Conciliation". The conclusion of the Tribunal from the facts which it has set out above was that the respondents, and indeed Mr Pritchard, most certainly did "engage" with ACAS. That is clear from the content of the emails to which the Tribunal has referred. On a factual basis, therefore, that claim must be dismissed.

122. In any event, there is no obligation, contractual or legal, on a respondent to engage with ACAS. In the absence of any duty or obligation it is not possible for this allegation therefore to amount to a breach of the implied term of trust and confidence. It is therefore dismissed as an allegation of breach of contract. Furthermore, once again, there was no attempt made by the claimant to seek to link this alleged misconduct on the part of the respondents to the protected act. In the absence of any such link then the unanimous decision of the Tribunal had to be that the claim of victimisation failed. In any event it also failed because the claimant had failed to

establish the single allegation that the respondents had failed to engage with ACAS Early Conciliation. Indeed the Tribunal noted that this was an allegation made against Mr Pritchard as an individual and not the respondents as a company. It was clear from the documentation to which the Tribunal has referred above that Mr Pritchard did engage with ACAS Early Conciliation.

Allegation 6 – Proposed transfer of employment

123. The Tribunal has set out above a detailed series of findings about the content and specific wording of the documentation which was sent to the claimant about which he complains. The documentation expressed the view that the respondents "believe" that he is "eligible" for transfer. It was made clear that it was envisaged that the employment of the claimant would transfer, not that it would. Furthermore, as counsel for the respondents made very clear, the respondents are under a legal obligation under the TUPE Regulations to engage in consultation with affected employees.

124. It was very clear to the Tribunal that although the claimant had an obvious preference for working at Terminal 1 that the respondents, following the return to work of the claimant in August, believed that the claimant was engaged at Terminal 3 and that he was engaged with the Flybe contract. Indeed, when he returned to work. he had undergone a programme of retraining and all that retraining had referred to the Flybe contract. The claimant had accepted that was the case because he had referred in evidence to the fact that the practices and procedures of Flybe were very different to those which he had been used to operating at when he was engaged at Terminal 1. There was no doubt whatsoever therefore, in the opinion of the Tribunal, that the respondents reasonably believed that the claimant would be one of those employees who would be affected by the potential transfer to Airline Services Limited. They were therefore under a legal obligation to consult with him about that proposed transfer.

125. The Tribunal was perplexed by the statement which was made by the claimant in paragraph 43 of his witness statement to the effect that "this meant that no future" with the respondent company. If the claimant reached that conclusion, then he did so without reason and without reasonable grounds. In the unanimous opinion of the Tribunal, it was neither a reasonable nor justified comment or conclusion for the claimant to have reached. Consultation with him about this proposed transfer had not even yet begun. He had been given an opportunity to object to being included in the list of employees if he wanted to do so. He had been sent the opportunity to express interest in alternative employment with the respondents. There were a number of options available to the claimant, and in the unanimous opinion of the Tribunal the respondents had sent a significant level of information to the claimant and had indicated that there would be a number of opportunities for him to discuss matters in due course. It was very clear to the Tribunal that no decisions had been reached. The Tribunal also found that it was very significant indeed that identical documentation was sent to over 100 employees who were also engaged with the Flybe contract. The claimant was not singled out for anything. He was sent exactly the same information in exactly the same format as over 100 of his colleagues.

126. The specific allegation of misconduct was that "the claimant was informed his employment would be transferred to Airline Services Limited". Using that clear wording on the part of the claimant, the Tribunal found that the claimant was not told that at all. He was told that it may transfer, and he was also told that there were a

number of alternatives, including applying for different jobs with the respondents. In the opinion of the Tribunal, the only reasonable interpretation of what the claimant was sent was that it was the start of a consultation and information process. No decisions had been taken. He was not being "informed his employment would be transferred". He was told that it was a possibility but that no decisions had yet been made and that there were a number of alternatives which may apply and a number of choices which were available to the claimant in the meantime. The factual basis of the claim, therefore, was not proven, and therefore justified the claim being dismissed as a breach of contract.

127. The Tribunal accepted that some of the language used in the documentation sent to the claimant was inconsistent, but the overall picture clearly painted was one of possibility and not one of certainty. The Tribunal found that any reasonable person considering the documentation which had been sent to the claimant would be bound to reach that conclusion. In any event, what was the "reason why" the claimant was sent this information? Was it, as the claimant suggested, because of the protected act? In the unanimous opinion of the Tribunal it most certainly was not because of that at all. Indeed once again the claimant put forward no evidence whatsoever to suggest any link between the protected act and the issuing of the TUPE documentation to the claimant. It was very obvious to the Tribunal that the "reason why" that documentation was sent to the claimant, as it was sent to over 100 other people, was because the respondents at that stage anticipated that their contract with Flybe would be transferred under the TUPE Regulations, and they were therefore meeting their obligations to consult with the employees that they believed would be affected. That was the "reason why" the documentation was sent. In the opinion of the Tribunal, it had nothing whatsoever to do with the protected act, and what is more the claimant produced no evidence whatsoever to suggest that it was or could be linked in any way whatsoever with the protected act. The allegation as a claim of victimisation therefore failed as it failed as a claim of breach of contract to cause or contribute to the claimant's dismissal by way of resignation.

Allegation 7 – Claimant's resignation

128. As the Tribunal has already commented, the Tribunal really could not understand how this was put as a stand alone allegation of either breach of contract of victimisation. The dismissal of the claimant, by resignation, was in his own words an accumulation of different factual events which then led to two "last straw" events which led to his resignation. There was no decision by the respondents to dismiss the claimant. The Tribunal therefore could not find any justification for this being put as a separate act of breach of contract and/or a separate act of victimisation.

129. In any event, even if it was a stand alone allegation, no evidence at all was put forward by the claimant to link this to the single protected act, and in the absence of any such information it inevitable that the only conclusion of the Tribunal must be that it was dismissed as a claim of victimisation.

Allegation 8 – Failure to consent to Judgment dated 19 May 2016 being set aside

130. The starting point for the Tribunal was that it could not be established that there was any duty, legal or contractual, express or implied, which obliged the respondents to agree to this request made on behalf of the claimant through Mr Broomhead. In

the unanimous opinion of the Tribunal, there was a fundamental and clear misunderstanding as to what the claimant was entitled to simply because he had paid a judgment. The suggestion that the respondents were behaving reasonably by refusing to allow the Judgment to be set aside was akin to an argument that someone stopped for speeding and then paying the speeding fine should be able to persuade the police to set aside the speeding conviction. The only question in those circumstances would be whether the individual was properly convicted on reasonable grounds of speeding, and the answer to that would be yes. In this case the claimant had been ordered to pay £1,500. He had failed to pay that amount. A Judgment was therefore issued in the County Court. The only question to be asked was whether or not at that time the claimant owed the money and had the money been paid. The answer to each of those questions was yes-and no. The judgment had therefore been entered, perfectly properly and reasonably. There were no grounds at all for the judgment to be set aside and it appears that suggestions made by Mr Broomhead to that effect demonstrated a fundamental misunderstanding of the process within the County Court for the setting aside of a Judgment. The claimant was at all times entitled to have a Certificate of Satisfaction issued in his favour to demonstrate that the money had been paid, but he was never entitled to have the Judgment set aside and at no time did Mr Broomhead ever refer the Tribunal to any case law or any of the rules of the County Court which would entitle the claimant to have made such an application, with or without the consent of the respondent.

131. In the opinion of the Tribunal, this claim was utterly misconceived both as a claim for breach of contract and a claim of victimisation. Again, unfortunately, the Tribunal is required to point out that in any event the claimant did not produce any evidence whatsoever to link this alleged refusal to the protected act in order to be able to substantiate a claim of victimisation. In the absence of any such evidence then the claim for victimisation was bound to fail in any event. In the absence of any contractual or other obligation on the part of the respondent to consent to the application to set aside the Judgment, then equally the claimant was unable to establish any breach of contract in connection with the facts alleged.

132. In connection with this allegation, the Tribunal would point out that it is suggested that the respondents were responsible for this. Whilst accepting that the respondents would have to take responsibility for the actions of their lawyers, it is perfectly clear from the relevant documentation that it was their solicitors who at all times were responding to the correspondence about this suggested setting aside of the Judgment. This is very clear from the documents which were included in the bundle at pages 131-134 inclusive. The Tribunal finds that the approach of the respondents, through their solicitors, was perfectly fair and reasonable. There were never any grounds for the Judgment to be set aside. The only entitlement was to a Certificate of Satisfaction to demonstrate that the money had been paid, and at all times the respondents through their solicitors indicated that they would make that confirmation available to Mr Broomhead if he wished to make an application for such a certificate on the part of the claimant.

Last Straw

133. The respondents' counsel referred to case law relating to the last straw doctrine. The claimant had relied upon two allegations as amounting to the last straw, and they related to the alleged failure on the part of the respondent to engage with

ACAS and the issue of the TUPE documentation to the claimant. It is obviously clear from the judgments of the Tribunal expressed above that neither of those issues, in the opinion of the Tribunal, amounted to a breach of contract, express or implied, and neither therefore could amount to a last straw. In those circumstances the Tribunal concluded that it would not have been obliged to look at the earlier allegations of breach of contract, but of course it was obliged to do so because they were not only put as breaches of contract which entitled the claimant ultimately to resign, but they were also put as eight individual allegations of victimisation. The Tribunal however found in respect of each of the named allegations that they did not amount to a breach of contract, either individually or cumulatively, and that neither did any of the eight allegations amount to allegations of victimisation.

134. The Tribunal would repeat, finally, that at no stage did the claimant ever attempt to lead evidence to demonstrate that there was a link between what he was complaining about and the single identified protected act. It remained in connection with each allegation nothing more than an allegation, a claim, a suggestion. In those circumstances the claimant failed on each occasion to meet the requirements of the burden of proof as set out above, both by reference to statute and well-established case law.

135. Finally, the respondents also argued that certain of the claims of the claimant were out of time. The Tribunal concluded that there was no last straw, as it has just set out above. In those circumstances the Tribunal found that allegations numbered 6, 7 and 8 in the Amended Schedule were in time, but that allegations 1, 2, 3, 4 and 5 were out of time. No application had been made by Mr Broomhead to extend time because it was just and equitable, and no representations had been made by Mr Broomhead on behalf of the claimant about any alleged prejudice if the Tribunal did indeed find that certain claims were out of time. No such representations whatsoever were received by the Tribunal on behalf of the claimant.

Employment Judge Whittaker

Date: 12th April 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

14 April 2021

FOR THE TRIBUNAL OFFICE