Case No. 1805583/2018

EMPLOYMENT TRIBUNALS

BETWEEN: Mx A Adams **and** Leeds Autism Services
Claimant **Respondent**

Heard at: Leeds

On: 16 to 18 and 23 to 26 November 2020
21 and 22 April 2021 (deliberations in chambers)

Before: Employment Judge Cox
Members: Mr R Webb
Mr J Rhodes

Representation:
Claimant: In person
Respondent: Mr Muirhead, consultant

RESERVED JUDGMENT

The claims fail and are dismissed.

REASONS

1. On 21 May 2018 the Claimant presented a claim against his former employer, Leeds Autism Services ("the Respondent"). The Respondent is a small charity with around 100 employees providing services for people

with autism in the Leeds area, including a residential home at which the Claimant worked as a support worker from 8 September 2015 until 15 May 2018. He was summarily dismissed on that date with a payment in lieu of notice.

The Claimant's disabilities

2. The Claimant states that he has autism, dyslexia and myalgic encephalomyelitis ("ME", otherwise known as chronic fatigue syndrome). From his appearance at the Hearing in November 2020 the Claimant manifested as having impaired mobility. During the course of the claim, the Respondent conceded that at the material time the Claimant met the definition of a disabled person under the Equality Act 2010 by virtue of each of the conditions of autism, dyslexia and ME. As explained in more detail below, during the Tribunal's case management of his claim the Claimant provided no medical evidence relating to any of his stated conditions, including any condition affecting his mobility, other than a GP's letter confirming that he has ME.

3. In spite of this, the Tribunal took account of the contents of the Equal Treatment Benchbook as they relate to each of the Claimant's stated disabilities when case managing the claim, both in terms of the description of the conditions and their effects and the possible adjustments that it might be reasonable for the Tribunal to make.

4. As the Benchbook acknowledges, the adjustments that are suitable depend on the circumstances of the case and consideration must be given to the needs of the particular individual. The Benchbook says that consideration "may need to include the impact on the other side in some cases". The Tribunal considers that it is always necessary to consider the impact of a potential adjustment on the other party. The Benchbook points out that the best source of information and advice on adjustments is the individual themselves.

5. In case managing the case, the Tribunal has borne in mind the following important principles:

    - The Tribunal's management of the Claimant's claim had to be based on the circumstances of his individual case, not on assumptions based on generalisations about his stated disabilities and their effects.

    - The Tribunal has a duty, so far as practicable, to ensure that the parties are on an equal footing and so must provide appropriate assistance to an unrepresented Claimant (see Rule 2 of its Rules of

Procedure). It is not, however, the Tribunal's role to represent or advise the Claimant.

- The Tribunal must make reasonable adjustments to enable a disabled Claimant to have a fair hearing of his claim. But the adjustments that are reasonable in all the circumstances must take into account that potential adjustments for a Claimant may be not be reasonable because they are unfair to the Respondent, in terms of amounting to an unfair impediment to its ability to defend the claim or an unfair cost in time and expense in doing so.

The procedural history

6. It is necessary to set out the extensive procedural background in order to put the case management decisions made before and during the Hearing into context. Some of these matters are also relevant to the issue of whether the Tribunal had jurisdiction to deal with his claims in terms of time limits. The Tribunal would not normally mention actions of the administrative staff, since these are not part of the judicial process of managing and adjudicating on a claim, but in this case it is necessary to mention them to a limited extent as they are relevant to give context to the matters that did fall within the Tribunal's area of responsibility.

7. In his claim form the Claimant alleged unfair dismissal and disability discrimination and applied for interim relief. The Claimant ticked the box at section 12.1 to indicate that he had a disability but in the box where he was asked to say what his disability was and what assistance, if any, he would need as his claim progressed through the system, he said: "I am unsure as to any assistance required at this time". In a document appended to the claim form the Claimant set out why he believed his dismissal was unfair. Broadly, he alleged that the reason for his dismissal was a protected disclosure that he had made when he contacted Leeds City Council about the health and safety of service users at the home. He also said that the decision to dismiss him was generally unfair. Towards the end of the third page of the document the Claimant stated that he had asked for the meeting that led to his dismissal to be concluded face-to-face as a reasonable adjustment for his disability, which he described as "ME and dyslexia". He made no mentioned of his autism. In the section for "Additional information" he stated: "Please note, have had difficulty providing the necessary information in the short time frame due to disability. There may be relevant details not included."

8. As required by Section 128 Employment Rights Act 1996 (ERA), the Tribunal had to decide the application for interim relief "as soon as practicable after receiving the application". It was listed to be heard on 13

June 2018. The Notice of Hearing, like every Notice of Hearing sent to the parties thereafter, included this text: "If you or anyone coming with you to the Hearing has a disability that makes coming to the Hearing or communicating difficult, please tell the Tribunal office dealing with your case as soon as possible. We will make reasonable adjustments to the way we deliver our service where we can."

9. On 22 May 2018 the Claimant wrote to the Tribunal asking it to take into account an offer of a settlement he had received from the Respondent, on the basis that it did "not fall within Section 111A of the ERA or under the 'without prejudice' principle, as they claim, as it relates to whistleblowing and I believe I can evidence 'unambiguous impropriety'".

10. On 7 June the Claimant wrote to the Tribunal asking for the Hearing to be postponed until he had had sight of the Respondent's response to his claim. It is necessary to set out a substantial extract from this email to illustrate the way in which the Claimant expresses himself in writing and his level of knowledge about the law and procedure:

> *The position is therefore that the Respondent is in receipt of my claim details in the ET1 form but I have not had sight of the ET3 form. My concerns is that this places us on an unequal footing as the Respondent will have the opportunity to prepare their response to my key points prior to the hearing but I will not be able to do likewise.*
>
> *I therefore request that the hearing is rescheduled to allow for me to receive the ET3 form prior to the interim relief hearing. I am requesting this in line with the Tribunal's overriding objective to ensure that the parties are on an equal footing. The ET3 response Is due one week after the date currently set for the interim relief hearing, Therefore I would submit that a delay may be reasonably practicable.*
>
> *In weighing this issue I request that you consider how it may impact two other aspects where the Respondent and I are, unavoidably, on an unequal footing. Firstly, I will have to represent myself due to not being able to afford a lawyer (having just lost my job), whereas the Respondent has legal representation. Not having had sight of the ET3 form may mean I have no understanding of the key legal principles relied upon by the Respondent. I therefore would not be able to adequately represent my case. I understand that the tribunal will allow leeway to litigants in person but this would not make up for a complete absence of relevant legal knowledge. However, I would suggest that having the same opportunity as the Respondent*

to understand the key legal issues raised against my case and prepare accordingly is likely to significantly mitigate this inequality.

Secondly, I have disabilities which can affect cognitive processing (M.E., Autism and Dyslexia – I will be providing evidence of this for the hearing but can email it to you now if needed). These difficulties can be exacerbated by stressful circumstances such as representing myself at the hearing. Therefore my ability to represent my case may be materially impaired. I would suggest that having the same opportunity as the Respondent to understand the key legal issues and prepare accordingly is likely to significantly mitigate this inequality.

11. The Tribunal refused the application for a postponement. It explained what would happen at the interim relief Hearing and confirmed that no special circumstances existed justifying the postponement of the Hearing. Such applications had to be heard as soon as practicable, which was often before a response had been received. The Tribunal would ensure that the Claimant was on an equal footing and would take his disabilities into account.

12. On 13 June at 10.11 the Claimant emailed the Tribunal with a further application for a postponement of the Hearing. He said he had experienced an increase in his ME symptoms the previous week and had not slept the previous night, which had had a severe and sudden impact on his ME symptoms. This was affecting his memory and his ability to concentrate and process information. He also said: "I can provide you with evidence of disability straight away and can provide a letter covering my health today from my GP or from the ME clinic if you need more specific details." Although the application was clear and lengthy, the Claimant said: "I can't really process what I need to say."

13. The Tribunal refused the application for a postponement. It was satisfied that it could assess from the detailed claim form whether the Claimant had a "pretty good chance" of succeeding in establishing that the reason for his dismissal was a protected disclosure. It concluded that he did not, for reasons it set out in writing and sent to the parties on 14 June. In summary, it was satisfied that the documents the Respondent produced indicated that the occupational health referral, which the Claimant said made allegations about his competency and conduct and began the dismissal process, pre-dated the alleged protected disclosure to Leeds City Council and that the Respondent had a broad range of concerns about the Claimant's behaviour, many of which pre-dated that alleged disclosure.

14. In the Order the Tribunal made after that Hearing, it required the Claimant to provide the full details of his complaint, mentioned in his claim form, by 4 July. The Tribunal said it would not expect these to be more than 5 or 6 pages long. He was required to specify the disabilities he said led to the disability discrimination, what the effect of those disabilities was on his day-to-day activities, what type of discrimination he was complaining about and what the alleged acts of discrimination were, that is, what happened and when. He was also required to provide the Tribunal with any reasonable adjustments that he would require at the Preliminary Hearing for case management that was now to be held.

15. At 0.01 on 29 June, just after the expiry of the 14-day time limit for a reconsideration application, the Claimant made a detailed application for the Tribunal to reconsider its decision not to postpone the Hearing of the interim relief application and its decision on the application itself. He cited the Tribunal's Rules of Procedure and case law on postponements. He asked for a Hearing to deal with his reconsideration application. He submitted a GP's letter. This confirmed that he had a diagnosis of ME and said: "The consequences of this are variable symptoms which can be aggravated at times of stress, but these include significant fatigue and malaise. It can also impact on the ability to focus and concentrate on a task in hand. Unfortunately, Andi had a flare-up of [his] symptoms around 13th June resulting in the inability to attend for the hearing." The application for reconsideration was refused. The Tribunal confirmed that it was not proportionate or consistent with the overriding objective to re-visit the issue of interim relief, which the Tribunal had been able to deal with fairly on the material before it.

16. At 00.00 between 4 and 5 July the Claimant emailed the Tribunal attaching various documents totalling 45 pages. He said that he had remained unwell until the end of June and because of his ME and dyslexia and the need to apply for reconsideration he had not had enough time to complete the task of detailing his claim. He said he would send the completed document shortly.

17. On 16 August, in response to a letter from the Tribunal of 2 August requiring him to provide the finalised details without further delay, the Claimant wrote again saying that he would be able to provide the completed information "relatively soon". He said that the "inherently stressful nature of this task significantly affects my abilities to complete the task efficiently."

18. At the Preliminary Hearing on 16 August the Claimant said that he needed no adjustments for the purposes of the Hearing but he might need to repeat things and might need more time to absorb matters. He said he

had not complied with the Order to provide details of his claim because the exertion caused in doing so had made him very unwell. He said he had not told the Tribunal about his ill health because he believed it might go against him. He did not explain why he believed that. Nevertheless, the Employment Judge extended his time for complying with the Order to provide details to 27 September. That substantial extension was given on the basis that the Claimant would by then know whether his trade union would assist him with the claim. He was also ordered to provide more details of the alleged protected disclosure. At the end of his Orders, the Judge stated that "for the avoidance of doubt, the Claimant has not been given leave to amend his Claim Form." A further Preliminary Hearing was listed for 5 October.

19. The Claimant having failed to provide the details ordered by 27 September, on 1 October the Respondent applied for an Unless Order that he be required to provide the details or his claim would be struck out. It stated: "The Claimant does not appear to appreciate that his delays and failure to advance his case put the Respondent charity to unnecessary additional time and expense."

20. On 3 October the Claimant emailed the Tribunal to say that he should be able to send the details "soon".

21. The Respondent applied for the Preliminary Hearing to be postponed as the Claimant still had not provided his details. In his response to that application, the Claimant stated that the Judge at the 16 August Preliminary Hearing had initially accommodated the Claimant's need for legal representation due to his disability and then removed that adjustment to accommodate a number of pre-booked holidays of other parties. He said that when he had explained to the Judge that he had found some of his experiences with the Tribunal to be "problematic on the basis of disability", the Judge's response had been to dismiss his concerns with these words: "The Tribunal knows how to deal with people like you." The Judge did not tell him how he might get his concerns addressed. "Please could you now tell me how I might raise these concerns." He went on: "The Respondent has requested I be ordered to produce the requested details. As per my previous email I am in the process of completing the information but am finding it difficult for reasons associated with disability. Giving me an order will not help me circumvent these difficulties. I would anticipate that the information will be completed soon."

22. On 4 October the Tribunal postponed the Preliminary Hearing and asked the Claimant to provide any further comments he wanted to make on the application for an Unless Order by 8 October. The Regional Employment Judge (REJ) also wrote to the Claimant explaining that the Tribunal is

experienced in making reasonable adjustments for disabled parties. He asked the Claimant to set out what adjustments he was asking the Tribunal to make and how they would assist him to participate in the proceedings. He extended time for the Claimant to reply to the Tribunal's letters to 15 October.

23. The Claimant having failed to respond by 15 October, the Tribunal wrote to him again on 31 October asking him to reply by 13 November.

24. On 15 November, nothing having been heard from the Claimant, the Tribunal wrote to him saying that it was considering striking out his claim because he had not complied with the Orders to provide further details and his claim was not being actively pursued. He was required to provide any objections by 27 November 2018.

25. On 26 November the Claimant emailed the Tribunal saying he wanted a Hearing on the strike out proposal. He said he had been waiting for a new date to provide his details but nothing had been forthcoming. He repeated his complaint about the Judge's alleged comment at the 16 August Preliminary Hearing and said he wanted to make a formal complaint. He asked for details of the Tribunal's complaints procedure and policies on equality and reasonable adjustments for disability. He said that "due to this inappropriate response and my other concerns that weren't addressed I now have very little faith in the Tribunal." He mentioned that he had started to lose sensation in his feet and was experiencing chronic and acute pain. He did not say when he was going to provide details of his claim.

26. On 28 November the REJ wrote the Claimant a detailed letter setting out the history of the claim and emphasising that "Whilst the Tribunal can, and will, make reasonable adjustments in its procedure, the interests of justice require also that the Respondent knows what case it is being asked to meet and that undue delay which may prejudice a fair trial is avoided, and the Tribunal must balance up the interests and needs of both parties." He directed that the further details of his claim must be provided by 20 December. Any application for an extension of time would need to be supported by medical evidence if the reason was medical or disability-related. The letter went on to say that if the Claimant "was asking the Tribunal to make reasonable adjustments in its procedures, or at any hearing, to accommodate his disability, he must provide details of the adjustments requested and support them with medical evidence as to the need for the adjustments and how they will assist you to participate in the proceedings." The REJ refused the Respondent's application for an Unless Order and did not pursue the strike out warning. He listed the claim

for a further Preliminary Hearing for case management at 10am on 24 January 2019.

27. The REJ dealt separately with the Claimant's complaint about the alleged comment by the Judge at the Preliminary Hearing.

28. The Claimant did not provide details of his claim by 20 December. The Tribunal therefore directed that the Preliminary Hearing at 10am on 24 January 2019 would also consider whether the claim should be struck out because of the Claimant's failure to comply with case management Orders.

29. At 11.15am on 24 January, the Claimant sent the Tribunal a document 18 pages long. The first 8 pages were single-line spaced and in very small font size, so that the document ran to over 25 pages, and possible longer, in normal print. This document did not give the details ordered by the Tribunal. It was no closer to clarifying the Claimant's case than the original lengthy document he sent in on 5 July, six months before, which he had stated at that time to be incomplete. He did not give details of the reasonable adjustments he needed.

30. The Judge dealing with the claim at the Preliminary Hearing nevertheless decided not to strike out the claim. She gave the reasons for that to the parties but did not put them in writing. She spent the best part of a day going through the claim form and the document the Claimant had submitted on 5 July 2018 with the Claimant, identified the details herself in discussion with him and set them out in a case management summary. She appears to have assumed in the Claimant's favour that the document of 5 July 2018 was further particulars of the existing claim rather than an application to amend it, even though the original claim mentioned only the dismissal and the meeting that led to it and the document of 5 July raised many other matters stretching back over most of the period of the Claimant's employment.

31. The Employment Judge identified the claims as follows: unfair dismissal under the general test of reasonableness in Section 98(4) ERA; automatically unfair dismissal by reason of a protected disclosure contrary to Section 103A ERA; detriments on the grounds of protected disclosures contrary to Section 47B ERA; failure to meet the duty to make reasonable adjustments in Section 20 of the Equality Act 2010 (EqA); discrimination arising from disability, as defined in Section 15 EqA; and indirect disability discrimination, as defined in Section 19 EqA. The parties were required to give full details by 7 February if they thought the case management summary was inaccurate or incomplete in any important way. The Judge

noted that the Claimant had dyslexia, ME and autism and may require reasonable adjustments.

32. On 7 February 2019 the Claimant sent in a document setting out many things he said he wanted to "correct". He said that this document was not complete. The document included four pages of allegations of victimisation and harassment as defined in Sections 26 and 27 EqA and complaints of detriment on health and safety grounds contrary to Section 44 ERA.

33. On 11 February the Claimant submitted another document, "suggested amendments for case management summary", which was presumably intended to be the final document. He said he wanted to re-label and/or add a label to some of the issues previously raised, and he set out a further six pages of detail.

34. At the next Preliminary Hearing on 12 March 2019, conducted by the same Employment Judge, the Tribunal gave the Claimant leave to add claims of health and safety detriment, victimisation and harassment. She also amended the claims as recorded in the previous Order in various respects. The Order does not record whether these amendments to the record amounted to amendments to the claim. The reasons for the Judge's decision were given to the parties at the Hearing but not put in writing. She set out the changes in a case management summary. She made orders for disclosure of documents by 16 May and exchange of witness statements by 13 June 2019. The claim was to be heard on 22 to 26 July.

35. In summary, the Tribunal spent a day-and-a-half of Hearing time helping the Claimant to clarify his claim and confirming it in writing, he having failed to complete that task himself, even though repeatedly ordered in clear terms to do so and given a substantial length of time to complete the task. The Tribunal gave the Claimant an opportunity to check the accuracy of its record of his claim and allowed him to amend it by adding further allegations. (At the main Hearing of the claim, the Claimant said that the Judge had conducted this exercise "on the fly". He wanted the issues to be narrowed down. When the Tribunal asked him whether he wished to simplify and focus his allegations, he said he did not. He said that the Judge's record was not his claim. He did not identify in what way it was not his claim.)

36. The claim was listed for a judicial mediation. The Claimant was ordered to provide the Respondent with a statement of his expectations from the mediation by 2 April. He did not do so. The Tribunal wrote to the Claimant on 16 April and asked him whether he wanted to take part in the mediation

and to provide his statement as soon as possible if he had not done so. On 19 April the Claimant said that he had not seen the email attaching the Orders. He added that he had "recently been told I have Cerebral Palsy and am currently awaiting for a neurological consultation. I have attached a copy of my most recent fit note, NB this was provided prior to the appointment when I found out about the Cerebral Palsy." The Med3 form annexed to the email stated that the Claimant was unfit for work for 3 months due to "foot pain under investigation/difficulty mobilising/ME". At the main Hearing the Claimant confirmed that he has never in fact received a diagnosis of cerebral palsy.

37. The judicial mediation was unsuccessful.

38. The parties entered into extensive correspondence about disclosure of documents, most if not all of which was copied to the Tribunal. The Claimant failed to disclose any documents to the Respondent. He had extensive queries about the Respondent's disclosure. The Respondent responded to those queries promptly. On 16 June the Respondent applied for the claim to be struck out on the ground that, amongst other things, the Claimant had failed to comply with the Tribunal's Orders. On 1 July the Claimant wrote complaining about the Respondent's failure to comply with its disclosure obligations and saying: "Please note that my full disclosure to the Respondent will be provided before the start of the working day tomorrow." He said that the Respondent had "knowingly behaved in a manner that they were aware was likely to cause the Claimant severe difficulty with complying with the case order due to his disabilities".

39. The Claimant was directed to respond to the Respondent's application for a strike out by 4pm on 4 July.

40. On 3 July the Claimant sent the Tribunal a 13-page document setting out the issues he had with the Respondent's disclosure. He said he had not disclosed the very small number of documents he had that were relevant because the Respondent had insisted that he should disclose all his documents at once. Since he contested the accuracy of the copy of various documents the Respondent had supplied in its disclosure, he "saw no alternative" but to provide the Respondent with copies of documents they both held, involving many hundreds of pages. This had delayed his disclosure.

41. The REJ directed that the Respondent's application for a strike out could not be dealt with without a Hearing and there was now insufficient time to hold one before the full Hearing began. The application would therefore be dealt with at the beginning of that Hearing. The parties were directed to

concentrate on preparing for the Hearing and not to make further applications before then.

42. On 11 July the Claimant sent the Tribunal a 10-page document seeking further and better particulars of the Respondent's reasons for dismissing him and specifying "key documents" that they had not disclosed. On 17 July the Tribunal directed that this application would be dealt with at the beginning of the main Hearing.

43. On 18 July, the Claimant sent the Tribunal an email in which he stated: "as a reasonable adjustment for disability I may need to sit on the floor for much of the hearing as I find it painful to stay seated in a chair for even short periods of time. . . If there is a reasonably comfortable chair available that would be helpful. However, I would still need to sit on the floor for the majority of the time so if such a chair is not available this is not too problematic. Also, I would need an appropriate space to sit on the floor – ie where I can see everyone and I am not in anyone's way." The Claimant did not specify the disability for which this requested change was a reasonable adjustment nor did he provide any medical evidence to support his request.

44. At 8.47 on 22 July, due to be the first day of the main Hearing, the Claimant emailed to say he was too unwell to represent himself. He was having cognitive difficulties, and twitches and spasms. He said he could provide medical evidence of his disabilities. He had taken a video of himself explaining this to the Tribunal but it would take a few minutes to send. No video was received. He said he would not be able to get an appointment to be seen by his GP that day. He asked the Tribunal not to go ahead without him on that day. He would still be unwell the following day but he would be broadly functional. He did not ask for the Hearing to be postponed.

45. The Tribunal decided not to postpone the start of the Hearing. At 9.27 it wrote to the Claimant to notify him that it had decided to use the first day of the Hearing to read the parties' witness statement and other relevant documents and that it would not hear any oral evidence until the following day. It stated: "If the Claimant is unable to attend tomorrow, he must support any further application for a postponement with medical evidence." Before the Tribunal adjourned to complete its reading, the Respondent informed the Tribunal that the Claimant had not provided a witness statement. The Tribunal therefore wrote to him again and said: "The Tribunal decides cases on the basis of evidence. If you do not provide a witness statement, the Tribunal will have no evidence from you. If you intend to submit a witness statement, you should send it to the Respondent and the Tribunal immediately."

46. At 8.01 on 23 July, the Claimant wrote to the Tribunal to say that he had markedly improved but not sufficiently to represent himself. Although he was in the middle of another acute episode, “this is not as bad as yesterday and I anticipate attending tomorrow.” He attached documents relating to appointments he had had with a neurologist in July 2019 and a record of a prescription for Gabapentin, which he said was dated 22 July and was neuropathic pain medication. He said that he would not be able to get a GP appointment that day. He asked that the Hearing should not go ahead without him on that day. He did not ask for the entire Hearing to be postponed.

47. At the Hearing, the Tribunal decided not to postpone the Hearing but to limit it to deciding the parties’ outstanding applications. The Claimant’s application had been made in writing and was very detailed and he had given a clear written response to the Respondent’s strike out application. The Tribunal considered that it was possible to deal with the applications fairly without the Claimant being present at the Hearing.

48. The Respondent’s representative confirmed that the parties had agreed between them to exchange witness statements on 28 June. The Respondent had sent its statements to the Claimant on that date but he had not sent his to them. He had sent the Respondent an email on 17 July apologising for his lateness in providing a statement but did not say when it would be sent.

49. The Tribunal decided that the Claimant’s failure to disclose documents did not justify a strike out Judgment as a large majority of the relevant documents were in the possession of the Respondent. It did, however, consider it appropriate and necessary to make an Unless Order in relation to the Claimant’s witness statement. It ordered that, unless the Claimant provided his witness statement by 4pm on 27 August his claim would be automatically struck out.

50. The Tribunal refused the Claimant’s application for further and better particulars of the Respondent’s reasons for dismissing him, being satisfied that the Respondent has already provided sufficient detail of its reason for dismissing the Claimant to enable the Claimant to understand the Respondent’s case. In his application the Claimant was effectively asking for the Respondent to be ordered to answer questions that the Claimant would have the opportunity to put to the Respondent’s witnesses at the Hearing. After discussion of the Claimant’s application for disclosure with the Respondent, the Tribunal was satisfied that certain documents, set out in the Order, should be disclosed. The other documents sought by the

Claimant either did not exist or had already been disclosed and were included in the Hearing file.

51. The Tribunal then adjourned the Hearing to be completed on a future date. It did not consider it to be in the interests of justice to delay the start of oral evidence any further during the current listing, given that there was a good chance that the Claimant would maintain on the third day that he was still too unwell to attend, there was now no prospect of completing the Hearing in the time allotted and the Respondent had already been substantially inconvenienced by the delay in beginning the oral evidence. It ordered the Claimant to send the Tribunal medical evidence (in the form of a letter from his GP or other medical professional) on why he was unable to attend the Hearing on 22 and 23 July and whether and when he would be fit to attend a Hearing. The Claimant never provided this evidence.

52. The Orders were sent to the parties on 24 July 2019. They included full written reasons for the Tribunal's decisions. They also set out the Claimant's allegations in an Annex, in consolidated form and numbered lists, to assist the parties, and particularly the Claimant, to prepare for the Hearing. The allegations and issues had been set out in the Orders made on 24 January and 12 March 2019, but these ran to 16 pages and the Tribunal considered that a consolidated list of allegations would be more manageable for the Claimant and would also assist the Respondent and the Tribunal at the Hearing of the claim. Even in consolidated form, the allegations ran to four pages.

53. On the form on which he indicated his availability for a re-listed Hearing, the Claimant said: "due to disability attending for 5 days in a row would be incredibly difficult and would negatively affect my ability to participate effectively in the proceedings. If possible, having a day's break midweek would help to significantly mitigate this problem. I can provide a GP's letter or other medical evidence as needed. Please let me know what adjustment for disability might be possible and what medical evidence would be required." The Tribunal responded that it would take reasonable steps to accommodate the Claimant's request. The Hearing was re-listed for 3 to 5 and 9 to 12 December 2019.

54. At 15.59 on 27 August, one minute before the compliance date in the Unless Order, the Claimant sent the Tribunal and the Respondent his witness statement, which was 37 pages long. He said that the majority of information was included but it had not been possible to complete it because the Judge had said that his application for essential documents not disclosed by the Respondent would not be considered until the first day of the Hearing. The Claimant had in fact already been notified of the Tribunal's decision on his application for disclosure.

55. On 28 August the Respondent informed the Tribunal that the Claimant's witness statement could not be opened as it was in an inaccessible format.

56. On 28 August the Claimant wrote to the Tribunal stating that he had been unable to complete his witness statement because of "disability/lack of reasonable adjustments" as well as the Tribunal's failure to order disclosure. In his email he mentioned that he had great difficulty with structuring written work due to dyslexia and autism; he needed to avoid overexerting himself for prolonged periods as this could lead to extreme exhaustion and inability to remember and plan tasks. He needed to have the documents he was seeking before the Hearing so that he could spread his workload and avoid overexertion. He said he had obtained a GP letter on why he was unable to attend the hearing but it had left out most of the relevant information. He was in the process of sorting this out and would send it on. He said he would be able to provide additional relevant medical evidence after his appointment with the ME clinic came through. He also had a video of his breathing problems at the time plus photographic and video evidence of breathing problems and a fall several days prior. (None of this evidence was ever sent to the Tribunal.) He said that if the Tribunal could make adjustments for his disabilities it was highly unlikely he would become unwell during the Hearing. "This would mainly be to do with the disclosure and spreading the preparation out so that it's manageable for me. I have specified that I am not looking for any financial compensation so there is no great detriment to the Respondent."

57. On 16 September the Claimant sent another email saying why his claim should not be struck out. This was six pages long and consisted mainly of references to a recent Care Quality Commission report on the Respondent's service. He said he would send another email with attached documents relating to disability and disability-related absence. This was never received by the Tribunal.

58. On 18 September the Tribunal wrote to the parties confirming that the Claimant's witness statement was being treated as complying with the terms of the Unless Order. It reminded the Claimant that his disclosure application had already been decided. The Tribunal noted that the reasonable adjustment the Claimant was seeking was spreading out the preparation for the Hearing so that it was manageable and noted that the Claimant now had over two months to prepare for the Hearing.

59. On 18 September the Claimant wrote to the Tribunal saying that he had potential respiratory restriction which might be due to an underlying neurological issue affecting his respiratory muscles. He made reference to

the results of a lung function test which he had obtained at an appointment with his GP. He said he would be able to get this medical evidence to the Tribunal by the following day and would give further evidence on the results of his MRI scan for suspected cerebral palsy after his upcoming neurology appointment. This information was never received by the Tribunal.

60. In the event, the listed Hearing in December 2019 had to be postponed because of the unavailability of a member of the Tribunal due to medical reasons. The claim was re-listed for 23 and 24, 26 and 27 March and 30 and 31 March 2020.

61. By March 2020 the country was dealing with the COVID-19 pandemic and the Tribunal was having to adapt its hearing arrangements. On 17 March the Respondent applied for the Hearing to be postponed. Three of its witnesses were aged over 70 and therefore at increased risk from the virus. The Tribunal granted that application and directed that the Hearing be re-listed in the period from October to December, on the basis that it was hoped that the public health risks connected with holding a Hearing in person would have passed by then. At that time, there was no facility for Hearings to be conducted entirely by video link.

62. The parties were informed on 27 April that the Hearing would now be held on 16 to 18 and 23 to 26 November. Exceptionally, in the light of the substantial delay before the case could be heard, the Tribunal also offered the possibility of another attempt at judicial mediation and sent the parties a Notice of Hearing for a Preliminary Hearing by telephone to discuss this. The Claimant did not attend that Preliminary Hearing. He emailed the Tribunal on 15 June to complain that he had not seen the Notice of Hearing because it was one of three letters the Tribunal had sent to him in the same envelope. He had looked at the first letter (proposing the possibility of another mediation) and the third letter (the Notice of Hearing for the main Hearing) but not the middle one (the Notice of Hearing for the Preliminary Hearing). He complained that: “As a person with disabilities that affect my ability to process information this standard of communication is not fit for purpose.” This was addressed by the Tribunal’s administrative staff as a formal complaint.

63. The Claimant also asked the Tribunal not to reschedule the Preliminary Hearing immediately as he was awaiting a diagnosis for a possible neurological condition. This was originally thought to be cerebral palsy but his neurologist now thought it might be a form of leukodystrophy. He had progressive weakness in his legs and arms and was having to request an assessment for a wheelchair. He also asked whether “the Tribunal was supposed to have regard to the guidance in the ‘Equal Treatment

Benchbook' (February 2018, revised March 2020)?" The administrative response to the Claimant's complaint confirmed that the Tribunal did have regard to that guidance.

64. The Tribunal was aware by this stage that it had already made a number of adjustments to the Hearing arrangements at the Claimant's request, even though he had provided no medical evidence to support them. The dates of the main Hearing had on each occasion been scheduled to allow a break in the middle of the Hearing. The Tribunal would be accommodating the Claimant's need to sit on the floor to conduct his case. The Claimant had had the Hearing file and the Respondent's witness statements for well over a year, so he had had more than adequate time to prepare his case, even taking into account the effects of his ME and dyslexia. Nevertheless, mindful of the number of conditions that the Claimant had mentioned in various correspondence, the Tribunal wanted to discuss the arrangements for the Hearing with the parties to make sure that no further adjustments were needed. On 9 October the Tribunal sent the parties a Notice of Hearing for a Preliminary Hearing to discuss arrangements for the forthcoming Hearing.

65. Unfortunately, due to an administrative error, the Notice of Hearing was sent to the Claimant's original email address, not his new email address, which he had given the Tribunal in an email of 15 June 2020. In that email, the Claimant had stated that he did not have access to his previous email address. On 9 October, however, the Respondent wrote to the Tribunal, copying in the Claimant, acknowledging that the Tribunal had listed a Preliminary Hearing on 22 October to discuss arrangements for the November Hearing. It made an application for that Hearing to be re-listed because of the non-availability of its representative. It also gave its views about the desirability of the Hearing being conducted by video link. It asked for the Hearing to be conducted by video because three of its witnesses were medically vulnerable if infected by COVID-19 and its representative would need to travel down from Scotland to attend. The Claimant wrote to the Tribunal saying he would await the Tribunal's response to the application to postpone and would respond to "the matters regarding the full Hearing etc. in due course". Even if the Notice of Hearing had not reached the Claimant, therefore, he was aware that it had been listed and what its purpose was. He did not alert the Tribunal to the fact that he had not received the Notice of Hearing.

66. The Tribunal granted the Respondent's postponement request and sent the parties a new Notice of Hearing on 15 October, again to the incorrect email address for the Claimant. The Respondent wrote to the Tribunal on 16 October, copying in the Claimant, acknowledging that the Preliminary Hearing had been postponed and re-listed on 26 October.

67. The Claimant wrote to the Tribunal on 22 October and said that he had not received notice of the Preliminary Hearings on 22 and 26 October. He was unable to attend a Preliminary Hearing on 26 October as this clashed with an important medical appointment. He added that he would find it "difficult, if not impossible", to attend any rescheduled Preliminary Hearing as he was currently trying to avoid eviction. The Claimant again queried why the Tribunal had said it would not make a decision on whether to order disclosure of documents he sought from the Respondent until the main Hearing. He acknowledged that the Tribunal had in fact ordered some documents to be produced. He said he had been repeatedly left in the position where he did not have access to relevant documentation to make his case and obtain legal support. It was particularly difficult for him to attempt to represent himself because of disability. "Please now sort this out."

68. The Tribunal replied as follows:

> *The Preliminary Hearing on 26 October 2020 was to discuss the arrangements for the forthcoming resumed Hearing of the claim on 16 to 18 and 23 to 26 November. The Notice of Hearing was sent to the Claimant's old email address due to an administrative error, for which the Tribunal apologises. As the Claimant is not available to attend the Preliminary Hearing, it is cancelled.*
>
> *The Tribunal notes that the Claimant says he will not be able to attend any rescheduled Preliminary Hearing. The Tribunal will therefore need to make arrangements for the resumed Hearing without the opportunity to discuss these in person with the parties. If the parties have any reasonable adjustments they would want the Tribunal to make to the way in which the Hearing is conducted to take into account any disability they or their witnesses may have, they should put those in writing to the Tribunal* ***within the next 7 days****. If adjustments are sought, the party requesting them should specify the relevant disability and explain why the adjustment is needed. In the light of the circumstances surrounding COVID-19, the Tribunal needs, in particular, to decide whether the Hearing should be conducted wholly or in part by video link rather than in person. The parties should therefore indicate whether they and their witnesses would (a) be able to take part in a hearing conducted by a video link and (b) would need to take part by video link rather than attend in person for any reason. The Tribunal acknowledges the comments the Respondent has already made in its email of 9 October 2020.*

The Tribunal notes the Claimant's comments about disclosure of documents. It has nothing to add to the Order it made at the Hearing on 23 July 2019, a corrected version of which was sent to him on 21 August 2019.

69. On 29 October the Claimant telephoned the Tribunal office to complain about this letter. He said that he could not write in to put his complaint in writing because of his disability and that the Tribunal should make a note of it for him as an adjustment for his disability. The Claimant was in fact clearly able to express himself in writing and had been doing so, at length, throughout his conduct of the claim. The member of administrative staff to whom he spoke agreed to make a note of his complaint and spent the best part of an hour in doing so. He emailed the two-page draft to the Claimant for his corrections. The Tribunal did not receive the corrected draft from the Claimant.

70. On 28 October the Respondent wrote in with further details about why its witnesses and representative would prefer the Hearing to be conducted by video link. Two witnesses were in their 70s, one in his 60s. Another was living with her mother, who was presently shielding due to having severe chronic obstructive pulmonary disease, asthma and diabetes. The representative, also in his 60s, would need to travel from Edinburgh.

71. On 30 October, the Claimant wrote to the Tribunal with details of his reasonable adjustments for disability.

I have already provided the Tribunal with details of my disabilities and how they affect me so I trust I am not required to reiterate this. I need to have the following adjustments to the manner in which the hearing is conducted:
1) for the information I requested by way of disclosure to be provided
2) for the documents I requested by way of disclosure to be provided
3) for the information and documents to be provided in adequate time to allow me to complete a statement of my case which would allow me to get legal representation and properly set out the claims in my case
4) not to have to represent myself as this puts me at a substantial disadvantage due to disability
5) for the information and documents to be provided in adequate time to allow me to write a full and proper statement of my case
6) for judges not to ignore the contents of my correspondence
7) for judges not to obfuscate in response to my correspondence

8) not to conduct a substantial part or any main part of the Hearing via video link as I cannot manage to adequately process complete information in this manner due to dyslexia, autism and other neurological issues
9) a comfortable chair - I previously asked for this but the Tribunal did not respond
10) I will need to bring in floor cushions as I cannot sit for very long in a chair – I will need somewhere to store these if at all possible as it would be very difficult for me to bring them back and forth every day.

Also, please be advised that I cannot manage stairs.

I will provide full details of the above in another email. [This was never received.]

I am very disturbed by the manner in which Judges have treated me as a disabled person. My disabilities have repeatedly been treated as an inconvenience. The things I cannot manage to do due to disability are repeatedly characterised as failures. The reasonable adjustments I say I need are ignore and replaced with 'more time' to complete the task when time is not a sufficient adjustment – you wouldn't respond to a wheelchair user by providing them with 'more time' to climb the stairs. This treatment is degrading and dehumanising."

72. The Tribunal replied as follows:

In the light of the parties' various requirements, the Hearing will be conducted partly in person and partly by video link. The Respondent's representative and witnesses will take part by video link. The Claimant will attend in person. The Employment Judge will also attend in person. The other members of the Tribunal will take part by video link or in person.

In relation to the other adjustments requested by the Claimant, the Tribunal has already made decisions on his applications for disclosure of documents. The Tribunal is unable to provide representation for the Claimant but it will ensure that he has a fair opportunity to put his case. The Claimant asks for a "comfortable" chair to be provided but does not explain what he means by that and so the Tribunal is unable to respond to that request. The Claimant is free to leave his floor cushions overnight in the hearing room.

73. On 5 November England entered a national lockdown to reduce the infection rate of COVID-19.

74. On 10 November the Claimant wrote to object to the Tribunal's decision on the way in which the Hearing would be conducted. He characterised the situation as being that only one of the Respondent's witnesses needed to shield, for all the others involved on the Respondent's side a video hearing was a preference only. The Judge had therefore placed the preference of non-disabled people over the disability needs of a disabled person, he said. He went on: "The only solution I can see is for the Tribunal to postpone the full hearing and order the disclosure of relevant documents and information. I would suggest that we use some of the time scheduled for the full hearing for case management. I am currently still setting out my formal legal argument as to why this is currently the only appropriate course of action – you will have this by tomorrow."

75. On 11 November, the Claimant wrote to the Tribunal asking whether Tribunal Judges need to have regard to the guidance set out in the Equal Treatment Benchbook. He also asked whether there was there any guidance on the considerations that Tribunal Judges need to take into account when considering how remote hearings may disadvantage disabled people and, if there is, could the Claimant be provided with a copy. The Tribunal confirmed that it did have regard to the Benchbook and provided the Claimant with a link to the guidance produced by the Equal Treatment Benchbook Committee on "Good practice for remote hearings". Since the Claimant had already been told that the Equal Treatment Benchbook was taken into account and in the light of the terms of his query about guidance on remote hearings, it is apparent that he was already aware of the answer to the questions he was asking.

76. On Thursday 12 November the Claimant wrote with an application for the decision that the Hearing be held partly by video to be reconsidered. He attached two documents, one setting out his objections to a video hearing, which he said he could not conduct in that format because of his disabilities. He also said that he was in a clinically vulnerable group due to a chronic neurological condition and hypothyroidism. The other document set out a detailed analysis of the application of six different sets of Government guidance on COVID-19 to the Respondent's stated reasons for avoiding an in-person Hearing, showing how they were not substantiated.

77. The Tribunal refused the Claimant's application for the Hearing to be postponed. His application relating to the format for the Hearing would be considered at a Preliminary Hearing for case management, to be conducted in person by the Judge sitting alone, on the first morning of the

listed Hearing on Monday 16 November, with the Respondent's representative attending by video link.

78. On 16 November, the Claimant did not attend at 10am, the start time for the Hearing. He had telephoned the Tribunal that morning saying that he was arriving by taxi and needed help carrying his bags. He arrived at 10.20am and was using crutches.

79. The Employment Judge discussed with the Claimant why he felt unable to manage a hearing by video link. He considered that he was being asked to do something he found difficult simply for what he characterised as the Respondent's "convenience". He said that he could not process what people were saying on a video link. Having heard the Respondent's representative through the link, he said the sound quality was also "abysmal" and that he could not focus on what was being said for that reason also. The Respondent's representative pointed out that the risk of transmission in the Leeds area was currently high. The risk would be heightened in the context of a Hearing, where people are speaking a lot and in a confined space. Those from the Respondent's side who were over 60 were in a clinically vulnerable group. He himself would need to travel from Edinburgh and was not sure that he could secure accommodation in the Leeds area. It was not the case that a disabled person's needs necessarily overrode the needs of everyone else.

80. The Tribunal asked the Claimant whether he felt he could participate fairly if one member of the Tribunal, who is medically vulnerable, did not attend in person. His response was that he did not understand why he had to risk his health (presumably, by attending a hearing in person) when others did not. If he could not communicate with one panel member he could not have a fair hearing. He had already suffered a lot of prejudice from the Tribunal; he said that it was "beyond ridiculous" what he had suffered.

81. Even in the absence of medical evidence, the Tribunal was prepared to assume in the Claimant's favour that, because of his autism, he found interaction with the Respondent's representative and witnesses via a video screen difficult. The Tribunal decided that, having regard to the Presidential Guidance on remote hearings and the Equal Treatment Benchbook's guidance on good practice for remote hearings, the Hearing would be reconvened in person, starting on the following day. One member of the panel would, however, still join by video link, since, due to medical issues, he was clinically vulnerable and it was not safe for him to attend in person and the Claimant's direct interaction with him was likely to be very limited. If necessary, that panel member's questions could be relayed to the Claimant by another panel member who was attending in person.

82. The Claimant mentioned at the end of the Preliminary Hearing that he had come to the Tribunal in a taxi because he had mobility issues and the taxi had not been able to find a place close to the Tribunal entrance to park. He also needed to be closer to a toilet. The Tribunal agreed to see whether the Hearing could be held in a room closer to the toilets but still large enough safety to accommodate everyone who was now needing to attend. The Claimant had extensive papers with him but told the Tribunal he did not have copies of the witness statements. He could not access his computer, he said, because it had a virus. The administrative staff photocopied the witness statements for him. After the Hearing, a member of the Tribunal's administrative staff telephoned a taxi for the Claimant to travel home and helped him to the taxi.

83. The following day, Tuesday 17 November, the Hearing was reconvened in a room closer to the toilets.

84. The Claimant conducted his case seated on the floor. He complained that he was having difficulty with accessing the building by taxi. He asked whether the Tribunal was aware of the public sector equality duty. He said that the Tribunal needed to help him to get home. He again complained about the Respondent's failure to disclose documents. (The Tribunal explored whether another Hearing centre with easier access for a taxi could be used. The only other venue that was available did not have a room big enough safely to accommodate all those who needed to attend, given that the Claimant would be conducting his case from the floor and so occupying more space than if sitting at a desk.)

85. The Tribunal discussed the draft timetable for the Hearing that the Respondent's representative had submitted. It had copied this to the Claimant for his comments but he had made none. The Tribunal emphasised the importance of keeping within the time estimate for the Hearing, given the substantial delay there had already been. The Claimant had confirmed that he was not seeking any form of monetary compensation if his claim were to succeed. The Tribunal was also mindful of the fact that the terms of any recommendation that the Claimant might seek in relation to his allegations of discrimination would depend upon which, if any, of those allegations were upheld. The Tribunal therefore decided that the Hearing should deal with liability only. The Tribunal told the Claimant that he could organise his time for cross-examination of the Respondent's witnesses as he thought fit, but he needed to bear in mind the total time available to complete the evidence.

86. The Respondent's representative reported that one of its witnesses, Mr Tully, had COVID-19 symptoms and expected his test results by 18

November. Another witness, Mr Hughes, had to be at home with his daughter, because she was self-isolating after contact with an infected pupil at her school. His wife was off work on 24 November and so he could attend on that day. Another witness, Mr Thomson, had been advised by his GP not to attend the Hearing because he was in an extremely vulnerable category. The Claimant agreed to him giving evidence by video link and that he would identify the questions he needed to ask him so that his evidence could be as short as practicable. Mr Thomson is a trustee of the Respondent and had dealt with one of the Claimant's grievances. The Tribunal asked the Respondent to consider whether Mr Thomson's evidence was relevant to the issues in the claim in any event.

87. The Respondent's draft timetable for the Hearing indicated that the Claimant would be giving evidence first. Although he had not previously commented on the draft, the Claimant now said that he was not prepared to give his evidence first. He said that he could not say what his claim was about until he heard what the reason for his dismissal was. (A substantial number of his complaints were unrelated to his dismissal.) He said it was a reasonable adjustment for his disability for him not to give evidence first because his health was deteriorating. The Tribunal decided that it was necessary for a fair hearing for the Claimant to give evidence first. He had already said that his witness statement was incomplete and he may want to give further evidence, albeit that he would need the Tribunal's leave to do so. Further, his allegations were still not entirely clear. It was the Claimant's claim. The Respondent needed to know the case that it had to answer.

88. The Claimant maintained his refusal to give evidence first and refused to affirm the truth of his witness statement. The Tribunal decided to treat his statement as his evidence and give the weight to it that it considered fit. The Respondent did not object to this course of action, even though it meant, as the Respondent acknowledged, that it could not cross-examine the Claimant on his evidence.

89. The Claimant then said he was not ready to cross-examine the Respondent's first witness, Miss Hussain. The Claimant was unable to explain why that was the case when he had had her witness statement for 17 months. The Tribunal decided to adjourn early for lunch, to allow the Claimant to consider what questions he wanted to put to Miss Hussain. The Claimant did not have a copy of Miss Hussain's witness statement with him so the Tribunal's administrative staff photocopied this for him again.

90. After the lunch break, the Tribunal administrative staff spent time arranging the furniture in such a way that the Claimant had unimpeded

sight of the witness, the Tribunal panel in the room and the Tribunal member joining by video link and enough room on the floor to arrange his papers.

91. The Claimant had a list of detailed questions for Miss Hussain and was able to refer her to the relevant page numbers in the Hearing file. The questions were, however, repetitive. At the mid-afternoon adjournment, and twice during the Claimant's cross-examination of Miss Hussain the Tribunal reminded the Claimant of the need to manage the time available. He needed to address the allegations to which this witness's evidence was relevant. The Claimant commented at about 4pm that his brain power was flagging. The Tribunal asked whether either party wanted a break but the Claimant and Miss Hussain agreed that the cross-examination should continue.

92. At 4.45pm the Hearing was adjourned with Miss Hussain's cross-examination not yet complete. By this time the Respondent's representative had been told that Mr Tully's test result might not be available as soon as expected and that he would need to give evidence the following week. The Tribunal decided to re-order the timing of the Respondent's witnesses so that the following day the Tribunal would hear the rest of Miss Hussain's evidence and that of Mrs Jordan and Mr Cant.

93. At 9.24 on Wednesday 18 November the Claimant emailed the Tribunal asking for the Hearing to be postponed until the following listed day, which was Monday 23 November. He was feeling dizzy and nauseous and having difficulty concentrating, to the point where he was finding it difficult to type out his email. He said that this was probably because of the effect of overexertion on his neurological condition. He said he had found it hard to order what he was asking and to think on his feet because he was exhausted. He went on:

> *This is also an issue with my Autism because of difficulties with executive functioning and transitioning between tasks particularly when exhausted but also due to information overload and sensory overload of having to deal with a complex unfamiliar process and unfamiliar people in a busy environment. The scheduled break day would give me time to plan my cross examination in more detail – I did previously have notes but I didn't really understand what was required until I actually went through the process. Also, I can see from your comments yesterday that I did not have an adequate understanding of what type of evidence each witness was in a position to give. If I can use this time to make a more detailed plan for cross examination that actually fits what the process requires*

and the type of evidence the Tribunal needs then I should be able to follow this even if I become unwell due to exertion again.

94. The Respondent resisted the Claimant's application for the Hearing to be adjourned until the following Monday and made its own application for the claim to be struck out because the Claimant was conducting the claim unreasonably and it was not being actively pursued.

95. The Tribunal granted the Claimant's application and refused the Respondent's application and confirmed this in writing to the parties as follows:

The Claimant's application was considered by the full Tribunal, having heard representations from the Respondent. In reaching its decision, the Tribunal noted that the Claimant relied upon a similar condition as a basis for their non-attendance at the Hearing on 22 and 23 July 2019. It also noted that the Claimant based their application in part on their need for more time to prepare their questions for the Respondent's witnesses, even though the Claimant has had those witness statements for over a year. The Tribunal was prepared, however, on this occasion to accept that the Claimant's condition is as they describe it, given that it is not practicable for them to supply medical evidence to confirm it, given its likely transient nature. Further, the Respondent has confirmed that the number of witnesses who will be giving oral evidence on its behalf has been reduced: the Respondent will be submitting witness statements only from Mr Thomson and Mr Shepherd and asking the Tribunal to give what weight it considers appropriate to those statements. It is therefore practicable for the Tribunal to hear the remaining evidence within the time already set aside for the Hearing, even taking into account the possibility that the Claimant may need further time to rest. The Tribunal therefore decided to grant the Claimant's application for the Hearing to be adjourned and reconvened on the next listed day, which is Monday 23 November.

The Respondent has now confirmed that Mr Tully is able to give evidence and has been able to arrange with his new employer to have time off to attend the Tribunal to give evidence on 26 November. The Tribunal therefore intends to hear from the Respondent's witnesses in this order:

Monday 23 November: Miss Hussain and Mrs Jordan. Given that the Claimant has already begun their cross-examination of Miss Hussain and Mrs Jordan's evidence is mainly relevant only to reasonable adjustments numbers 13 and 15 in the list of

allegations, this could be a relatively short hearing day if the Claimant focuses their questions, as they have said they plan to do.

Tuesday 24 November: Mr Hughes

Wednesday 25 November: Mr Cant. The Tribunal proposes to begin the Hearing at 2pm to allow the Claimant time to recover from cross-examination of Mr Hughes, if they need it. Mr Cant's evidence could be heard in a relatively short time as it is mainly relevant only to detriment number 5 in the list of allegations.

Thursday 26 November: Mr Tully.

For the Claimant's information, at the hearing of the Claimant's application, the Respondent made its own application that the claim should be struck out because the Claimant was conducting the claim unreasonably and/or because they were not actively pursuing their claim. The Tribunal refused that application because the Claimant had not had the opportunity to respond to it. In any event, the Tribunal did not accept that the Claimant was not actively pursuing their claim. Further, for the reasons set out above, the Tribunal was prepared on this occasion to grant the Claimant's application for the Hearing to be adjourned. Even if the Tribunal had decided that that Claimant's application was without merit, it would not have accepted that it was appropriate to strike out the claim when there was still time to complete the hearing of evidence in the time already allotted for the Hearing.

96. The Respondent had confirmed at the Hearing that it no longer intended to present oral evidence from Mr Shepherd, who dealt with the Claimant's appeal against dismissal, or Mr Thomson. It would, however, be asking the Tribunal to accept Mr Thomson's witness statement in evidence and give it the weight it considered appropriate.

97. At the beginning of the Hearing on Monday 23 November the Claimant said he felt nauseous. He said that it was difficult to prepare his case and that he was preparing "on the fly". He could not prepare when the Tribunal had refused to order disclosure of documents "for no good reason". The Tribunal should have narrowed the issues before now. He did not say how the Tribunal could achieve that, given the extensive number of allegations he was making.

98. The Claimant continued to cross-examine Miss Hussain. His questions were detailed but repetitious. At the mid-morning adjournment, the Judge suggested to the Claimant that he use the break to identify a final 10

minutes of questions for the witness. He asked for longer. The Judge reminded the Claimant again of the need for him to manage his time. He needed to bear in mind that there was another witness whose evidence was due to be completed that day. The Claimant was resistant to the Tribunal's guidance and continued to cross-examine the witness for the rest of the day. The Tribunal reminded the Claimant on numerous occasions that he needed to manage his time. In particular, he was reminded of the need to put to Miss Hussain what unlawful acts he alleged she had done. The Tribunal offered to do this for him, but he declined the Tribunal's assistance. At one point, the Claimant commented: "I really needed to narrow all this down before I came in." In order to save him time, the Tribunal reminded the Claimant that he could assume that the Tribunal had read the witness statements and the documents referred to in them. He responded that he did not trust the Tribunal. His cross-examination of Miss Hussain came to an end at 4.35pm. The Tribunal decided to address in due course how Mrs Jordan's evidence was to be heard but that it was now necessary to give the Claimant a fixed timetable for future witnesses, it being clear that he was not willing to accept the Tribunal's guidance.

99. At the end of the Hearing at around 4.40pm, the Claimant said that he was exhausted and could not manage this length of Hearing day. He had not been able to whittle down his questions because he had not had disclosure of documents and information. The Tribunal twice asked him how, in his view, the Tribunal could proceed with the Hearing fairly. He did not answer. The Tribunal decided to reconvene the following day at 12 noon rather than 10am to give the Claimant a chance to recover. Mr Hughes would be the sole witness that day.

100. By 12noon on Tuesday 24 November the Claimant had not yet arrived. He had informed the administrative staff that he was on his way. He eventually arrived at 12.25pm. The Tribunal allowed him 10 minutes to do stretching exercises on the floor. The Hearing began but the Claimant said that he could not concentrate on what was being said. He asked the Tribunal for a minute to recover and the Tribunal gave him permission to lie down to do so. At 12.45pm the Hearing resumed. Mr Hughes affirmed the truth of his witness statement. The Claimant then asked for more time to recover. The Tribunal adjourned the Hearing to 1.50pm to allow him to do so.

101. At 1.50pm the Claimant said he felt acutely unwell due to exhaustion. He said his witness statement was incomplete. He refused the Tribunal's offer to ask its questions of the witness first. Eventually, he made an application for the whole Hearing to be postponed because he was too unwell to represent himself. He said that the Respondent needed

to provide documents and things needed to be narrowed down. He said he needed adjustments for his disabilities of ME and his neurological condition. He said this was originally thought to be cerebral palsy but was now thought to be adrenomyeloneuropathy. This gave him pain and affected his thoughts. He would like to narrow the claim down but needed his own legal representation to do so. The Tribunal offered to discuss the focusing of his claim with him but he said he would not feel comfortable with relying on the Tribunal's assistance to do this. He then said he would be able to narrow the issues if he had documents or clarification from the Respondent.

102. The Respondent objected to the application. The claim had now been running for 2-and-a-half years. The Claimant had been given a draft timetable by the Respondent well in advance of the Hearing and he had not commented on it. He had never asked for a day's rest after each day's Hearing. The Respondent began to talk about the availability of Mr Hughes, who was caring for his school-age daughter who was self-isolating, but the Claimant interrupted to protest that the Tribunal was being asked to compare Mr Hughes's childcare needs with the Claimant's disability needs. He said his condition had been exacerbated because of the problems with accessing the Tribunal building. This should have been addressed in advance, he said, because he had made clear he could not walk. (As mentioned above, the Claimant had told the Tribunal that he could not manage stairs. The building where the Tribunal is situated has a lift.)

103. The Tribunal refused the application for the Hearing to be postponed. The Tribunal did not accept that the Claimant was unable to continue because of exhaustion. He had made his application robustly, assertively and at length, with no sign of exhaustion. The Tribunal had already allowed significant breaks in the Hearing to allow him to recover, in additional to the week-end break built into the original listing. It would not be in the interests of justice for the Hearing to be postponed when it had already been postponed once because of the Claimant's professed exhaustion and the claim would be unlikely to be re-listed for several months. Mr Hughes's evidence was relevant to the issue of the Claimant's dismissal. In his email to the Tribunal of 11 July 2019 asking for further particulars of the reason for his dismissal, the Claimant had already made clear what questions he had about that. The Tribunal could ask those questions on behalf of the Claimant.

104. At the resumed Hearing, the Claimant refused the Tribunal's offer to ask Mr Hughes the questions the Claimant had posed in his 11 July email; the Claimant wanted to ask the questions himself in the time available. He wanted to put any outstanding questions for Mr Hughes in

writing. The Respondent agreed to this as a way of making some progress with the Hearing and the Tribunal so directed. The Claimant then went on to cross-examine Mr Hughes with animation and clarity. At 4.40pm the Tribunal checked whether everyone was content to continue the Hearing until 5pm. No-one objected. The Claimant continued to ask questions with animation and clarity. The Hearing concluded at 5.10pm. The Tribunal decided to reconvene the following day at 2pm, to give the Claimant time to recover, if he needed it.

105. On Wednesday 25 November the Claimant did not appear at the beginning of the Hearing. The clerk informed the Tribunal that he was resting in the reception area. The Tribunal agreed to postpone the start of the Hearing to 2.10pm to allow him to rest. At 2.15pm the Hearing began. Mr Cant gave evidence. At the beginning of his cross-examination of Mr Cant the Claimant said that he was breathless and having cognitive difficulties. He did not ask for a postponement and his subsequent questions of Mr Cant were clear and detailed. When the Claimant's questions became repetitive, the Tribunal reminded him that the Hearing would be ending at 4.30pm and his questioning of Mr Cant needed to be concluded by then. The Hearing concluded at 4.35pm.

106. The Tribunal discussed with the parties how the remaining Hearing time should be used. The Claimant agreed that he would put his questions in writing to Mrs Jordan. Mr Tully would be the sole witness the following day. The Tribunal directed that his evidence be concluded by 4pm to allow time for the Tribunal to make case management Orders on the remaining stages of the Hearing.

107. On Thursday 16 November the Claimant cross-examined Mr Tully for the whole day.

108. At the end of the day the Tribunal made orders for the disclosure of a small number of documents that it appeared might be relevant. This resulted in the disclosure of minutes of the Board of Trustees that contained a few brief references to the Claimant.

109. The Tribunal also allowed the Claimant two months to prepare his written questions for Mr Hughes and Mrs Jordan and ordered that he copy those questions to the Tribunal. The Claimant asked for permission to put further questions in writing to Miss Hussain and Mr Tully, as a reasonable adjustment for his disabilities. The Tribunal refused that application. Even taking into account the Claimant's disabilities, it was disproportionate to allow him a further opportunity to question witnesses whom he had already cross-examined for a full Hearing day or more. The time allocation for those witnesses had already been increased during the course of the

Hearing in response to his requests for more time. He had had a fair opportunity to ask the questions he needed to ask. The Claimant said that the Tribunal's decision was "beyond unfair".

110. The Tribunal gave the Respondent until 12 February 2021 to provide the response to the questions posed of Mr Hughes and Mrs Jordan. The parties were given until 12 March 2021 to provide anything they wished to put in writing to summarise their cases. This extended timetable was an adjustment for the Claimant's stated difficulties in processing information and writing.

111. On 22 January 2021, the compliance date for his written questions to Mr Hughes and Mrs Jordan, the Claimant wrote to the Tribunal and the Respondent saying: "I will get back to you as soon as I am well enough to do so." He made no application for an extension of time. The Tribunal never received any written questions from the Claimant or a summary of his case.

112. The Tribunal draws the following conclusions from the facts relating to the procedural background to the claim:

112.1 The Claimant is a highly intelligent and articulate person who is able to express himself clearly and fluently in writing and orally and able to subject issues and documents to detailed analysis.

112.2 The Claimant is very well-informed of his legal rights and the legal principles involved in his claim.

112.3 The Claimant is very well-informed about the Tribunal's Rules of Procedure and the guidance it follows in dealing with claims and in making adjustments for disabled people.

112.4 The Claimant repeatedly failed to provide the details of his claim he was ordered to provide, even though given a substantial period of time to do so. The Tribunal has given him extensive support in articulating his claim and has given him leave to amend his claim by adding additional allegations.

112.5 The Claimant has failed to comply with almost all of the Tribunal's Orders, amounting to a failure to co-operate with the Respondent or the Tribunal in the preparation of the claim for hearing. He did not provide his witness statement until that was the subject of an Unless Order made on what was due to be the first day of the Hearing.

112.6 The Tribunal has repeatedly asked the Claimant to provide a complete account of his various conditions and the effect they have on his ability to conduct his claim so that it can ensure that appropriate adjustments can be considered. He has provided details of various conditions in piecemeal fashion and at a late stage. He has failed to co-operate with the Tribunal in discussing adjustments.

112.7 Although the Claimant has repeatedly offered to, or indicated that he will, provide medical evidence, he has not in fact provided the Tribunal with any medical evidence about any of his conditions and their effect, other than one GP letter submitted in June 2018 confirming that he has been diagnosed with ME that causes him to become fatigued. In breach of Orders and directions, he has provided no medical evidence to support his requests for reasonable adjustments or the various applications for postponements he has made.

The evidence

113. Although the Claimant was not willing to give evidence under affirmation, the Tribunal nevertheless read and took into account the contents of his witness statement and the documents he referred to in it. For the Respondent, the Tribunal heard oral evidence from: Miss Hussain, the Respondent's Human Resources Manager at the relevant time; Mr Peter Hughes, the Respondent's Chief Executive, who made the decision to dismiss the Claimant; Mr Iain Cant, the Chairperson of the Respondent's Board of Trustees, who dealt with one of the Claimant's grievances; and Mr Russell Tully, who for the latter part of the relevant time was Residential Team Manager at the home where the Claimant worked and his line manager. The Tribunal had evidence from Mrs Tracie Jordan, the Respondent's Chief Finance Officer, in the form of her written witness statement. The Tribunal also took into account the contents of a witness statement from Mr Thomson, who considered the Claimant's grievance in September 2017.

114. In addition, the Tribunal considered various documents in the Hearing file and a supplementary Hearing file (produced by the Respondent after the Tribunal's Order for discovery at the Hearing in July 2019) running to a total of round 800 pages; a small number of documents produced by the Claimant and the Respondent during the course of the Hearing; and Board minutes produced by the Respondent after the Hearing.

115. On the basis of that evidence, the Tribunal makes the following findings in relation to the Claimant's allegations. These include findings on the history of the Claimant's employment with the Respondent, which are needed in order to put the

Tribunal's findings on the Claimant's specific allegations, and in particular the allegations relating to his dismissal, into factual context.

The Respondent's concessions

116. As already mentioned, the Respondence conceded during the course of the preparation of the claim for hearing that the Claimant was at the material times a disabled person as a result of dyslexia, ME and autism. The only medical or other third-party evidence that the Tribunal was presented with about these conditions or the effect they had on the Claimant was two GP letters that confirmed his diagnosis of ME and dyslexia. The Claimant himself did not mention his autism in his witness statement. From the evidence presented to the Tribunal, the first time he raised it with the Respondent as relevant to his employment appears to have been at the stage of his appeal against his dismissal.

117. The Respondent also conceded all the Claimant's claims that he had raised health and safety concerns falling within Sections 44(1)(c) and 100(1)(c) ERA (referred to in these reasons as "raising health and safety concerns") and made protected disclosures within Section 43A ERA. In addition, it conceded all but one of the Claimant's claims that he had done protected acts falling within Section 27(2) EqA. For ease of reference, raising health and safety concerns, protected disclosures and protected acts are referred to collectively in these reasons as "the prohibited grounds".

118. After much reflection, the Tribunal has decided that its findings must reflect the Respondent's concessions on these points, which were made when the Respondent was given the opportunity to summarise its case after the end of the Hearing. The Respondent was represented and the Claimant was not. The Tribunal does not consider it appropriate in all the circumstances to go behind concessions the Respondent has made, even where the Tribunal was presented with no evidence that a particular disclosure or act was done at all or there was no evidence that an act said to be a protected disclosure with Section 43A ERA was made by the Claimant in the reasonable belief that it was in the public interest, rather than being a complaint about his own employment situation, which is part of the statutory definition. Effectively, the Respondent was indicating by its concessions that it was content for the Tribunal to approach the claims on the basis that the sole issue was whether any of the Respondent's actions were done on any of the prohibited grounds and the Tribunal has proceeded on that basis.

Background facts on the Claimant's employment

119. The Claimant began working for the Respondent in September 2015. The first six months of his employment was a probationary period. He declared his ME and his dyslexia on his application form. He told the interview panel that his dyslexia meant that paperwork might take him "a bit longer".

120. After his two-week induction training, the Claimant complained in his feedback form about the strip lighting, uncomfortable seating and the noise of constant banging of doors.

121. The Claimant was informed during his induction period that he would need to complete a piece of induction work called the Care Certificate, developed by an organisation called Skills for Care. As the Claimant explained in his witness statement: "*This is a nationwide initiative which was introduced as an industry standard for new starters in care and support work. The aim of the Care Certificate is to ensure that new starters are competent in any given area of practice before being allowed to work unsupervised in relation to that practice area*." The Care Certificate covers minimum standards in 15 aspects of the job role. One way of candidates demonstrating that they meet each of these standards is by completing a workbook in that practice area. This was the method of assessment that the Respondent used. The Claimant was given some time during the induction period to work on the Care Certificate but this proved insufficient because, as a result of his dyslexia, he took longer than others to complete written work.

122. The Claimant's induction also included two days' training referred to as "Team Teach". Karen Denson, then the Respondent's Chief Executive Officer, conducted a quiz to test participants' understanding of the material. The Claimant believed that Ms Denson had made an error when she said to the trainees that the proposition "The fact that a person can complain means they can breathe adequately" was "true", in relation to a person being physically restrained in a hold. He queried this with Ms Denson.

123. At a meeting on 24 November 2015 the Claimant raised with the home's then Deputy Manager and his supervisor, Louise Hughes, that he had difficulty completing the Care Certificate work in his own time because he needed his time outside work to recuperate from working. If he could not recuperate he could not manage his ME. He also explained to Ms Hughes that he did not believe that he was required by Skills for Care to undertake the Care Certificate in any event, as it was for new starters and he had 13 years' experience and held NVQ3 and NVQ4 in Health and Social Care. He gave her a dyslexia assessment statement prepared in 2003 which explained his specific difficulties. (This statement was not presented in evidence to the Tribunal.) He asked whether non-written methods such as observation and professional discussion could be used to assess his competency. He also raised the issue of being expected to undertake two sleep shifts a week, which was leaving him fatigued and exacerbating his ME symptoms.

124. Ms Hughes told the Claimant that her current position was that he would need to complete the workbooks as that was the Respondent's policy. She

allocated him two periods on shift to make progress with the written work. She would talk to Ms Denson about the possibility of adjustments for the Claimant.

125. On 27 November 2015 the Claimant emailed Ms Denson to inform her that his managers were refusing to make reasonable adjustments for his disability and that this was also indirect discrimination under the Equalities Act 2010. He asked that the Respondent allow him to omit the Care Certificate or provide evidence of competency in another way. This was conceded to be a protected act and a protected disclosure.

126. On 11 December 2015 Kim Corcoran, then the Claimant's line manager, met with him to discuss his email to Ms Denson. Ms Corcoran said that the Claimant could have an electronic copy of the workbooks to complete and that someone could type for him. The Claimant explained that these adjustments were not relevant because the issue for him was the amount of time it would take him to complete the workbooks. They met again on 17 December to discuss the Claimant's induction work and the Claimant suggested that he use some annual leave to complete the work as he did not see any other way to complete it during his probationary period.

127. In February 2016 the Claimant had a supervision meeting with Ms Hughes. She confirmed that his sleep shifts had been reduced to around 6 per month as a temporary measure. At some point she told the Claimant that he could apply to work one sleep shift a week under the flexible working policy and that his needs would be likely to be prioritised over a number of other staff. The Claimant said he thought this was potentially discriminatory because staff could make a flexible working request only after completing their probationary period, which left disabled employees at a disadvantage in the meantime.

128. On 6 April 2016 the Claimant sent Mrs Tracie Jordan, the Respondent's Finance Officer, an informal grievance alleging that the Respondent's failure to make reasonable adjustments could amount to disability discrimination. He said that he did not believe that his probationary period could be assessed on a fair basis and asked for his probationary period to be extended. Mrs Jordan said that these issues would be addressed in the Claimant's probationary review meeting, due to take place the following day.

129. On 12 April 2016 the Claimant submitted a five-page formal grievance complaining about the Respondent's failure to make adjustments for his disabilities, which he said was affecting his health. In summary, he said that the Respondent should not be requiring him to complete the workbooks, but rather be assessing his knowledge and competencies in different ways, such as by discussion, observation and project work. Because of his ME and dyslexia, it was taking him a long time to complete the workbooks and he was having to do the work in his own time when he should be recuperating. He said that he also

needed to raise issues about reasonable adjustments regarding sleep shifts but would do this separately. He mentioned that he believed Ms Denson had made an incorrect statement at the Team Teach session that he said could lead to a serious incident or death of a service user. This was conceded to be a protected act, a protected act and to amount to raising health and safety concerns.

130. On 13 April 2016 the Respondent extended the Claimant's probationary period for 3 months. From April to June 2016 he was off work on sick leave. On 18 May he submitted a letter from his GP that stated he had chronic fatigue syndrome and had been off work with a relapse as he had found it difficult to do the two overnight shifts. He was also finding it difficult to complete his induction work because of his dyslexia. The GP suggested that he should be required to do only one overnight shift and that the amount of induction work required of him should be reduced.

131. Mr Hughes heard the Claimant's formal grievance at two meetings, on 5 July and 12 August. The letters that Mr Hughes sent the Claimant said that he was keen to meet promptly in order to try to resolve the Claimant's issues and avoid causing the Claimant additional or undue stress. From reading the detailed minutes of the meetings, the Tribunal finds that Mr Hughes gave detailed and careful consideration to the Claimant's concerns.

132. The meeting on 5 July was the longer meeting. Mr Hughes said that, whilst he did not accept that the Claimant had been discriminated against, he did accept that there were gaps In the Respondent's procedure that had resulted in a lack of agreement on reasonable adjustments and miscommunication with the Claimant. He explained that the organisation had now adopted a formal procedure for the assessment and review of reasonable adjustments, with one manager responsible for their implementation. He acknowledged that the Claimant's issues had not been satisfactorily addressed and apologised for the stress this must have caused. He said he was sorry that the Claimant had had to resort to making a formal grievance to initiate improvements and acknowledged that it had caused him suffering. The Claimant accepted the apology and thanked Mr Hughes.

133. The Claimant then said he wanted to add another grievance which he had not managed to submit because his computer was broken. This related to the stress he had been through because of the difficulties he had in completing the care certificate work and his fear that his job was in jeopardy as a result.

134. Mr Hughes noted that it appeared that Karen Denson had resolved the issue of sleep shifts. He assured the Claimant that there could be ways round his difficulties in completing the Care Certificate in his own time, by observations and initiatives that unfortunately had not been communicated to the Claimant in the past. He wanted to "push a reset button" and meet to discuss reasonable

adjustments and formalise a plan. He gave the Claimant the standard form that the organisation was now using to record reasonable adjustments. He encouraged the Claimant to book an assessment of his needs by Access to Work, as the Claimant had proposed.

135. The Claimant raised the comment that Ms Denson had made at the Team Teach meeting. Mr Hughes said that this had been a semantic error on the day and that it would not have led to any dangerous misunderstanding because staff had annual refresher training and a handout from the day to refer to.

136. On 12 July 2016 Mr Hughes conducted a meeting with the Claimant and made a record of reasonable adjustments. This form, which the Claimant signed, recorded his disabilities as fatigue and dyslexia. His dyslexia meant that it took "a bit longer" to complete written work, for planning order of words and thought processes prior to writing as well as the act of reading and writing. Online training could be difficult during working hours due to distractions and difficulty in concentration. The record confirmed that the Respondent had received a report from the Claimant's university assessment and a medical report from his ME clinic from 2013. The record stated that the Claimant "had to employ increased levels of concentration and time to complete tasks rather than [his] dyslexia being visible in the quality or output of work." (As mentioned above, the 2003 assessment was not presented in evidence to the Tribunal; neither was the report from the ME clinic.)

137. The adjustments recorded included: a maximum of 1 sleep shift per week; minimising the occurrences of a late shift followed by an early shift; using a combination of observation, professional discussion and using existing written work (submitted for his NVQ qualifications) to demonstrate requirements for the Care Certificate were met; allowing the Claimant to complete the written work as and when he could manage it within the timeframes agreed with him during his probation; online training was to be completed at home; absences due to ME were not to be counted towards absence triggers for investigation; and the Claimant was to be given priority access to a new laptop which was to be purchased and kept on site.

138. On 12 August, the second part of the grievance hearing was held. Mr Hughes confirmed that, contrary to the Respondent's stress policy, the Claimant had not been directed towards the possibility of completing a stress diary. He said that the Respondent intended to establish a system for monitoring and addressing mental health and stress issues.

139. Mr Hughes wrote to the Claimant confirming his conclusions on 17 August.

140. On 30 August 2016 the Claimant appealed against Mr Hughes's decision to Mr Cant. His appeal was 13 pages long and contained a detailed account of why he considered Mr Hughes had been wrong to conclude that he had not been discriminated against. He asserted that he had been the subject of a failure to make reasonable adjustments, indirect discrimination and/or discrimination arising from disability. In essence the Claimant's appeal was based on his assertion that Mr Hughes, being satisfied that steps had been taken to accommodate the Claimant's disability, had not gone on to assess whether the steps were sufficient to meet the duty to make adjustments. The appeal document contained extracts from the Equality and Human Rights Commission Code of Practice and references to legal definitions and case law.

141. This appeal was conceded to be a protected act and a protected disclosure.

142. The appeal meeting was held on 3 October 2016. Mr Cant made clear that he did not consider his role was to give his opinion on the Claimant's grievance. Rather, it was to establish whether any reasonable employer, given the evidence available to Mr Hughes, would have come to a different conclusion to that reached by Mr Hughes. The Claimant said that he would be happy if Mr Hughes simply withdrew his statement that the Claimant had not been discriminated against. Mr Cant asked the Claimant whether he was saying that reasonable adjustments had been made but not in a timely fashion and he said "yes". At one point, with reference to the Claimant's complaint that he had been required to complete the Care Certificate work books, Mr Cant said: "the [Disability Discrimination Act] does not seek to make someone a subject of positive discrimination or advise that they should be treated at a higher level than anyone else. Reading through [the Claimant's] appeal and relevant documentation, it appears that [he] is seeking something special; [the Claimant] should not contend that [he] does not have to do thing that are required to be undertaken as part of [his] duties, simply because [he] has a disability." At the appeal meeting, the Claimant acknowledged that Mr Hughes had been "really good" and that he appreciated all that he had done. He had gone "above and beyond" and what was now in place would help others in the future.

143. On 11 October 2016 Mr Cant wrote to the Claimant saying that Mr Hughes's conclusions were fair and reasonable and his appeal was therefore dismissed.

144. At this point, the Tribunal summarises the position in this way. The Respondent had been slow to make adjustments for the Claimant's ME and dyslexia, in relation to the way in which the Care Certificate was to be completed and the number of sleep shifts he was expected to do each week. (As explained below, the Tribunal has not itself made findings on whether the Respondent in fact breached the duty to make reasonable adjustments.) Mr Hughes appeared

to accept, however, that the delay was unacceptable, and he apologised for it. That implies that the Respondent accepted it had for a period been in breach of its duty to make adjustments. It then agreed adjustments with the Claimant. If Mr Hughes, and Mr Cant on the Claimant's appeal, had been prepared to acknowledge that there had been discrimination during the period of delay, the Claimant told Mr Cant that that would have been sufficient to satisfy him. That acknowledgement was never made. Further, in the comments he made at the appeal meeting, Mr Cant does not appear to have appreciated that an employer may be required to adjust its expectations of a disabled employee, in order to meet its duty to make reasonable adjustments. The fact remains, however, that, as the Claimant himself accepted, Mr Hughes made extensive efforts to remedy the Respondent's past shortcomings and agreed the Claimant's adjustments with him, as well as introducing a new procedure by which consideration of reasonable adjustments could be managed by the Respondent in the future. As will be apparent in the Tribunal's findings below, the Claimant did not join Mr Hughes in pressing the re-set button and continued to raise his dissatisfaction with the way in which Mr Hughes and Mr Cant had handled his grievance.

145. On 13 October 2016 Ms Denson told the Claimant that staff had complained that he was interfering with their work. She gave as examples that the Claimant had told another member of staff that he had seen a service user holding his back and he thought he might need a couple of paracetamol; he had taken it upon himself to report repairs; and he had provided written information about the reason for a GP appointment for a staff member who was accompanying a service user to the appointment. The Claimant told Ms Denson that the negative reaction he was receiving was part of the bullying he was experiencing from other staff members and gave her examples of this. This was conceded to be a protected act and a protected disclosure.

146. At a supervision meeting with Mr Hughes on 5 December 2016 the Claimant again raised that he was being bullied by staff who had reacted negatively to him raising concerns and accused him of interfering. This was conceded to be a protected disclosure and a protected act.

147. The Claimant alleges that he made a protected disclosure and did a protected act at a meeting with Ms Denson on 10 February 2017. From the record of the Preliminary Hearing in January 2019, it appears that his allegation is that at this meeting he complained to her about being bullied as a result of raising health and safety issues or making other complaints. This is conceded to be a protected act and a protected disclosure.

148. At a probationary review meeting led by Mr Hughes on 15 February 2017 the Claimant's probationary period was extended by three months because he had still not completed his induction work. The minutes record that the agreed plan allowing for reasonable adjustments was for the Claimant to submit the

documents he had already completed to Ms Denson and she would assess them, using observations and professional discussion with the Claimant to fill any gaps. Five days in February and March were identified on which this work could be done.

149. The Claimant's relationship with colleagues was also discussed. He told Mr Hughes that he felt that his previous concerns about the behaviour of his colleagues, which he thought amounted to bullying and victimisation, had not been dealt with. This was conceded to amount to raising health and safety concerns.

150. Mr Hughes agreed that the management of staff needed to be improved. He confirmed that the organisation wanted to ensure staff concerns were listened to. It would be taking measures to improve this across the service and look into the ways in which staff responded to concerns that were raised. He told the Claimant that he should raise any working practice issues with his service manager, Neil Robinson, who would meet with him every four weeks to provide a forum in which he could raise such issues. This would allow him to raise issues without the risk of alienating colleagues, although he emphasised that if the Claimant identified health and safety or safeguarding issues he should take appropriate action. He said that the Respondent wanted the Claimant to feel well supported as he potentially had a lot to offer the organisation.

151. The Claimant alleged that he made a protected disclosure and did a protected act in an email to Mr Hughes dated 20 February 2017. This email was not presented in evidence. From the record of the Preliminary Hearing in January 2019, it appears that his allegation is that in this email he complained that the Respondent had failed to act in response to his complaints of bullying and victimisation. This email was conceded to be a protected disclosure and a protected act.

152. On 17 March 2017 the Respondent confirmed to the Claimant that he had satisfactorily completed his probationary period.

153. The Claimant alleged that on 27 March 2017 he made a protected disclosure and did a protected act in an email. This email was not presented in evidence to the Tribunal. From the record of the Preliminary Hearing in January 2019, it appears that his allegation is that in this email the Claimant complained about bullying, victimisation or unfavourable treatment that he had been subjected to as a result of raising health and safety issues or making other complaints. This email is conceded to be a protected disclosure or a protected act.

154. The Claimant was off work sick from 19 to 27 May 2017. At a return to work meeting on 6 June 2017 with Deputy Manager Matthew Barber the

Claimant said that the stress of bullying and victimisation by his colleagues had exacerbated his ME symptoms and there had been no management action to tackle the problem. From the extensive notes of the meeting, it is apparent that the Claimant raised with Mr Barber various incidents where members of staff had reacted negatively to the Claimant raising concerns about safe working practices. This included one colleague, RN, who was a Senior Support Worker, criticising the Claimant in front of other colleagues for raising a health and safety concern about who was best qualified to sleep close to a service user to ensure he received his medication at the appropriate time.

155. From the documents the Tribunal saw, it is apparent that a manager had interviewed RN shortly after the incident, on 9 May 2017, and her perception was that the Claimant was demanding that she take the action he proposed to resolve the sleeping arrangement. It was not a problem that the Claimant had raised the issue of the sleeping arrangement, but she felt bullied by him in the way he raised it with her. She admitted that she had lost her temper and told the Claimant that she felt he was interfering and should let her sort it out. She had declined the Claimant's offer to talk about the matter in private because she felt that she would be vulnerable if the conversation was not witnessed.

156. At the meeting with Mr Barber the Claimant also complained that another colleague had made a note critical of him in the home's communication book, in which staff would record information that needed to be passed on to other staff. The note stated that the Claimant had not followed a service user's support plan. The Claimant had suggested that a meeting should be held between him and this individual to clear the air but this was never arranged. Another colleague had criticised him for not sorting out a problem a service user had with his trousers. He had been told to raise concerns through his manager, but they had not had a supervision in three months. He had made a complaint against Ms Corcoran, his manager, about her failing to make reasonable adjustments but this had not been addressed. No one appeared to have responsibility to feedback to the Claimant the results of his concerns and complaints. The Claimant complained about various comments Mr Cant had made during the grievance appeal meeting. The Claimant also complained about two colleagues, one of whom had used the character of a date rapist as a source of humour and another who had talked to the Claimant about a rape scene in a horror film, which he considered to be inappropriate.

157. Mr Barber told the Claimant he would submit this as a formal grievance on his behalf. The Claimant did not ask him to do this but did not say that he did not want him to. The Tribunal is satisfied that, at some point, the Claimant confirmed, expressly or impliedly, that he did wish this to be viewed as a formal grievance. This grievance was conceded to be a protected disclosure, a protected act and raising health and safety concerns.

158. In August 2017 Mr Tully was appointed as manager at the home where the Claimant worked. From the evidence of Mr Hughes and Mr Tully, it was apparent to the Tribunal that Mr Tully's appointment was a potential turning point in the management of the home. As Mr Hughes had acknowledged to the Claimant at his probationary review meeting in February, there needed to be a change of culture within the Respondent's organisation, which needed to be management-led, so that staff felt able to raise concerns about working practices without that being viewed in a negative light. Mr Tully realised on his appointment that the working practices at the home needed to be improved. This included improvements in the way in which management and staff communicated with each other and between themselves in addressing issues that arose.

159. Shortly after Mr Tully's appointment, the Claimant complained to him that he was experiencing ongoing bullying and victimisation, mostly due to reporting health and safety issues. He raised again the example of the Senior Support Worker who had criticised him in front of colleagues when he queried where a service user's support workers should be sleeping. This complaint was conceded to be a protected disclosure and a protected act.

160. In around June or July 2017 the Claimant told Mr Barber that he had been the subject of further incidents of harassment and bullying. Mr Barber said these would be considered as part of the Claimant's existing grievance. This further complaint to Mr Barber was conceded to be a protected disclosure and a protected act.

161. On 10 July 2017, having self-referred to the Leeds Autism Diagnostic Service, the Claimant was given the diagnosis of "autism spectrum disorder". If this diagnosis was put in writing, that document was not presented in evidence to the Tribunal. The Tribunal heard no evidence on whether and when the Respondent was informed of the diagnosis having been made, or on whether and when the Claimant had any discussion with anyone within the Respondent about the effects his autism might have on his behaviour. The Tribunal heard and saw no evidence to indicate that the Claimant had told the Respondent at any time before this that he was or might be autistic. The Claimant himself gave no evidence to the Tribunal on the effects of his autism. The Tribunal knows only that the Claimant mentioned in his autism to Mr Tully in an email he sent him on 22 January 2018 and in a return to work meeting on 1 February 2018. The Claimant also raised his autism in his appeal against dismissal

162. Mr Tully became the manager of the home where the Claimant worked on 1 August 2017. He was also the manager of another home. One of his priorities was to improve the working practices at the Claimant's home. He knew that staff needed to feel able to raise work issues, including health and safety issues, without fear of a negative response and that ways of staff raising concerns in a

constructive way needed to be established. One of his main focuses was to ensure that Senior Support Workers responded to health and safety concerns quickly. He put in place a system so that a senior manager was always available on call to give advice and support to Senior Support Workers.

163. The home had around 20 staff and two managers. Mr Tully spoke to the staff and they raised their experiences of conflict with the Claimant. Staff at senior care level and above had difficulty dealing with the Claimant and found him antagonistic and unwilling to agree to their requests. Mr Tully wanted to address the root cause of the conflict and focus on moving forward with a new way of working, based on honesty, openness and fairness. He wanted to support the repairing of damaged relationships between the staff with the ultimate goal of improving the lives of service users.

164. One of Mr Tully's conversations was with a Senior Support Worker whom the Claimant had challenged the previous year about a faulty lock on the home's front door. She spoke about the problems she had with the Claimant's behaviour. She did not want to raise a grievance about this and was happy to continue to work with the Claimant and support him. Mr Tully gave her advice to help build her confidence in managing the Claimant and she agreed that she would come back to Mr Tully if she had a problem. Mr Tully discussed with her her response to the issue of the lock and was satisfied that she had acted reasonably at the time. Unsurprisingly given the passage of time, Mr Tully could not recall the detail of what she said she had done.

165. The Claimant was off work sick from 25 August to 3 September 2017. At a return to work meeting on 7 September he told his manager that his ME had been exacerbated by ongoing bullying and victimisation he was subjected to at work, which had not been adequately addressed. This was conceded to be a protected disclosure and a protected act.

166. Mr Thomson, a member of the Respondent's Board of Trustees, was due to hear the Claimant's grievance as raised with Mr Barber on his return to work in June. Mr Thomson wrote to the Claimant inviting him to a meeting to discuss it on 16 August and summarising the complaints that he believed the Claimant was making. He invited the Claimant to let him know in advance of the meeting whether there was anything else the Claimant thought he should consider. In response, the Claimant said that he had had to wait three months for a date for his grievance hearing. "This takes me past the date where it is possible to take the matter to tribunal." Eventually he agreed to attend a meeting on 13 September. He asked to put his grievance in his own words so that the emphasis would be on the things most important to him and Mr Thomson agreed.

167. Mr Thomson's witness statement gave little detail about his investigation of the Claimant's grievance. His evidence was that he had visited the home on two days and spoken to the Deputy Team Manager and two of the individuals that the Claimant had complained about in his grievance. He also sought confirmation from Mr Hughes that concerns about bullying and harassment expressed by the Claimant had been appropriately addressed. The Tribunal accepts that, on the basis of this evidence, it is not possible to conclude that Mr Thomson carried out a thorough investigation of the Claimant's grievance in advance of the grievance meeting.

168. At the meeting, the Claimant explained that as an outcome to his grievance he wanted practical steps to be put in place to make sure that there would be an end to negative reactions to the raising of health and safety issues and that action would be taken on issues that he raised. He did not want the specific incidents of bullying and victimisation that he had raised to be investigated, he wanted a system put in place to stop it happening again, a change in culture. He suggested that senior managers could be given training in how to deal with these things constructively. If anything had been done about his previous complaints, he said, he had not been informed. Mr Thomson put to him that decisions had been made by people in a more senior role than him that he disagreed with. The Claimant replied: "Yes, they need to explain." They may disagree with him, but "there is an appropriate way of going about things". He raised again the organisation's failure to make adjustments for his disabilities. At the end of the meeting he confirmed that he absolutely loved his job.

169. The Respondent conceded that the Claimant did protected acts and made protected disclosures in his conversation with Mr Thomson at this meeting.

170. On 12 October 2017 Mr Thomson wrote to the Claimant with his decision on the grievance. He said that he was confident that Ms Denson and Mr Hughes had acted appropriately in relation to the concerns the Claimant had raised about bullying and harassment. He added that "matters subsequently discussed in others' supervisions should remain confidential". Management at the home where the Claimant worked had been advised to confirm to all staff that the names of staff members should not be written in the communications book. In relation to the Claimant's comments about the workplace culture which prevented issues between colleagues from being resolved, Mr Thomson said: "I would encourage you to build strong working relationships with colleagues, but also to raise issues appropriately in staff meetings. However, it should also be understood that there may be issues where you may have a different view from senior staff, but where you have to accept and respect their decision."

171. The Tribunal notes that Mr Thomson did not explain what he meant when he said that "appropriate" action had been taken by Ms Denson and Mr Hughes in relation to the Claimant's allegations of bullying, although he implied that

these matters had been raised with the individuals in their supervisions. He was also indicating to the Claimant that if he disagreed with someone senior to him within the home he needed to respect their decision, even if he disagreed with it. The Claimant had confirmed at the grievance hearing that he did not want the specific incidents he had raised to be investigated and so it is understandable that Mr Thomson made no findings on them.

172. The Claimant requested an extension of time to appeal the decision as a reasonable adjustment for his disability. On 17 October Mr Thomson confirmed to the Claimant that the time for notifying him whether he wanted to appeal was extended by three days to 20 October and he could then take the time he needed to formulate the reasons for his appeal, as long as they were sent in at last 48 hours before the time set for the appeal hearing.

173. The Claimant did not appeal Mr Thomson's decision.

174. On or around 23 October the Claimant had his first supervision meeting with Mr Tully. In Mr Tully's perception, this was a good exchange in a friendly atmosphere. The Claimant raised concerns about conflict he was having with staff and in particular the attitude of Senior Support Workers. After that conversation, Mr Tully had a conversation with one of the Senior Support Workers the Claimant had mentioned and the deputy manager spoke to the other, to check that they understood what their attitude and demeanour should be towards more junior staff. Mr Tully did not tell the Claimant that these conversations had taken place.

175. During November 2017 the Claimant sent emails to Mr Barber and Mr Tully complaining about "ongoing bully[ing] & victimisation" and the lack of management intervention to help him. He said that this was affecting his health. These emails were conceded to be protected disclosures and protected acts.

176. In response, Mr Tully said that the Claimant needed to direct his questions about bullying and victimisation to Mr Thomson, who had been dealing with his grievance about those matters. It is not clear why Mr Tully assumed without clarification from the Claimant that Mr Thomson was dealing with matters that the Claimant described as "ongoing", since some of these incidents might have occurred since the matters that were the subject of the Claimant's grievance.

177. The Claimant began a period of sick leave that lasted two-and-a-half months.

178. On 17 November the Claimant wrote to Mr Tully asking him "to agree to take adequate steps to address the on-going bulling & victimisation I have been experiencing before I return to work", some of which he said he had described to Mr Tully in his last supervision in October 2017. He asked Mr Tully to carry out a

risk assessment for him in relation to the effects of bullying and harassment on his health and to arrange a meeting with the Claimant, Ms Hussain from HR and Mr Tully. The meeting would be to discuss what steps were needed to address the ongoing bullying and victimisation to which the Claimant was being subjected, and what steps were needed to prevent the recurrence of the problem for the Claimant and others. He also asked Mr Tully to talk to staff about the appropriate way to respond when someone raises a health and safety issue and the appropriate way to address criticisms to other staff members, and to speak to the two members of staff who made inappropriate comments about rape, which he had reported before but nobody had taken any action on.

179. This email was conceded to be a protected disclosure and a protected act.

180. In response to the email, Mr Tully acknowledged that the Claimant appeared to feel there were outstanding issues that needed addressing. He invited him to a welfare meeting with himself and Ms Hussain on 24 November 2017. Miss Hussain had only recently joined the organisation, in October 2017.

181. Just before the meeting on 24 November the Claimant wrote an email to Miss Hussain saying that his aim for the meeting was to "agree a constructive way forward". He said that he had no interest in any formal finding of fault but he believed it was important for the Respondent to acknowledge that working practices needed to improve and to "look at putting something in place to this end. I have consistently taken this position and up until now it has effectively used by LAS [the Respondent] as an excuse not to take action. I need for LAS to work with me and actually address these issues this time." He attached documents evidencing how he had reported that long-term victimisation was affecting his health and that he had asked for action to be taken. Nothing was implemented, he said, and nobody got back to him. He believed this showed a clear omission to protect his health and safety and fulfil the legal duty of care. This email was conceded to be a protected disclosure, a protected and to be raising health and safety concerns.

182. At the meeting on 24 November 2017, the Claimant said that the issue in his grievance had been about how his complaints had been dealt with in practice. He commented that no investigation of his complaints had taken place, even though he had offered evidence. The Claimant repeated his complaint about the staff member who had shouted at him that it was not his business when he had raised safety concerns about who was sleeping near the service user who needed access to medication. Miss Hussain said that this staff member was senior to the Claimant and that, once he had raised it with her, he had discharged his duty of care to the resident. He said that all the senior staff at the home, bar one, responded inappropriately to concerns being raised.

183. When Miss Hussain asked whether there were health and safety issues he had raised with Mr Tully that had not been resolved, the Claimant mentioned that he had raised in supervision that people should be spoken to about the way they responded to others and that there was an issue with the door closer on the fire door on the first floor corridor. Miss Hussain made a general point to the Claimant that once he had reported a concern to a more senior person, he had discharged his duty of care and it was then up to the more senior person to decide on the appropriate action. The Senior Support Worker that the Claimant had reported the fire door to was not required to give him a detailed response. If he felt it had not been dealt with appropriately, he could report it to the home manager. The Claimant also mentioned that the latch on the front door was ineffective. He had raised it with a Senior Support Worker but she had decided to leave it. The Claimant said he wanted an appropriate response, to keep residents safe. The Claimant offered to give information on the dates, times, people involved and the incident.

184. When the meeting moved on to discuss the Claimant's allegations of bullying and victimisation, he said that the grievance outcome had not dealt with this because it had not resulted in any support being given to the Claimant. He did not know whether the specific incidents he had mentioned had been dealt with. There should already have been an investigation. Miss Hussain asked the Claimant for a clear list of incidents; she said that a lot of what he was raising was historic and "we cannot go back two years". The Claimant said there had been a lot of low level comments to him, made after the date of his grievance. Mr Tully asked him who he had reported these to. He did not respond to that question but went on to talk about an extension of time for his appeal.

185. The Claimant felt that Mr Tully and Miss Hussain were resisting discussing his concerns. He said: "you are not taking this issue seriously I don't wish to continue this meeting; I wish to speak to [Mr Hughes] with the rest of the issues". He said to Miss Hussain that he had declined to deal with herself and Mr Tully and they needed to respect that. The meeting lasted three hours.

186. It is not clear from the minutes, but it appears that Miss Hussain may have said she would go through all the health and safety concerns the Claimant had raised and had been documented as given to the management of the home. She did say that she would go through the Claimant's file to pick out all the issues relating to the Claimant.

187. The Respondent concedes that the Claimant's contributions to this meeting amounted to raising health and safety concerns, raising protected disclosures and doing protected acts.

188. After the meeting, Miss Hussain decided that it would be better to ask the Claimant to identify the matters he considered to be outstanding. At the Tribunal

Hearing, she explained that she did not have time to go through the Claimant's personnel file in detail because she had a number of other employees' issues to deal with at the time. The Tribunal considers that this was an understandable and reasonable position for Miss Hussain to take, given the number and range of complaints that the Claimant had raised and the fact that Miss Hussain was new to the organisation and busy with several employees' issues. She had two junior employees assisting her but they worked part-time and the majority of the employee relations issues fell to her to deal with. It was also unclear which matters, if any, the Claimant accepted had been dealt with and which he considered were outstanding. For example, the Claimant had told Mr Thomson that he did not want the specific incidents of bullying that he had raised in his June grievance to be investigated but was now complaining that they had not been. He was also saying that there had been further incidents of bullying but had given no detail of what these were.

189. In a letter dated 5 December 2017 Miss Hussain asked the Claimant to put in writing the issues he considered Mr Hughes had not thoroughly investigated in 2016. She also asked him to give details of times and dates of the incidents of continuing bullying he had mentioned in the meeting. She asked him to provide these details within the next five working days, otherwise LAS would not investigate further. She confirmed that in LAS's view the Claimant's allegations of negative comments having been made about rape was dealt with at the time but if there was another situation that had taken place the Claimant was asked to provide details in the next five working days. Finally, she confirmed that future meetings would be with herself and Mr Tully, not Mr Hughes, or that they would deal with the Claimant in correspondence in order to facilitate his return to work.

190. With the letter, Miss Hussain enclosed a stress risk assessment form that had been completed by herself and Mr Tully. In the form, the box for "nature of activity/hazard" was not completed. It appears that Mr Tully and Miss Hussain were proceeding on the assumption that the activity or hazard in question was the Claimant's job duties: in some preliminary text headed "context", the form recorded that the Claimant felt "stressed in particular situations relating to their role of Support Worker". In the box setting out precautions to minimise the risk, the proposed actions included that the Claimant would not put himself "in a conflict situation that will cause this individual stress". It says that he will have regular contact with a shift leader and regular supervisions with his line manager and give regular feedback on how he is feeling. The Claimant is to raise any areas of concern with his line manager or the HR manager so action can be taken. "LAS reserve the right to refer [the Claimant] to an Occupational Health Advisor to ascertain how their medical condition could impact their day to day work."

191. The Claimant alleged that there was a supervision meeting with Mr Hughes on 5 December 2017 at which he raised health and safety issues. The Tribunal was presented with no evidence about this meeting but the Respondent conceded that the Claimant raised health and safety concerns at it.

192. The Claimant responded to Miss Hussain's letter on 13 December. His first sentence, in bold type, was: "I request that an Occupational Health Assessment is carried out so that there can be an objective assessment of how to support me." He went on to say that he found the risk assessment form unsatisfactory. It did not identify the hazard that was being assessed, which he said was the stress of being victimised and the lack of management intervention that was exacerbating his ME. He described the proposal that he stay out of conflict situations as "victim blaming" and said that LAS had a responsibility to change its work culture so that there should be no conflict between staff when health and safety concerns are raised. He said that he had repeatedly reported situations, as the document suggested he should do, but this had been to very little effect.

193. The Claimant said he could not provide details of previous incidents of victimisation in the timescale provided and that Miss Hussain should honour her agreement to check first what was already recorded. He said that he considered her requirement that he provide details of current victimisation within five days to be discriminatory: "I believe that knowingly providing an untenable timeframe, particularly as I am unwell, and refusing to investigate victimisation unless I can comply constitutes disability discrimination which is unlawful under the Equality Act 2010. I am also concerned that this may be victimisation due to whistleblowing." He said that it was not correct that he was unable to provide details of ongoing victimisation during the meeting, he had not done so because he did not feel they would be taken seriously. He had no knowledge of any investigation having been carried out into any of the incidents he had already reported. He asked for details of how the comments about rape had been dealt with and whether the individuals had been told that this type of comment was unacceptable.

194. In an email on 14 December Miss Hussain pointed out to the Claimant that his current fit note expired on 7 December and he needed to submit another one. She would respond to his other points in due course.

195. On 19 December Miss Hussain wrote to the Claimant again and asked him to provide a fit note to cover his current absence from work by 22 December. She asked him to provide "constructive amendments" to the draft risk assessment and she would take these into account. She said that she thought a referral for an occupational health assessment would be extremely helpful in ascertaining his fitness for work and what the Respondent could do to assist and support him in his role. She would prepare the referral documentation

and send him a copy. She repeated that she needed him to put details of ongoing bullying and victimisation and health and safety concerns in writing within five working days in order for this to be investigated further. She explained that it would be helpful if all complaints could be in writing "as I do not wish to send correspondence back and forth with misinterpretations and incorrect information." She felt that five working days was a reasonable timescale, given that the Claimant had an in-depth knowledge of what had taken place and it was important that memories of what had happened should not fade. "I do not agree that I will not take any incidents you report to me seriously. I will explore any complaints that you have raised and will deal with them accordingly; however we do require specifics in order to do this."

196. On 10 January 2018 Miss Hussain wrote to the Claimant and said that as LAS had still not received his fit note, it had no alternative but to invite him to a disciplinary hearing to deal with this. She would be drafting his occupational health referral and would send him a copy for his records. As he had failed to provide details of his current allegations of bullying and victimisation, the Respondent would not be taking this matter any further. As she had not received any comments on his risk assessment, she was concluding that he had nothing further to add.

197. On 18 January 2018 the Claimant had a telephone conversation about his return to work with Mr Tully. He said that he was fit to return to work but Mr Tully said that this would not be possible until the Respondent had a fit note signing him off as fit to return and the risk assessment had been completed. He would also need to conduct a return to work interview before the Claimant returned. The Claimant objected to any delay on his return to work because he could not afford to be on sick leave any longer. He also objected to Miss Hussain being present at the meeting.

198. On 21 January the Claimant wrote to Miss Hussain. In it he said that he was waiting for a call back from his GP surgery about his sick note and would provide it to the Respondent as soon as he received it.

199. Mr Tully summarised his discussion with the Claimant in a letter he sent him on 22 January. He proposed a return to work meeting at which the stress risk assessment would be completed and he confirmed that Miss Hussain would be present. He said that the Claimant's failure to provide a fit note would be dealt with in a separate letter. The Respondent was in the process of referring him to occupational health and would send him a copy of the referral shortly.

200. Also on 22 January 2018 Mr Tully wrote to the Claimant inviting him to attend a disciplinary hearing to address the allegation that he had failed to produce a fit note to certify his absence from work since 7 December 2017 despite requests to do so and was therefore on unauthorised absence.

201. On 22 January the Claimant wrote Mr Tully a four-page email setting out various complaints. One set related to Mr Tully's decisions about the necessary pre-conditions for the Claimant's return to work, which he believed were unjustified. He then set out a series of complaints about Miss Hussain, which he wanted to be treated as a formal grievance against her. These included her characterisation of the Senior Support Worker shouting at the Claimant as a "professional discussion"; reproaching the Claimant for challenging a Senior Support Worker; telling him that he should respect the Senior Support Worker's decisions on how to deal with the health and safety concern he had raised about the door latch needing repair; failing to respect their agreement that she would collate the information he had already provided about bullying and victimisation; requiring him now to provide those details, and within an unreasonably short timeframe given his disability, which he considered to be indirect discrimination contrary to the Equality Act 2010; and now saying he would be disciplined for not providing a fit note. He said he had kept the Respondent informed about his progress in obtaining a fit note and that he had had difficulty in chasing the matter up in a more timely fashion because of his autism and ME. He was concerned that this action amounted to retaliation against him because he had raised concerns about her conduct and lack of professionalism. He asked that Miss Hussain should not be present at his return to work meeting as this would cause him high levels of unnecessary stress and not having her there would be a reasonable adjustment for his disability, given that people with autism and ME are disproportionately affected by stress.

202. The Claimant concluded his email with this: "I wish to set up a meeting with you, me and my union representative. . . Due to the potentially serious consequences of preventing staff from challenging inappropriate health & safety decisions I will need to see acceptable progress made towards addressing this either at this meeting or beforehand. If this isn't done I will have no choice but to report the matter to CQC and Leeds City Council."

203. The Respondent conceded that this email amounted to a protected act, a protected disclosure and to raising health and safety concerns.

204. The disciplinary hearing did not take place. Mr Tully emailed the Claimant on 23 January to tell him that the disciplinary process would be suspended until Mr Tully had investigated his grievances.

205. On 24 January the Claimant sent Kathy Paul, HR Officer, his fit note, attached to a lengthy email in which he again stated his concerned that the disciplinary action against him was victimisation for raising concerns that Miss Hussain had discriminated against him and condoned or failed to act on other victimisation he had reported. He also stated that the action was disability discrimination because his ability to provide the fit note was impeded by his

disabilities. He requested that the disciplinary action be withdrawn as it was clearly unreasonable and he believed it constituted disability discrimination and potentially victimisation by Miss Hussain and Mr Tully. He said that his reports of victimisation and discrimination since November 2015 had never been investigated. The email ends: "You said that you would check who was the best person for me to raise these concerns with."

206. On 26 January Mr Tully wrote to the Claimant summarising what he believed to be the substance of the Claimant's grievance against Miss Hussain and proposed dates for a meeting to discuss it.

207. On 1 February 2018 the Claimant had a return to work meeting with Mr Tully, with Ms Paul as HR support and taking notes. The meeting lasted three-and-a-half hours.

208. In relation to the draft risk assessment, the Claimant said that it was not his role at work that was stressful, it was people victimising him. Mr Tully told the Claimant that this issue had now been raised with staff. He said that when the Claimant found himself in conflict with another member of staff he should raise the issue with Mr Tully by email and he would deal with it. The Claimant raised two incidents, one in 2016 when a service user had been in pain and the shift leader had ignored it and another in October 2017 when the Claimant had raised a service user's back pain and staff had reacted by shouting sarcastically. Mr Tully said that working procedures had changed since the Claimant had been on sick leave. There had been a dialogue with all parties and there was no dispute now as procedures would be followed. If the Claimant had any outstanding issues, then he should put those in writing in his grievance. The Claimant said that his risk assessment needed to include a statement that, when issues were reported, work culture needed to be addressed, that is, what people were actually doing in practice. At the moment, issues were recorded in the communication book in the home and then everybody knew about it, and that was not the best forum. Mr Tully said that he agreed, and this had been addressed at a recent staff meeting. He said that his job was to improve working practices and bring issues to a staff meeting to avoid conflict situations developing that added to the Claimant's stress. The Claimant said that the risk assessment was not appropriate. When Mr Tully suggested that it be taken back to HR for amendments, the Claimant tore it up, stating that the sources of his stress were not mentioned in it. The meeting adjourned for 20 minutes.

209. Mr Tully was concerned that the Claimant was trying to use the meeting, whose primary aim was to establish what needed to be done to get the Claimant back to work, as a grievance meeting. He felt that the Claimant was not understanding or acknowledging all that had been done during his absence to develop a more positive working environment. In his experience, staff had been able to raise health and safety concerns with management during the Claimant's

absence. At the resumed meeting, Mr Tully again invited the Claimant to give his comments on the risk assessment in writing and to put all issues of victimisation and bullying in writing also. He extended the Claimant an open invitation to arrange further meetings. The Claimant said that he had left messages to explain why he had been struggling to get fit notes. The colleague he left a message with did not appear to have passed it on, as it was not recorded in the communication book, which he had just checked. (In his evidence to the Tribunal, the Claimant said that he had emailed Miss Hussain on 21 December telling her he was awaiting a call from his GP's surgery about the sick note, but that email was not presented in evidence to the Tribunal.)

210. Mr Tully told the Claimant that he would need to get his online training up to date during his first week back at work and he would not be put on shift until his training was finished. The Claimant said it was difficult to do online training at work because of noise interruptions. Mr Tully explained that the "twilight room" now had two computers installed for staff to use. The Claimant said that this would still cause him difficulties because of his dyslexia and autism and that Mr Hughes had agreed he could do his training at home because of the difficulties he had doing it at work arising from his dyslexia. Mr Tully said he would check what had been agreed and get back to the Claimant.

211. Towards the end of the meeting, the Claimant again complained about how shift leaders should respond to concerns that were raised. Mr Tully again asked the Claimant to put the specifics in writing to be brought up as a formal grievance. He was concerned that the number of concerns that the Claimant had raised, in telephone calls, by email and in meetings, could not be safely and appropriately addressed, in the interests of the Claimant and the Respondent, unless they were all consolidated into one grievance so that they could be comprehensively addressed by one person or team of people. The Claimant said that he had reported the issues to three managers, including Mr Hughes, and he did not remember them all. Mr Tully asked the Claimant if he intended to raise a grievance about how Mr Hughes had handled his issues, and he replied that he would expect that he would have been told that someone had been spoken to, but the problem seemed ongoing. There were still insidious repeated reactions from certain staff.

212. On 2 February the Claimant sent Mr Tully his detailed comments on the risk assessment, as he had been invited to do. This was a six-page document setting out the factors that he said contributed to his stress due to bullying and victimisation, and what action he suggested to address those factors. He also gave detailed commentary on why the current draft was inadequate.

213. On 5 February Mr Tully responded to this email by confirming that he would treat the points the Claimant raised as a grievance, which would be dealt with by Mr Hughes in due course. He confirmed that an occupational health

referral was in progress. He also confirmed that the Claimant would be required to do his training at work and the Respondent would provide a quiet room in which to conduct this.

214. At 12.54 on 22 January, Miss Hussain had begun the process of obtaining an appointment with the Respondent's occupational health providers to carry out an assessment of the Claimant. On 6 February an appointment was confirmed for 5 March. The referral form was sent at 5.03pm on 14 February. The form had been drafted by Mr Tully with Miss Hussain's assistance. The substance of the referral read as follows:

> *Leeds Autism Services provide day and night support to individuals who have autism which are mainly high needs on the spectrum. The service we provide is a day and night service in a residential home setting.*
>
> *As far as we are aware Andi health conditions are ME, Dyslexia, and autism.*
>
> *Thus we have an overall concern for this individuals health at work and would most appreciate the following questions to be answered:*
>
> *1. Can Andi carry out their day to day duties including morning, late and night shifts and respond to varying demands of the Residential Support Worker role unaided?*
> *2. What would Andi's responsiveness be during the day to a service user Incident and how quickly would their be able to respond to a volatile service user situation where physical intervention would be required?*
> *3. How would Andi's health conditions impact on their day to day duties as a support worker to ensure our service users remain safe and secure at all times.*
> *4. How likely would it be that Andi's overall conditions would impact on them carrying out the day to day support worker duties as outlined in this individual's job description given [his] health conditions and are there any adjustments you can recommend?*
> *5. Andi has displayed concerning behaviour as follows and we would like your professional opinion on how this could affect working with vulnerable adults as follows:*
>
> - *If Andi's beliefs and wishes conflict with the wishes of a service user, do you believe that Andi is able to accord with the service user and prioritise their needs/wishes over their own. For example, in regards to food choices. Do you believe that Andi is able to handle this kind of conflict in a responsive and attentive way? We have observed that Andi tends to believe that their way is best and finds it difficult to understand others' points of View.*

- *It is part of Andi's role to administer medication; they are required to make judgements on the use of PRN analgesic and antipsychotic medication for service users. Do you believe Andi is able to make an impartial judgement, prioritise the needs of service users and collaborate with the staff when there isn't a specific guideline for each instance, often due to the complexity of service users. How do you believe Andi is able to respond to this situation safely and effectiveiy? For example we have observed Andi finds it difficult to collaborate on the agreed use of medication with support staff and medical professionals and tends to believe their way is the best way to administer.*

215. The specific questions in bullet points were based on information that Mr Tully had acquired about the way in which the Claimant was performing his duties. In his evidence to the Tribunal he explained that, given the passage of time and the vast amount of information circulating in the home at the time, he was unable to recall whether these concerns had been documented anywhere. The first bullet point related to the Claimant having made a decision based on his values or beliefs rather than the service user's wellbeing. (This seems likely to relate to the incident Mr Hughes was later to investigate after the Claimant telephoned Ms Mitchell at Leeds City Council, as detailed further below.) The second bullet point, as far as Mr Tully could recollect, related to the Claimant insisting that a service user maintained a particular medication routine and being unwilling to take the advice given by a dietician in that regard.

216. On 7 February Mr Hughes wrote to the Claimant setting out what he considered the Claimant's current grievances were and inviting him to attend a meeting to discuss them. He again asked the Claimant to put in writing details of specific instances of any current victimisation and harassment and give details of how Miss Hussain had discriminated against him.

217. On Saturday 10 February the Claimant arrived at work to find that work was being done on a section of wall between the back yard of the home and the neighbouring property and the height of the wall was reduced as a consequence. The Claimant was concerned at the risk to a service user with a history of absconding who was likely to come to harm if he absconded. The Claimant and a Senior Support Worker, with the Shift Leader's approval, covered the gap in the wall with some sheets, on the basis that the service user would not know that there was a hole in the wall if he could not see it. The following day the Claimant noticed that the sheets had been weighted down with rocks because of the windy weather. He was concerned that these could injure service users if they tugged at the sheets and so he and the Senior replaced them, at the Claimant's suggestion, with beanbags.

218. The Claimant raised the issue with Mr Tully after the weekend. Mr Tully reassured the Claimant that he did not believe the gap was a risk for the service user. The wall was still around 5 or 6 feet high at its lowest point and the service user is around 5 feet 4 inches tall, overweight and unlikely to have been able to scale the wall. He is supported on a one-to-one basis at all times. He is categorised as "no object permanent", meaning that he would see a more distant wall behind the gap as part of the wall, and would not register the gap. The door to the garden had two locks, which the service user would find difficult to unlock. Nevertheless, initially Mr Tully agreed that the hole could be covered with sheets. Mr Tully arrived at the home just before the service user did. He told the Claimant to put a note in the communication book telling staff to secure the wall with sheets. The Claimant did so, with a statement that the instructions came from Mr Tully.

219. The windy weather then made the sheet and its fixings dangerous and Mr Tully decided that the sheets should be taken down. He told the shift co-ordinator, Sean Riley, to take the sheets and fixings down.

220. On Wednesday 14 February the Claimant arrived at work to find the hole in the wall exposed and a ladder leaning up against the wall. The Claimant tried to contact Mr Tully but was unable to do so, so he spoke to a manager at another of the Respondent's sites, Jane Archdale, who told him to move the ladder and secure the area before the service user returned. The Claimant decided to put the coverings back up. He had a conversation about this with Mr Riley, but Mr Riley did not want to risk conflict with the Claimant and so did not resist his actions, even though Mr Tully had given him contrary instructions.

221. The Respondent conceded that the Claimant's conversation with Ms Archdale amounted to raising health and safety concerns, a protected act and a protected disclosure.

222. On 14 and 15 February the Claimant telephoned Ms Mitchell from Leeds City Council. LAS has a contract with the City Council to provide autism services and Ms Mitchell manages that contract. She had previously carried out an inspection of the home where the Claimant worked. He disclosed to her that there had been: repeated negative responses to raising health and safety issues; a risk to a service user absconding due to lack of management action in relation to the hole in the wall; lack of protocols around pain medication and service users not being provided with adequate pain relief; a service user missing over 60 meals in a six-month period and not being given support for his mental health issues; poor staff attitudes to autism and mental health issues; and lack of support for a service user during bereavement.

223. The Respondent conceded that these 'phone calls amounted to qualifying disclosures and raising health and safety concerns. It did not concede that they

amounted to protected acts and the Tribunal finds that they did not. The Claimant's reference to poor staff attitudes to autism and mental health issues was not sufficiently detailed or clear to amount to an allegation that the Respondent had contravened the EqA.

224. At 12.46 on 15 February the Claimant emailed Mr Tully to let him know that he had contacted Ms Mitchell about these matters. He said:

> *I did make it clear to [Ms Mitchell] that you had agreed to follow up on some of these issues and that some of the problems where either wholly or primarily to do with previous managers. I also let [Ms Mitchell] know that I have been away from work for three months so wasn't fully aware of progress that may have been made in my absence.*
>
> *I am happy to discuss this with you more fully.*

225. The Claimant then went in to work. Sometime that day Mr Tully handed him a copy of the occupational health referral.

226. Mr Hughes investigated the concerns that the Claimant had raised with the Council by interviewing staff at the home. He was concerned to learn that the Claimant had been facilitating the service user remaining in his room by taking him meals there, when it had been decided that he should be encouraged to leave his room to prepare his own meals. This had been causing frustration amongst staff.

227. Mr Hughes emailed Ms Mitchell with his findings. In particular, he explained that the service user who was alleged to have missed meals was being encouraged to leave his room to get his supper himself, as he had been becoming increasingly isolated. He acknowledged that the management of the home had been lax, but reassured Ms Mitchell that Mr Tully was being proactive and seeking to address the issue.

228. On 16 February the Claimant emailed Mr Hughes to say that he believed that Mr Tully had made allegations against him in the occupational health referral in response to the fact he had raised concerns with the Council. He said he was worried he was going to lose his job due to this situation. Mr Hughes replied on 20 February that he had seen the email that confirmed the referral was drafted before he raised his concerns with the Council and reassured him there was no link between the two.

229. The Claimant went on sick leave again. He replied on 21 February saying that he wanted the date the email was sent to be verified by an independent party and "potentially have it forensically checked". The Claimant pointed out that he had previously told Mr Tully that he intended to disclose his concerns to

the CQC and the Council if he did not address the Claimant's concerns, which he had not. He also said that the he had raised concerns about the negative reaction of staff to him raising health and safety concerns with Miss Hussain, Mr Tully and Mr Hughes himself. He believed "this constitutes internal reporting of a qualifying disclosure which would mean subsequent detriment was covered under the LAS whistleblowing policy and the Public Interest Disclosure Act."

230. On 22 February, without responding to the Claimant's email of 21 February, Mr Hughes wrote him a "without prejudice" letter suggesting terms of settlement. The Tribunal has not seen that letter, which is subject to privilege. The parties agree that the settlement would have involved the termination of the Claimant's employment relationship.

231. On 23 February the Claimant refused the proposed settlement and asked that his occupational health assessment and grievance process should be concluded before any process that could result in the loss of his job or disciplinary action. He raised his concerns that Mr Tully had failed to take management action to deal with the hole in the wall, the fact that the Respondent had not acted on details of bullying and victimisation he had provided, Mr Hughes had failed to investigate his allegation of the occupational health referral amounting to victimisation for whistleblowing; the fact that the Respondent had not investigated the Senior Care Worker who shouted at him when he raised a health and safety issue; and the unreasonable pressure he had been placed under to accept the settlement offer within a day. He again said that the Respondent had not dealt with the issues he had raised in his grievances: "*Holding a meeting without investigating or actually addressing the issues raised does not constitute dealing with issues*."

232. On 28 February the Claimant attempted to attend a staff meeting but was told by Mr Hughes and Miss Hussain that he could not do so as he was currently on sick leave. Miss Hussain told him that he would need to provide a fit note and have a return to work meeting before he could return. The Claimant was resistant to what the managers were saying and argued with them that he should be allowed to return to work that day.

233. Also on 28 February Mr Tully wrote to Miss Hussain to explain his response to the Claimant's email to him of 15 February about the matters he had raised with Leeds City Council. He said that the email caused him concern on a number of levels. First, it showed that the Claimant was unable to allow senior staff to deal with matters and was using his limited information and understanding to demand resolutions that he was unable to compromise on. Mr Tully explained that he had given an explicit instruction to a staff member about how the hole in the wall should be dealt with, only to find that the Claimant had given a different instruction that the staff member had gone along with because it was easier than having to deal with the Claimant. Mr Tully considered that the

Claimant's email was an attempt to influence Mr Tully in relation to the concerns he had about the Claimant's conduct, rather than being to promote the welfare of the service user. He considered it wholly inappropriate that the Claimant had raised his concerns with Ms Mitchell rather than following the Respondent's procedure (presumably a reference to its whistleblowing procedure). He considered that the Claimant had been "*unable to adapt to a responsive and informed manager and continues to pursue their own agenda*". The Claimant had shown Mr Tully a lack of respect, as when he had torn up the risk assessment and shouted at Mr Tully down the phone when not given the answer he was looking for. He concluded: "I have reached the conclusion that the relationship between [the Claimant] and myself has degraded to the point of it being unmanageable. They respond negatively to being managed and I have concerns over which unsanctioned action they may choose to take next, or which instruction they may choose to override from either shift leaders, operational management or the senior management team."

234. In his response to the questions the Claimant put to him in cross-examination, Mr Tully said that in his time as a manager this was the first time he had had to write an email to HR like this. He said: "It is hard to put into words how much time I and [the Respondent] had put into trying to work with you and change around the situation we were in". And all this was at a time when he was also managing a huge period of change to working practices, with a high turnover of staff and changes to the management team. He could not do it any more. When the Claimant put to him in cross-examination that he had just wanted Mr Tully to make an effort and talk to the staff members he was having a problem with, Mr Tully's response was "I had made an effort. I was working 10-hour days and six- or seven-day weeks".

235. On 7 March the Claimant emailed Ms Paul to amend his current grievance to include detriment due to whistleblowing from Mr Tully, an omission to objectively investigate by Mr Hughes and a detriment by Mr Hughes by a settlement offer that required the Claimant to resign and warned of further action against him if the offer was not accepted. The Claimant said that Mr Hughes would no longer be a suitable person to hear his grievant. He added that his grievance "*will also refer to the inadequate and inappropriate responses to previous grievances and appeals by Iain Cant and David Thompson*."

236. On 7 March, Mr Hughes wrote to the Claimant instructing him to attend a formal hearing to discuss his relationship with staff and managers and consider whether the employment relationship was sustainable. The letter went on:

> *In particular we wish to consider the following issues:*
>
> - *We have at all times endeavoured to deal promptly and efficiently with any grievance or complaints you have raised, and given you*

clear outcomes and explanations. However, you continue to raise complaints on the same facts and issues that have already been addressed.

- *You have raised various claims of bullying, harassment and victimisation. and made claims that individuals have caused your various disabilities/illness. We have tried to investigate and address these claims, but when you are asked for evidence you are unable to provide it. You request that Leeds Autism Services take action to deal with these claims, but prevent us from being able to do so by not providing the necessary information or evidence.*

- *You appear to have issues with each manager you meet with and in particular any manager who addresses an issue you have raised but does not give the outcome you are looking for. It becomes very difficult to run an organisation while devoting time to addressing frequent grievances arising purely from you receiving responses that do not fit in with your understanding of how we should deal with matters. We have always responded reasonably to you. Your objections to dealing with certain managers and the allegations you raise against them mean that the pool of managers you are willing to meet with is now extremely low making dealing with any future grievances exceptionally difficult.*

- *You regularly make 'reasonable adjustments' requests, as you are entitled to do. However, when we seek to discuss these adjustments, you seem to be very resistant to co-operate and engage with management in order to find a solution which is acceptable to both parties.*

- *You appear to have difficulty and/or great reluctance to follow reasonable management instructions. As an example, in regard to an issue with the wall at [the home], despite your line manager giving you assurances and instructions this was dealt with, you ignored this instruction and convinced another employee to do as you wanted, despite being instructed otherwise.*

- *You attempted to attend a team meeting on 28th February, whilst you were off sick and after not following the correct absence reporting procedures. As a result, after we discussed this with you separately, you raised various new matters. In particular, you stated you felt fit to work and wished for us to conduct a return to work meeting immediately, and also stated that you felt we had discriminated against you. We were not in a position to act on any of your requests immediately and explained that you had not*

followed the correct absence procedure, meaning we were unaware of your return to work or indeed your fitness to work. We still await a FIT note to cover your absence. Your behaviour during our conversation leads us to believe you had a desire to delay the team meeting and were therefore refusing to accept or show understanding of what you were told, in order to present an obstacle to the meeting going ahead. We had to be very clear with our instructions, and even then you did not appear very accepting and you looked visibly very unhappy about us speaking to you about this and outlining our view point as your employer. This again evidences a break down in our relationship between us, and is only the latest example of numerous similar incidents suggesting that the employment relationship is becoming increasingly unworkable and acrimonious for both parties.

- *We have an overriding duty of care to our service users and now feel that there are increasing indications that you are may well not be safe to work with them. This is borne out of your complaints to Leeds City Council. Upon investigation, these complaints in fact gave reason to believe that you were imposing your views/wants on to service users and not conducting yourself in an appropriate manner. For example, you made claims to Leeds City Council alleging that we were withholding meals to a particular service user, when in fact it was found that you were taking the meals to the said service user and not allowing them a choice to come downstairs and make their own meals independently. Such an incident is not within the ethos of LAS and us providing our service users with person centred planning/involvement. This causes us great concern regarding you supporting our vulnerable service user group. Furthermore, the making of any vexatious or malicious allegations to Leeds City Council or other external bodies inevitably undermines trust and confidence in you as an employee and undermines the working relationship. Therefore, we wish to discuss this issue further, to consider its potential impact on our future relationship.*

- *Each time a trustee is asked to hear an appeal hearing you object to the trustee we appoint or unhappy with the outcome and then proceed to lodge a further complaint against the said trustee. This is again making it difficult for us to deal with appeal hearings, as we have a limited pool of trustees with very limited availability, and has a detrimental impact on the running of the organisation, as the trustees are responsible for appropriate governance but are devoting a disproportionate amount of time to dealing with issues connected to these appeal hearings.*

- *During a recent return to work meeting you tore up a Stress Risk Assessment in front of the manager. This was inappropriate and disrespectful in itself. You had also been asked on numerous occasions prior to the meeting to comment on it and contribute to the meeting, as you had requested it was carried out in the first place, but then made it extremely difficult to achieve any meaningful progress. We view this as a clear example of the broader breakdown of the employment relationship.*

Although we have discussed many of the above issues as and when they have arisen, we now feel it is necessary to discuss the cumulative effect of the frequent and ongoing disagreements between you and the organisation's management (and other staff) and review the implications for any future working relationship.

We will be using the following supporting documents in the meeting and attach this to the letter as follows:
E mail from Russell Tully dated 28th February 2018
E mail from [the Claimant] dated 15th February 2018
Extract regarding said service user AP relating to response to LCC regarding concerns raised and service user involvement.
Letter dated 7th February 2018 from myself.
Letter dated 5th February 2018 from Russell Tully
Letter dated 26th January 2018 from Russell Tully
E mail to Kathy Paul 24th January 2018
E mail from [the Claimant] dated 22nd January 2018
Letter to [the Claimant] dated 10"" January 2018
E mail from [the Claimant] dated 21st December 2017
Letter to [the Claimant] dated 19th December 2017
Letter to [the Claimant] dated 5th December 2017
Minutes of meeting dated 24th November 2017

You have the right to be accompanied by a fellow employee or an accredited trade union representative and it is up to you to inform your companion of the date and time of the hearing.

Please be aware that, in the circumstances, a potential outcome of the hearing could be that you will be dismissed from employment. Having regard to your past concerns and difficulties with meetings, if you wish to conduct the meeting via correspondence then we would be happy to agree to this.

237. By this stage, the Respondent had decided not to continue with the occupational health referral until the issue of the Claimant's future employment had been settled.

238. In his evidence to the Tribunal, the Claimant said that the list of reasons given in this letter mainly related to his internal and external whistleblowing. Most of the reasons given, he said, were "*vague to the point where it is difficult to address them*." On 23 March he wrote Mr Hughes a detailed six-page letter requesting supporting evidence for the "allegations" set out in the letter.

239. The meeting was eventually held on 26 March. The Claimant was accompanied by his trade union representative, Mr Vincent. The Tribunal was provided with a transcript of the meeting, which was recorded by the Claimant with the Respondent's agreement.

240. Mr Hughes led the meeting, supported by Miss Hussain. He confirmed to Mr Vincent that this was not a disciplinary hearing. It was a meeting to discuss whether there had been a breakdown of trust between the Claimant and the Respondent and whether their employment relationship was sustainable. Notwithstanding that clarification, Mr Vincent continued to refer to the "allegations" in the letter and asked what policy the organisation was following, Mr Hughes continued to confirm that these were not allegations but matters that might indicate a breakdown of trust between the parties. The Claimant complained that the issues in the letter were too vague for him to have had an opportunity to prepare anything in response. He gave as an example the first point: "unless I'm to go back through every single point I've made in my grievance and every single point I've made in my appeal and demonstrate for every single point that they had not been adequately dealt with, that I wasn't given the information that they were adequately dealt with and substantiate my reasons for re-raising each issue I don't know how I could address even that. . . that one point".

241. The meeting continued with the Claimant and Mr Vincent repeatedly asking for details of and evidence for what the Claimant had done wrong and what policy the organisation was intending to follow and Mr Hughes and Miss Hussain repeating that these were not disciplinary allegations. The Claimant questioned how the Respondent's trustees were trained and whether they were competent.

242. The Claimant asked if he could return to work in the meantime but was told that he could not, because the organisation was currently unclear whether he was safe to work with service users. The Claimant queried whether LAS was genuinely worried about his competency. He pointed out that the occupational health referral had effectively been cancelled, so the organisation had decided not to get medical input on his competency. Mr Hughes responded that some of

the organisation's concerns about his competency had arisen from the investigations he had carried out about the concerns the Claimant had raised with Leeds City Council. Having investigated those concerns, Mr Hughes had concluded that the Claimant's issues were "largely vexatious". Mr Hughes discussed the example of the Claimant's complaint that a service user had not been provided with meals, which Mr Hughes had decided, after discussing with others, was in fact not an issue.

243. Eventually, because little progress was being made on discussing the central issue of the lack of trust and confidence between the parties, the meeting was ended by Mr Hughes and Miss Hussain saying that the process would be conducted by correspondence, to allow both sides to take advice and the Claimant to put the points he wanted to make in writing.

244. On 3 April, Mr Hughes wrote to the Claimant, again emphasising that the meeting had not been to discuss disciplinary allegations, but to discuss the relationship between the Claimant, staff and managers and to understand whether they could work together. Mr Hughes gave the meeting itself as a clear example of why the Respondent considered that working with the Claimant was proving very difficult. "Our meetings with each other continue to take a long time and have no outcome which is difficult for us to maintain and results in no outcome and you questioning everything that we are trying to do." Mr Hughes then set out all the points from his letter of 6 March, but gave specific references to indicate which documents that had been supplied supported which point. He said that the points made were a range of examples and were not intended to be exhaustive.

245. On 23 April the Claimant sent Mr Hughes what he described as the "first part" of his response to Mr Hughes's letter, addressing the first point only. He said he could send a summary of his response to the other points the following day, provided he could provide additional information if needed in due course. Mr Hughes replied that he needed to send all correspondence by 4 May. On 4 May the Claimant sent him "some of" his responses to the letter of 3 April; he had not had time to respond to everything before the deadline. The Claimant's response was a detailed account of where he took issue with the points that the Respondent raised and ran to 39 pages. On 8 May he wrote to Mr Hughes and asked that the rest of the hearing be dealt with in a face-to-face meeting as a reasonable adjustment for his disability, as his dyslexia and ME make extensive written work difficult for him.

246. On 15 May, having considered the Claimant's responses, Mr Hughes wrote to him notifying him that the Respondent had decided to terminate his employment with effect from that date but with a payment in lieu of notice. The letter is detailed and gives an indication of Mr Hughes's approach to the

decision to dismiss the Claimant and the reasons for it. The letter read as follows:

> *I write further to your letters of 4th May 2018 and 23rd April 2018 in which you submitted your response to the issues we outlined in our letters dated 7th March and 3rd April 208 and our meeting which we attempted to discuss matters on the 26th March 2018.*
>
> *I have given your written correspondence very careful consideration and outline our responses as follows, listing each point in our letter followed by your response and our comments:*
>
> *1 We have at all times endeavoured to deal promptly and efficiently with any grievances or complaints you have raised and given you clear outcomes and explanations. However, you continue to raise complaints on the same facts and issues that have already been addressed.*
>
> *You have submitted various reasons as outlined below*
>
> - *That your current Line Manager Russell Tully did not respond to your complaints regarding Yasmin Hussain on 24th November 2017 where you made allegations of bullying and victimisation.*
> - *That you had raised whistleblowing complaints with Leeds City Council on 15th February 2018 and thus feel victimised.*
> - *You raised issues of disability discrimination on 15th March 2017 which were not addressed*
> - *The incident with RN wherein she shouted at you and you felt this was bullying and victimisation and this was not responded to.*
> - *You raised various health and safety issues and these were responded to with sarcasm and shouting.*
> - *There are now three incidents where negative connotations were made regarding rape and this was not dealt with.*
> - *You felt the individual stress risk assessment provided was inadequate and counterproductive*
> - *You also submit that Yasmin Hussain, HR Manager, advocated ways of working that would endanger service users, that she condoned bullying and also discriminated against you on the grounds of your disability.*
>
> *In response to your written submissions I have taken into account what you have submitted. In relation to your grievance that you submitted dated 22nd January 2018 we have tried to arrange to meet with you.*

However, you had a period of absence you then submitted other varying complaints and in this we also had to arrange your return to work. We have tried to deal with your issues as quickly as possible. However, you have submitted several grievances against various Senior Managers and this therefore makes it difficult for us to deal with matters as efficiently as you would like us to as the pool of people available to deal with the grievances is getting progressively smaller. You have not taken sufficient account of the size of the organisation, the fact that we have other employee issues to deal with and our priorities in providing support to our service users.

Furthermore, Russ Tully did respond to your allegations of bullying and victimisation regarding Yasmin Hussain and confirmed that I would hear the grievances. You then went on to lodge a grievance against Russ Tully your current line manager. Furthermore, we do not accept your comments that you made a whistleblowing complaint and thus then were victimised.

As far as I can see from the evidence provided you submitted a concern to Leeds City Council regarding a service user which was found not to be valid and nor was it was factually correct. In fact, we believe that you were imposing your views and needs on the service user. You also raised historic health and safety matters with your immediate line manager. You are fully aware of the relationship we have with Leeds City Council and the processes for you to follow. This does give the impression that your intent is to cause issues for Leeds Autism Services and harm our reputation and relationships with external bodies. This incident further exemplifies your inability to accept management decisions which has the potential to damage our reputation with other external bodies.

With regards to the health and safety issues that you have continually raised, we have responded to them in a robust manner and have reiterated to you on numerous occasions that the issues you had raised were minor health and safety issues. Again, you appear to have great difficulty understanding health and safety legislation and how this affects you as an employee of Leeds Autism Services. You raised issues of a broken padlock on the back door with the potential of a service user to "abscond". You raised this issue with your Senior Colleague and thus discharged your duty of care to which you do not appear to accept and then proceed to exaggerate the issues to meet with your views. We once again confirm that once you have raised a health and safety matter with your immediate line manager/supervisor you have then discharged your duty of care as an employee of Leeds Autism Services.

In relation to your negative comments regarding rape which you are now saying occurred on three separate occasions. As you are aware, we did speak to the employees involved but this was a discussion between colleagues. We are not in a position to police every conversation that

takes place between employees. We will take action accordingly if we feel there is a need to or requirement to do so. Again, this is an example of where you feel Leeds Autism services should take action when it is not reasonable to do so and your expectations of what we should carry out compared to what we can actually deliver are not achievable.

Furthermore, you raised issues relating to employees regarding their attitudes towards autism, mental health issues, bereavement and your belief that they have dated approach to notions of care. If this is correct, which we do not believe is the case, then this is an operational management issue and not your issue to take forward as a Support Worker. Again, this demonstrates your difficulty in understanding the employer/employee relationship boundaries.

We conducted a stress risk assessment based on our understanding of what exacerbated your ME given your previous comments. You did not respond to requests for contributions to this, and at the meeting you physically tore up the printed copy. Furthermore, the return to work meeting which included this took over 4 hours to conclude, again this gives the appearance you are reluctant to work with us and demonstrates how time consuming this is for us to deal with as an organisation.

In regards to Yasmin Hussain, HR Manager, she was appointed in October 2017 and thus took an objective view to your issues, not having any previous history of working with you. We do not believe that Yasmin condoned any premise of endangering service users, bullying and victimisation nor has she discriminated against you on the grounds of your disabilities. We firmly believe you did not respond well to what Yasmin was saying to you in the meeting as you wished to hear answers that fitted in with your view of the world. Namely, Yasmin made it very clear that once you had discharged your duty of care when raising health and safety issues this was all dealt with accordingly.

Yasmin also quite rightly pointed out that you were able to respond and write lengthy e mails and thus did not accept you were unable to submit an appeal against a grievance outcome. Again, Yasmin supports many of our employees who have a wide range of disabilities and do not accept that she had discriminated against you in any way. We are sorry you feel this way but I can assure you this is never our intention and feel we have been very supportive of you and your various disabilities.

Again, this may well not fit in what you expect us to do for you, but there is a continuum of reasonableness as a small charitable organisation.

2 You have raised various claims of bullying, harassment and victimisation, and made claims that individuals have caused your disabilities. We have tried to investigate and address these claims but when you are asked for evidence you are unable to provide it. You request that Leeds Autism Services takes action to deal with these claims

but prevent us from being able to do so by not providing the necessary information or evidence.

You have submitted various reasons as outlined below:

- *That you feel it is unreasonable to ask for details about continued bullying and victimisation within 5 working days.*
- *That you feel Leeds Autism Services are making excuses not to investigate your grievances.*
- *That the individual stress risk assessment provided was inadequate and counter-productive and Russ Tully asserted you could not return to work unless this was agreed.*
- *That your grievance hearing will not take place ahead of a decision to dismiss you.*
- *That you feel there is a potential victimisation from Yasmin Hussain and Russ Tully.*
- *That Yasmin Hussain had taken disciplinary action against you and this amounted to disability discrimination.*

It is clear from the evidence provided that it is not unreasonable for the organisation to request you to provide details of bullying and victimisation within the specified timescales. You will fully appreciate that a timescale has to be given otherwise they can be no swift investigation to grievances nor can they be any apparent conclusion.

Leeds Autism Services denies failing to deal with your grievances. In fact you received correspondence dated 7th February 2018 confirming that I would be holding a grievance meeting to listen to your grievances and address such concerns. Given you had particular grievances against Yasmin Hussain and Russ Tully these evidently were not the correct people to hear the grievances hence why I was hearing them. I note that from the correspondence you were offered a number of dates to have your grievances heard but you or your trade union representative was unable to attend on each offered date. Thus, we have tried to deal with your grievances as quickly and efficiently as possible.

You will fully appreciate that it was at your request for a stress risk assessment to be conducted. This was drafted and sent to you in correspondence of 7th December 2017. We asked for your comment on numerous occasions, but you failed to provide us with any feedback. We then conducted a four-hour meeting for a return to work meeting which encompassed you unpicking every aspect of the stress risk assessment, which included you tearing this up at one point during the meeting in front of your line manager and HR officer. You also make various claims that you do not feel supported by your line manager Russ Tully. I do not agree you have not been supported. I feel the four hour meeting for your return

to work in addition to the ongoing support you were provided with upon your return is more than adequate support for a single employee.

I do not believe either that Yasmin Hussain or Russ Tully have victimised you and you have not presented any evidence of this. It may well be that you do not wish to hear what they have to say about how they will deal with issues you have raised but this is most certainly not victimisation. Unfortunately, we have to run an organisation and this cannot be run on individual wants and needs and perceptions by individual employees on how LAS should be run.

I would like to be clear that it was not Yasmin Hussain, HR Manager whom invited you to a disciplinary hearing. It was in fact Russ Tully, [the home] Manager. The reason for such a disciplinary invite was due to your failure to provide a fit note and follow the absence reporting process. We had given you ample time to respond. In any event, although you feel victimisation has taken place I do not agree with this and feel this appears to be a result of you not being able to understand how we operate as an organisation and what we find acceptable and unacceptable.

3 You appear to have issues with each manager you meet and in particular any manager who addresses an issue you have raised but does not give you the answer you are looking for. It becomes very difficult to run an organisation whilst devoting so much time to addressing frequent grievances arising purely from responses that you feel do not fit with your understanding of how we should deal with matters. We always respond reasonably to you. Your objections to dealing with certain managers and the allegations you make against them meant that the pool of managers and the allegations you make against them you are willing to meet with is now extremely small, making dealing with any future grievances extremely difficult.

You have submitted reasons as below:

- *That the only individuals you do not wish to meet with are Yasmin Hussain and Russ Tully.*
- *That you have only raised are three grievances in the 2.5 years you have been employed.*

As an organisation, amongst the pivotal people are your line manager (Russel Tully) and that of HR management by Yasmin Hussain. It is true to say you have raised numerous issues against Russ and Yasmin which I feel shows you have difficulty in working with us as an organisation. It is clear that you have lost all faith in the organisation to deal adequately with any issue to your satisfaction. Indeed, you showed complete and serious disrespect for your line manager relating to the [home] wall incident whereby your manager gave you a very specific instruction and you took it

upon yourself to override this decision. You appear to be unhappy with the HR Manager for similar reasons.

From your correspondence it appears that you wish to protect issues out over a lengthy period so that different issues all become confused and memories fade. A clear example of this, is the three grievances that you have made and which have been addressed but which you are still reaffirming they are ongoing e.g. lack of management relating to ongoing victimisation and bullying.

You are clearly very unhappy with dealing with Senior Managers and Trustees within the organisation. To the extent that during our recent meeting held on 26th March 2018 you questioned the training of our trustees which really is none of your concern.

This again demonstrates again how we are not able to work together moving forward.

4 You regularly make reasonable adjustment requests, as you are entitled to do. However, when we seek to discuss these adjustments you seem to be very resistant to cooperate and engage with management in order to find a solution which is acceptable to both parties.

You have responded as follows:

- *That LAS's track record of providing reasonable adjustments for yourself has been very poor and that your probationary period was for 18 months.*
- *Russ gave you an ultimatum of accepting the stress risk assessment and did not address your issues*
- *That you carrying out your online training from home was a reasonable adjustment and was agreed with Pete Hughes in 2016.*
- *Russ withdrew your request for a reasonable adjustment and this was withdrawn without your consultation.*
- *David Thompson, LAS trustee, refused to make a reasonable adjustment.*

We do not agree that LAS's provision in making reasonable adjustments to you has been poor. It is indeed true that your probationary period was extended and reasonable adjustments were put in place in order to assist with your various disabilities. You will appreciate if we did not have any medical evidence to support what you were saying we are perfectly entitled to ask you to provide medical evidence of your disabilities.

Leeds Autism Services has spent numerous meetings doing its utmost to support yourself with your varying disabilities. In an ideal world our managers would be able to respond to issues immediately. This is not the

case and as you will fully appreciate social care sector managers change and thus leaves a gap in continuity.

Furthermore, we have limited resources and thus rely upon external bodies such as Access to Work to advise us. I believe that we asked you to contact Access to Work and this was not acted upon and followed through in relation to them coming to assess you at work and recommending further adjustments to the work place. We adjusted your working hours to accommodate your ME and offered you sufficient assistance with your dyslexia.

I would like to point out the whole purpose of making reasonable adjustments is to put a disabled person on a level playing field with a non-disabled person and not allow them preferential treatment. It is not a reasonable adjustment to request an individual does not attend a meeting because you do not feel the responses given are to your satisfaction. This has no clear connection to your disabilities, or your different needs as a result of your disabilities.

Your line manager Russ Tully did not give you an ultimatum, what Russ did communicate as your employer was that we felt that stress risk assessment was adequate for you to be able to return to work and carry out your duties. You requested your online training to be carried out at home.

There was a point in time where there was no adequate place for you to carry out your online training at [the home] but as explained to you there are now numerous places where you can carry out your online training at [the home] and therefore your request was refused.

Furthermore, we offered you to carry out your online training at [two other sites of the Respondent]. All of these suggestions we feel are reasonable but you declined and confirmed you felt this was not sufficient though we believe we have given you adequate provision.

It is factually correct that Russ Tully declined this request and he did postpone the meeting as he had a more pressing operational matter to deal with at [the home] but this did not result in an unreasonable delay. It is also true to say you felt us paying you full pay whilst you were off sick in November 2017 was a reasonable adjustment but we do not agree this is appropriate.

In relation to David Thompson your assertion that he did not make reasonable adjustments for you is untrue. We have endeavoured where we can to make reasonable adjustments but this does not appear to ever meet your expectation. We have tried our best to accommodate you within our limited resources and operational running whilst providing a service to our service users.

5 You appear to have difficulty and/or great reluctance to follow reasonable management instructions. As an example in regards to an issue with the wall at [the home] – despite your line manager giving you assurances and instructions this was dealt with you ignored this instruction and convinced another employee to do as you wanted despite being instructed otherwise.

We note that we have not received any submission from you in relation to this matter.

I therefore conclude from the evidence available that you refused to follow Russ's instruction in relation to the [home] wall. It is clear that Russ instructed you that the [home] wall had been dealt with but you took it upon yourself to try and deal with it after your line manager had left. This demonstrates serious disregard for your line manager and for organisational procedure.

It is not acceptable that you coerced an employee to deal with the [home] wall namely to ensure more netting was erected. We note that the said employee declared it was easier to do what you wanted rather than having to deal with you. Which demonstrates again that colleagues have great difficulty in coping with your wants and needs and feel it is easier just to give in to your requests.

This lack of regard for your line manager or for organisational process shows you appear to have no understanding of employment/employee boundaries and demonstrates the breakdown in the employment relationship.

6 You attempted to attend a team meeting on 28th February 2018 whilst you were off sick and after not following the correct absence reporting procedures. As a result, after we discussed this with you separately you raised various new matters. In particular you stated you felt fit to work and wished for us to conduct a return to work meeting immediately and also stated that you felt we had discriminated against you. We were not in a position to act on any of your request immediately and explained that you had not followed the correct absence reporting procedure, meaning we were unaware of your return to work or indeed your fitness to work. We still await Fitnote to cover your absence. Your behaviour during our conversation leads us to believe you had a desire to delay the team meeting and were therefore refusing to accept or show understanding of what you were told, in order to present an obstacle to the meeting going ahead. We had to be very clear with our instructions and even then you did not appear very accepting and you looked visibly very unhappy about us speaking to you about this and outlining our view point as your employer. This again evidences a break down in our relationship between us and is only the latest example of numerous similar incidents suggesting

that the employment relationship is becoming increasingly unworkable and acrimonious for both parties.

You have submitted the following in relation to the above:

- *That you have been given four different reasons for you not been able to return back to work as namely, not following the absence management reporting procedure, that you were allowed time to prepare for your formal hearing, that you required a fit note to return to work, and the fourth reason is Yasmin Hussain was working on your return to work meeting.*
- *That the alleged behaviour that was described above is not specific enough.*

I have given these points great consideration and do not agree that your interpretation of events is correct. Firstly, when you attempted to attend a team meeting on the 28th February 2018 you were, as we understood it, off sick and therefore we did not expect you to attend

In terms of your return to work it is true that Yasmin Hussain did clarify that she was looking into your return to work but we do not agree that when we met on the 28th February 2018 that we said you could not return to work and you were to prepare for your formal hearing.

What Yasmin did say to you on the 28th February 2018 that she would be in touch in order to facilitate your return to work and we were still awaiting a fit note covering your absence, to clarify you did not require a Fitnote to return to work. We did agree to reinstate you on full pay, accepting that you were fit to return to work, but decided to offer you paid time off as a reasonable adjustment to allow you to prepare for the hearing.

7 We have an overriding duty of care to our service users and now feel that there are increasing indications that you may well not be safe to work them. This is borne out of your complaints to Leeds City Council. Upon investigation, these complaints in fact gave reason to believe that you were imposing your views/wants on to service users and not conducting yourself in an appropriate manner. For example, you made claims to Leeds City Council alleging that we were withholding meals to a particular service user when in fact it was found that you were taking the meals to the said service user and not allowing them choice to come downstairs and make their own meals independently. Such an incident is not within the ethos of LAS and us providing our service users with person centred planning/involvement. This causes us great concern regarding you supporting our vulnerable service user group. Furthermore, the making of any vexatious or malicious allegations to Leeds City Council or other external bodies inevitably undermines trust and confidence in you as an employee and undermines the working relationship. Therefore, we wish to

discuss this issue further to consider the potential impact on our future relationship.

You have not submitted anything relating to these issues and therefore we will make our conclusions as follows. We feel that you did make vexatious claims to Leeds City Council and as we understand it you continue to do so as we have received an email from Leeds City Council informing us again of your contact.

We believe that by doing this (whatever your motivation) you have the potential to damage our reputation and our working relationships with Leeds City Council. We do have concerns with you working with our vulnerable service user group and as such do not believe you are safe to work with them as you may impose your wants and needs them.

In relation to this particular service user it is apparent you were taking food to their room rather than allowing them to come out of their room and prepare their own meals. This kind of action contradicts our ethos, practice and indeed specific instructions/care plans. We feel this kind of behaviour undermines our employment relationship and overall this specific incident has left us in a very difficult position with us having to rebuild our relationship with Leeds City Council due to your actions.

8 Each time a trustee is asked to hear an appeal hearing you object to the trustee we appoint, or you are unhappy with the outcome and then proceed to lodge a further complaint against the said trustee. This is again making it difficult for us to deal with appeal hearings as we have a limited pool of trustees with very limited availability and has a detrimental impact on the running of the organisation, as the trustees are responsible for appropriate governance but are devoting a disproportionate amount of time to dealing with issues connected to these appeal hearings.

You have submitted your points as follows:

- *You feel that Iain Cant was not competent to hear your grievance appeal hearing due to his understanding of employment law and disability discrimination.*
- *David Thompson refused to address the issue of disability discrimination relating to comments made by Iain Cant.*
- *That trustees are not trained in employment legislation and in particular disability discrimination.*
- *That David Thompson concluded from your grievance appeal hearing that managers had behaved appropriately.*

  Furthermore, David Thompson declined to make a reasonable adjustment relating to a grievances hearing.

I would like to clarify the role of Trustees within a small charitable organisation. The sole purpose of their function is for them to govern the organisation and agree strategy and how we intend to take the charity forward. Therefore, your understanding that they should have an in-depth knowledge of employment law is unfounded and incorrect.

We feel our trustees are equipped to hear appeals in certain circumstances but do bear in mind our board of trustees are from commerce and thus not dedicated Employment Law experts. This is normal in most companies and organisations.

We do not believe the trustees have discriminated against you on the grounds of your disability. We believe we have acted reasonably at every stage. Again we reaffirm that a reasonable adjustment is to ensure a disabled person is put on the same par as a non-disabled person thus I cannot see how you have been discriminated against. In terms of your appeal hearing David Thompson only asked you to confirm if you wished to appeal and you did not do so, we therefore understood that you did not wish to appeal. You were not asked to submit your full appeal in writing in the timescale, you were asked just to confirm if you wanted to appeal. We were prepared to offer you time to prepare your full case for appeal, as a reasonable adjustment.

This exemplifies again how you have lost all confidence in us as your employer and you do not wish to engage with trustees that meet with your understanding of how issues should be dealt with. I would also like to make you aware that trustees are voluntary and do not have copious amounts of time to deal with your every issue though they will hear appeals where appropriate.

9 During a recent return to work meeting you tore up a Stress Risk Assessment in front of your line manager. This was inappropriate and disrespectful in itself. You had also been asked on numerous occasions prior to the meeting to comment on it and contribute to the meeting, as you requested it was carried out in the first place but then made it extremely difficult to achieve any meaningful progress. We view this as a clear example of the broader breakdown of the employment relationship.

You have submitted nothing regarding the above comment. You had asked us to draft a stress risk assessment, which we had done in our correspondence dated 5th December 2017 and you had declined to respond to this. We were trying to assist you but you then decided because the stress risk assessment did not fit with how you wished it to be you would tear this up. We view this as a graphic example of the fundamental breakdown in our relationship and how we are unable to work together.

In conclusion, taking into account all the points you have raised and our responses we feel we have no other option but to terminate your

employment. Throughout this letter we have highlighted why we find it difficult to work with you and how you find it difficult to work with us as an employee. It is hard for us to run a small benevolent charity while having to deal with and correspond with you continuously and balance this against our overreaching responsibilities to our service users and other employees within the organisation.

We have tried our best to work with you but we are not able to reach any conclusion or compromise as you appear to feel your way in the correct and only way. This is not how any organisation works. We also believe that we have fully supported you in making reasonable adjustments in regards to your disabilities. The whole ethos of our charity is to provide support to individuals with disabilities and we have done our best to do so with yourself on this occasion.

Furthermore, we have many employees that have a wide range of disabilities to whom we have provided reasonable adjustments to and this has met with their satisfaction and allowed us to have a positive working relationship.

It is with much regret that we are terminating your employment as of 15th May 2018 for some other substantial reason, ie the reason being that the employment relationship is not sustainable and is indeed fundamentally broken. You will not be required to work your notice of one month, which will be paid in lieu, we will also pay you outstanding holiday pay of 131.25 hours in your May 2018 salary.

You have a right of appeal against this decision and as a reasonable adjustment we are allowing you an extended period in which to appeal. If you wish to appeal, please put your appeal in writing to Yasmin Hussain, HR Manager by 31st May 2018. Yasmin will coordinate your appeal with the relevant trustee for reference

247. On 1 June the Claimant sent Miss Hussain an email appealing against his dismissal. This email, expanded upon in the documents he subsequently sent to Mr Sheppard, amounted to a reasoned and detailed criticism of each of the points Mr Hughes made in his letter of dismissal. In broad summary, the grounds of the Claimant's appeal were as follows:

247.1 LAS had provided no evidence to substantiate its assertion that he had repeatedly re-raised issues that had already been dealt with and for which he had received clear outcomes.

247.2 LAS was wrong to criticise him for not providing evidence of his bullying and victimisation allegations when he had already provided this and was off work sick at the time he was told he needed to provide it again. He had given details of many issues he had reported in detail but were not investigated or acted upon.

247.3 The evidence might show the Claimant had raised issues about managers but that did not provide grounds for concluding that it was unreasonable for him to do so, particularly when the issues he had raised were never investigated.

247.4 The example of resisting following management instructions was not well-founded as Mr Tully himself had not said that he had given instructions to the Claimant about how the wall should be dealt with, and there was no evidence the Claimant was aware of the instruction he had given.

247.5 The Respondent had not provided any detail on what behaviour on the day of the team meeting was said to evidence that the employment relationship had broken down. The Respondent had not considered how his autism might have affected his understanding of what the managers were saying to him on that day.

247.6 No evidence had been provided to substantiate the assertion that the Claimant was not safe to work with service users.

247.7 LAS had provided no grounds or evidence for its statement that the Claimant's protected disclosure to the Council was vindictive and malicious.

247.8 All the allegations related to external and internal whistleblowing. These issues were raised after he had made a protected disclosure to the Council about his concerns for the health and safety of service users. His potential dismissal was due to whistleblowing.

247.9 The outcome of the meeting had been pre-determined, since he had been asked to agree to the termination of his employment before the meeting and told that further action would be taken if he did not agree.

247.10 The allegations against him were too vague to allow him to adequately prepare to meet them.

247.11 The Respondent had failed to take into account in its assessment of his conduct in tearing up the risk assessment that stress is more prevalent among people on the autistic spectrum and affects them more, and that stress affects the ability to communicate.

247.12 In criticising him for his relationship with staff and managers the Respondent had failed to consider the significance of his autism.

247.13 Mr Hughes had failed to investigate his allegation that he was victimised by Mr Tully for whistleblowing.

247.14 The Claimant's grievance about Miss Hussain, Mr Tully and Mr Hughes was not heard prior to the decision to dismiss him, despite the fact that it raised issues directly relevant to the decision to dismiss him.

247.15 The meeting was conducted by Mr Hughes with Miss Hussain's support when both these individuals were interested parties, because they were named in the Claimant's grievance.

247.16 His competency had been questioned and used as a basis of dismissal even though the occupational health report which could have assessed his competence was not obtained

248. On 5 June Mr Sheppard, one of the Respondent's trustees, wrote to the Claimant saying that he was handling his appeal, which he proposed to do on the basis of written correspondence only. This was because the original hearing had been unable to go through all the points in the three hours available and that the Claimant found such meetings difficult and distressing. He invited the Claimant to submit any further information and representations by 18 June.

249. On 14 June the Claimant emailed Mr Sheppard saying that he did not find meetings difficult and distressing, it was dealing with matters in writing that he found difficult because of his ME and dyslexia. He asked for the appeal to be conducted face-to-face, as a reasonable adjustment for his disability. On 18 and 19 June he sent Mr Sheppard further emails with lengthy attachments expanding on his grounds of appeal.

250. Mr Sheppard wrote to the Claimant on 4 July 2018 setting out detailed reasons for his conclusion that the appeal should not be upheld. The letter gives an indication of Mr Sheppard's approach to the appeal and his findings on it. It reads as follows:

I acknowledge receipt of two e mails received on 18th and 19th June 2018 along with a number of attachments to both e mails. I will therefore along with your e mail and attachments dated 1st June 2018 now consider all the points you have raised by correspondence. I confirm that this appeal is against the decision to terminate your employment on the fundamental basis of some other substantial reason.

I would also like to refer to the fact that you have requested a face to face meeting rather than holding the appeal hearing by correspondence. Unfortunately, I am not in a position to agree to a face to face meeting for the reasons stated in previous correspondence. Meetings with you tend to go on for 3 hours or more and rarely cover all the issues listed in advance so it is very difficult to reach any conclusion. Trustees are not employees and have limited time available so it is important we use that time efficiently. I am also aware that you can be very distressed during the meetings and therefore feel it is better for all parties to deal with these matters in a calm and constructive manner.

It is far easier to read your correspondence on the matter so we can be very clear on your grounds of appeal, which you have helpfully provided.

I have taken into account all your submissions and will number them in line with the original dismissal letter along with a synopsis of the points you have raised in your appeal and my findings:

1 We have at all times endeavoured to deal promptly and efficiently with any grievances or complaints you have raised and given you clear outcomes and explanations. However, you continue to raise complaints on the same facts and issues that have already been addressed.

In your appeal you have submitted that you believe that all the issues you have raised were in regards to the employer's legal and contractual duties to employees and services users and thus you believe these were directly relating to health and safety matters and as a result constitute whistleblowing. You have also made specific references to the following:

A, Various health and safety issues which demonstrated a pattern of senior staff not understanding how to address these issues and responding very negatively e.g. shouting and sarcasm when asked to take action.

B Incident of March 2017 whereby a Senior Support Worker shouted at me in front of colleagues for asking that action be taken on health and safety issue.

C Investigating into bullying and victimisation I reported in October 2016 – I never received any outcome to this or any explanation as to the lack of an outcome.

D Unwanted/negative comments regarding rape from two senior members of staff on three separate occasions.

E Protected disclosure to Leeds City Council.

All your grievances that you have raised have been investigated and dealt with accordingly. I understand this may not have been entirely to your satisfaction, but the company grievance procedure has been followed on each occasion. I note that in the correspondence you have changed the number of times in which you felt there were negative comments regarding rape to three times which I understand initially from your previous correspondence it was only one incident.

For the sake of clarity I have alphabetised our responses below to each point:

A/B We take all health and safety issues very seriously but it is clear from the evidence that the health and safety issues that you have raised were minor ones and none were of significant concern or major organisational impact. It is clear from all the correspondence that you have been advised on numerous occasions that once you have informed a more Senior Member of Staff e.g. not a fellow Support Worker that you have discharged your duty of care. You have not submitted any recent evidence of senior staff responding negatively, the only example given was from last year which is some time ago and was, as I understand it, dealt with at the time.

C With regards to bullying and victimisation, all historic issues were investigated and dealt with accordingly. However, what is clear from my

review of the paperwork is that you alleged further bullying and victimisation in a Welfare Meeting in November 2017. During the said meeting you were asked for further information but you declined to give us such information and following on with this in further correspondence you were asked to provide LAS with instances but declined to do so. Without evidence we cannot investigate such issues.

D It is clear that in relation to the negative comments regarding rape which you are now saying are on three separate occasions, only the first instance was looked into, as that is all we were aware of. As you are aware, and as communicated to you before, this particular employee was spoken to regarding this issue.

E In terms of your alleged protected disclosure to Leeds City Council, from reviewing the paperwork I believe that this has been fully dealt with. I do not believe that your complaint was valid and I believe it does not fall within the remit of a protective disclosure legislation. Your refusal to accept the decision of management on this issue is an example of the fundamental breakdown of the employment relationship.

> *2 You have raised various claims of bullying, harassment and victimisation, and made claims that individuals have caused your disabilities. We have tried to investigate and address these claims but when you are asked for evidence you are unable to provide it. You request that Leeds Autism Services takes action to deal with these claims but prevent us from being able to do so by not providing the necessary information evidence.*

In your appeal you make reference to the fact that Yasmin Hussain had asked you to resupply your bullying and victimisation claims and the timescales in which you were asked to provide this in during this period you were off sick and you feel this was unreasonable to do so. Furthermore, that your grievances raised in January 2018 onwards were not dealt with prior to your dismissal and relates to victimisation and harassment by those involved in the process.

From reviewing the evidence and looking at your appeal submissions it is clear that I feel it is not unreasonable for you to resupply the information on bullying and victimisation for Yasmin Hussain, HR Manager, to investigate. The very reason Yasmin Hussain was asking for this information was that during your Welfare meeting you had a very in depth understanding of the issues and thus asking for it all to be in writing was not unreasonable. Furthermore, I note from the paperwork you raised current issues of bullying and victimisation but when repeatedly asked in numerous correspondence you did not give us specific incidents, instead you made general allegations without any detail at all. From reviewing the paperwork we outlined your grievances on 26th January 2018, 5th February 2018 and 7th February 2018 we have tried to arrange meetings to discuss

your grievances but this was not able to be scheduled given you were off sick and we were unable to work with you to agree times and dates for meetings.

It is true to say that Pete Hughes wrote to you on the 7th February 2018 confirming that he would hear your grievances and address your concerns. I note from the correspondence you were offered a number of dates to have your grievances heard but you or your trade union representative were unable to make the dates. It is clear from the paperwork that Leeds Autism Services has endeavoured to deal promptly and effectively with your grievances in the best way possible. Furthermore, I reiterate we are small charity with limited resources and we are unable to deal with every minor matter immediately.

From reviewing the paperwork you have had a number of complaints which have led to your dissatisfaction with the organisation. The fact that you made complaints against Yasmin Hussain, Russell Tully and subsequently Pete Hughes meant there was no one else who could be involved in the process. We are not in a position to foresee when you are going to lodge grievances and thus I believe they were the two best placed individuals to deal with your meeting held on 26th March 2018. From reviewing the correspondence leading up to this meeting, the minutes of the meeting and subsequent correspondence I conclude this was carried out in a professional and objective manner. In fact, on the 3rd April 2018 Pete Hughes re worded his original invite letter dated 7th March 2018 to assist you to understand the process we were undertaking as you struggled very much with the meeting held on the 26th March 2018.

Furthermore, it would be inappropriate for the voluntary board to be involved in a dismissal which is to all intents and purposes an operational matter. Our board of trustees are purely voluntary and do have very limited times and resources in which they can address Leeds Autism Service matters.

You have stated that you find it "perverse" that Leeds Autism Services asked you for this information within specific timescales and you regard this kind of request as an unnecessary obstacle. I disagree with your view. You made complaints about issues you feel were not investigated fully in the past. How is the organisation to decide if these issues were investigated fully if they do not know what they are? In this kind of allegation, we would have to go back through earlier documents to identify what had or had not been dealt with in the past, and therefore knowing exactly your complaint consists of is not perverse or unreasonable.

> *3 You appear to have issues with each manager you meet and in particular any manager who addresses an issue you have raised but does not give you the answer you are looking for. It becomes very difficult to run an organisation whilst devoting so much time to*

addressing frequent grievances arising purely from responses that you feel do not fit with your understanding of how we should deal with matters. We always respond reasonably to you. Your objections to dealing with certain managers and the allegations you make against them meant that the pool of managers and the allegations you make against them you are willing to meet with is now extremely small, making dealing with any future grievances extremely difficult.

In your appeal you have submitted that LAS has not stated why we find it problematic to raise issues against managers, all the grievances raised were in regard to the employers legal and contractual duties to employees and service users and as such constituted internal whistleblowing.

The way in which Leeds Autism Services operates is within a flat management structure. Thus amongst the pivotal people within the organisation is your line manager (Russell Tully) and that of the HR Manager Yasmin Hussain. It is not itself an issue to raise concerns about managers. However, from the correspondence you appear to have had a multitude of issues with your line manager and subsequently Yasmin Hussain, HR Manager, finally you also had issues with the Chief Executive, Pete Hughes. I feel this clearly demonstrates that you have real issues in working with us as an organisation. Judging from all the correspondence it appears to me that each time a manager or someone in authority whom is more senior than you questions you, your judgement and/or offers an alternative organisational view on situations that you do not appear to like or accept this. A very good illustration of this is when you showed utter disregard and serious disrespect for your line manager relating to [the home] wall incident whereby your line manager gave you a very specific instruction and you took it upon yourself to override this decision. It seems to me you are also unhappy with the HR Manager for very similar reasons.

You appear to have difficulty understanding how an organisation operates and the management structures within an organisation particularly how instructions are given and should be adhered to generally, and further difficulties in understanding your role as a support worker ie a junior member of the team.

As I have already stated, I do not accept that your complaints constituted internal whistleblowing, many of them were in fact personal issues relating to you and your views.

It is also clear that you have lost confidence in the trustees as during a recent meeting held on the 26th March 2018 you questioned the training of our trustees which is none of your concern. Furthermore, I understand that you have previously questioned trustees' abilities and skills and thus find that my only conclusion is that we are not in a position to work

together moving forward given your disillusion with the organisation at every level.

> *4 You regularly make reasonable adjustment requests, as you are entitled to do. However, when we seek to discuss these adjustments you seem to be very resistant to cooperate and engage with management in order to find a solution which is acceptable to both parties.*

In your appeal you have submitted that you felt this issue relates to the fact that you were not able to input into the stress risk assessment, and provide bullying and victimisation issues, due to the fact that you were off sick and unable to provide the information in such a short time frame.

It appears to me that you have misunderstood this point of your appeal relating to reasonable adjustments. The stress risk assessment does not relate to reasonable adjustments, this relates to you not being able to respond to questions that we ask you. From reviewing the documentation it is clear that your line manager felt the stress risk assessment was more than sufficient for you to return and to carry out your duties at [the home] in February 2018. We do not feel it was unreasonable for you to provide the documentation on bullying and victimisation in a short time frame. I would like to reiterate the reason we asked you for this is so that issues can be promptly and effectively dealt with.

Leeds Autism Services has held numerous meetings, doing its utmost to support you with your disabilities. For example, we made many provisions during your probationary period, adjusted your working hours, provided a number of laptops for you, and reconfigured the wifi to meet your needs. Furthermore, we have allowed you extra time to submit grievances and for meetings for you to submit documents. We felt the training provisions at Ashlar House are more than sufficient for you to conduct your online training. It is also clear you were offered alternatives to carry out your training at our other sites e.g. [two other sites]. We do not believe we were unreasonable by refusing your request to conduct your training at home as a reasonable adjustment. We have also paid you for your time off work as a reasonable adjustment to prepare for your formal meetings, given the difficulties you seem to have in this regard.

I would like to reconfirm the whole purpose of reasonable adjustments that an organisation is required to make under the Equality Act 2010. The term reasonable adjustments is to put a disabled person on a level playing field with a non-disabled person and not to allow them exclusive treatment because of their disabilities. It does appear to me that you regularly state requests for anything from provision of full pay instead of statutory sick pay to delays for pre-notified meetings as "reasonable adjustments". A reasonable adjustment is only applicable where a disabled person is put at a substantial disadvantage in comparison with non-disabled persons. So

before we had a quiet room for staff to carry out training on a computer, allowing you to do this at home was a reasonable adjustment. However, once we had arranged facilities in the premises this adjustment was no longer required since the disadvantage was no longer present. In making decisions on reasonable adjustments we have to look at not only the prevention of the disadvantages but whether it is practicable, costs and if it would disrupt other activities in the organisation. I believe we have tried our very best to accommodate you within our limited resources and operational running whilst providing a service to our service users. We are only able to do so much to assist and accommodate all your requests and I am afraid this has met with much resistance from yourself as it appears that you are unable to work with management to discuss solutions and reject any decision made by management which does not accord with your view of the situation.

> *5 You appear to have difficulty and/or great reluctance to follow reasonable management instructions. As an example in regards to an issue with the wall at [the home] – despite your line manager giving you assurances and instructions this was dealt with you ignored this instruction and convinced another employee to do as you wanted despite being instructed otherwise.*

In your appeal you have submitted confirming that you were not given specific instructions by Russ Tully regarding the [home] Wall as his statement does not say this. Having reviewed his evidence, I agree that it is not clear from his statement, as it is implied but not explicit. However, in your own email to Russ, which he refers to, you confirm that you had spoken to him about this and you refer to actions taken as a result, so by implication I understand that he instructed you and other staff in relation to this issue. In order to clarify this point I have spoken to Russ and he confirms that he issued three instructions over five days regarding the [home] Wall which were understood and obeyed by all staff except yourself.

It appears to me that Russ made it clear that the [home] wall was being dealt with and he had made a professional judgement in relation to this matter and then you took it upon yourself to deal with the matter after your line manager had left the premises. This, in my view shows utter disregard and respect for organisational procedure, your line manager and your colleagues.

It is indeed correct we do not have a specific statement from Sean Riley, it is simply reported via Russ. However, no matter what he did/did not say it is clear from your own evidence and in particular the fact you decided to speak to Leeds City Council and follow it with an email that you disagreed with the decision made in regards to the wall.

This shows a disregard for your line manager and for the organisation and demonstrates you are not willing to work within the organisational policies and procedures and as such are a fundamental potential risk to the organisation not only to staff but to our vulnerable service users. The question has to be asked as to what other procedures or instructions you would ignore or override. As a care provider, we are obliged under statute to have policies and procedures in place in all areas of our service, and are heavily regulated. Your actions demonstrate that we cannot rely on you acting within the boundaries we set or to act in the best interest of our service users.

I would also like to add that the [home] Wall incident was simply an example of this, not the only incident of this kind.

> *6 You attempted to attend a team meeting on 28th February 2018 whilst you were off sick and after not following the correct absence reporting procedures. As a result, after we discussed this with you separately you raised various new matters. In particular you stated you felt fit to work and wished for us to conduct a return to work meeting immediately and also stated that you felt we had discriminated against you. We were not in a position to act on any of your request immediately and explained that you had not followed the correct absence reporting procedure, meaning we were unaware of your return to work or indeed your fitness to work. We still await fit-note to cover your absence. Your behaviour during our conversation leads us to believe you had a desire to delay the team meeting and were therefore refusing to accept or show understanding of what you were told, in order to present an obstacle to the meeting going ahead. We had to be very clear with our instructions and even then you did not appear very accepting and you looked visibly very unhappy about us speaking to you about this and outlining our view point as your employer. This again evidences a break down in our relationship between us and is only the latest example of numerous similar incidents suggesting that the employment relationship is becoming increasingly unworkable and acrimonious for both parties.*

In your appeal you stated that Leeds Autism Services have not been specific about your behaviour in the actual team meeting. Furthermore, LAS has not considered that you have Autism though it takes individuals with Autism, and cannot immediately understand issues compared to individuals whom do not have autism. Furthermore, you submitted that you cannot respond to the allegation if more specifics are not given as you are not aware of the behaviour that had taken place.

Upon reading the correspondence, it is clear that you did attend a team meeting while off sick and that you did not follow the correct absence

management reporting procedure and were fully aware of what you needed to comply with in order to return to work. It is not your behaviour at the actual team meeting which caused us concerns, it was your behaviour during the discussion between yourself Pete Hughes, Yasmin Hussain and Russell Tully which gave them great concern.

What is very apparent is that two senior managers in the presence of your immediate line manager explained the reasons why it was not appropriate for you to attend the team meeting but you decided to be obstructive and wished to prolong the conversation further. In terms of your behaviour during this discussion, what this specifically relates to is how you were very argumentative with two Senior Managers and were refusing to listen, you visibly screwed your face up on numerous occasions, and you displayed very angry behaviour by "stomping" to the photocopier. It is clear in my opinion yet again your behaviour showed disregard for those in a position of authority at LAS. It is agreed and accepted that you do have Autism but this still does not excuse your behaviour. It appears to those who interact with you on a regular basis that you do understand situations but choose not to accept the views of others, especially managers and wish to challenge every minute issue.

> *7 We have an overriding duty of care to our service users and now feel that there are increasing indications that you may well not be safe to work them. This is borne out of your complaints to Leeds City Council. Upon investigation, these complaints in fact gave reason to believe that you were imposing your views/wants on to service users and not conducting yourself in an appropriate manner. For example, you made claims to Leeds City Council alleging that we were withholding meals to a particular service user when in fact it was found that you were taking the meals to the said service user and not allowing them choice to come downstairs and make their own meals independently. Such an incident is not within the ethos of LAS and us providing our service users with person centred planning/involvement. This causes us great concern regarding you supporting our vulnerable service user group. Furthermore, the making of any vexatious or malicious allegations to Leeds City Council or other external bodies inevitably undermines trust and confidence in you as an employee and undermines the working relationship. Therefore, we wish to discuss this issue further to consider the potential impact on our future relationship.*

In your appeal you have cited that LAS has not provided you with evidence to support this issue and that you had made no representation to this in your original meeting.

I have read all correspondence with great interest. It is clear that you did make some form of complaint to Leeds City Council about our residential service. We believe whatever your motivation was, you have the potential to damage our reputation with Leeds City Council. The way in which you went about this, by alleging a protected disclosure, and then adding a number of other issues to your complaint, after your discussion with your manager about the wall issue, lead us to believe the complaints were vindictive and malicious in intent. It is hard to believe the lengths you went to by moving not only outside the chain of management within the organisation but to an external organisation with which we have a regulatory and contractual relationship was motivated purely by good intentions. By doing this and making such wide-ranging allegations you must have known it could have potentially damaging repercussions for LAS.

There are concerns with you working with our vulnerable service user group given that you impose your own views on these extremely vulnerable individuals.

In relation to this particular service user it is clear that you were taking food to their room in your role as Support Worker and were not allowing this service user choice to come and prepare their own meals. This type of action is very serious and contradicts our ethos, practice and indeed specific instructions/care plans. I wholeheartedly agree that this type of behaviour undermines the employment relationship and overall this complaint has left us in a very difficult position with us having to rebuild our relationship with Leeds City Council due to your actions.

> *8 Each time a trustee is asked to hear an appeal hearing you object to the trustee we appoint, or you are unhappy with the outcome and then proceed to lodge a further complaint against the said trustee. This is again making it difficult for us to deal with appeal hearings as we have a limited pool of trustees with very limited availability and has a detrimental impact on the running of the organisation, as the trustees are responsible for appropriate governance but are devoting a disproportionate amount of time to dealing with issues connected to these appeal hearings.*

We have not received any correspondence in relation to this point and thus will make our conclusions as follows. The whole purpose of a trustee within a small charitable organisation is for governance and to agree strategy and how the charity is to function going forward. Therefore, it is not reasonable for our Trustees to have an in depth understanding and knowledge of employment law practice but we do take care to obtain advice on these issues where required. In essence, it is difficult for us to operate when you are clearly unhappy with the trustees that govern the organisation and you have questioned their competence on more than one

occasion, specific example being Iain Cant, Chair of LAS Board and that of David Thompson, LAS Trustee.

The fact that you have also raised that our trustees have discriminated against you which is not factually correct and untrue, again this further demonstrates the breakdown of trust I.e. you have no confidence in the organisation from the top to the bottom and that you are very unhappy with any response you receive from the organisation. I would also like to make you aware that trustees are voluntary and do not have copious amounts of time to deal with every issue though they will hear appeals where appropriate.

> *9 During a recent return to work meeting you tore up a Stress Risk Assessment in front of your line manager. This was inappropriate and disrespectful in itself. You had also been asked on numerous occasions prior to the meeting to comment on it and contribute to the meeting, as you requested it was carried out in the first place but then made it extremely difficult to achieve any meaningful progress. We view this as a clear example of the broader breakdown of the employment relationship.*

In your appeal your submission is that LAS did not consider the relevant factors in determining the Stress Risk Assessment. Furthermore, you state that you had been off work for two and a half months due to stress due to bullying and victimisation which had exacerbated your ME symptoms. Furthermore, you have stated that due to your Autism stress is more prevalent. In addition to this an occupational health appointment was effectively cancelled. Furthermore, you state that you feel that there was lack of management action regarding bullying and victimisation. Furthermore, Russ Tully had not supported you and thus reports to Yasmin Hussain and culminated in you tearing up the stress risk assessment. Furthermore, the fact that Russ Tully had taken no action regarding the unwanted conduct that you were receiving from raising health and safety concerns. The very reason you tore up the stress risk assessment was because you were at a loss of how to further communicate with Russ as he was not speaking to staff concerned. It is also apparent that this meeting took four hours to conclude.

Upon looking at all the evidence, it is true you were off work and thus a return to work meeting was conducted at the start of February 2018. Furthermore, it is clear that you were asked on numerous occasions for your input to the stress risk assessment which you declined to do and subsequently asked for an organisational risk assessment similar to that of a service user. Your only response was to declare it (in your own words from your appeal submission) as "inappropriate and counterproductive" and this is a further example of your unwillingness to engage

constructively with the organisation. You had an opportunity to shape the stress risk assessment but failed to do so.

I do not agree that Russell Tully has not supported you. It is clear from all the correspondence that he has done his utmost to help and support you. I feel that this may well not be up to the standard that you expect and that Russell did not agree with everything that you wished for him to do and thus this potentially could be a reason why you did not feel supported by your line manager. A stress risk assessment is individually based but cannot go into the infinite detail that you wished it to, in relation to an employee. In terms of health and safety matters at this point we were not aware of any unwanted conduct apart from the grievance you had lodged against Yasmin Hussain, which we were dealing with. You had requested that we carry out a Stress Risk Assessment to assist you and we did so in correspondence dated 5th December 2017.

I do not agree that you felt it was appropriate for you to tear up a stress risk assessment in front of your line manager no matter what the reason was e.g. your autism or sheer frustration. None of these reasons are acceptable and nor are they how we would expect an LAS employee to conduct themselves.

I do not agree that your occupational health referral was cancelled. At this point when you had your return to work meeting your occupational health appointment was in the process of being scheduled. Thus this is factually incorrect and untrue in terms of claiming that LAS had cancelled your appointment. I refer back to correspondence date 19 December 2017 whereby Yasmin Hussain informs you of the proposed referral.

You have also submitted issues with procedural fairness which I will now address as follows:

A. I believe that the letter sent to you about your dismissal is very clear and concise. We had written to you twice prior to your hearing on the 26th March 2018 to make it very clear to you. As you are aware, none of these meetings were a disciplinary meeting, this was to discuss our relationship between employer and employee. I do not agree that you have been left to guess the reasons for your potential dismissal. The correspondence is very detailed and in depth and leaves no doubt in my mind the reasons for potential dismissal.

B. You were not required to have an investigation meeting prior to your meeting held on the 26th March 2018. It is denied that you were repeatedly told to stop when you tried to address issues. The purpose of the meeting was to discuss the employment relationship and it was clear from the meeting that it was very difficult for you to understand the

purpose. You were very clear and very intent on the facts and thinking you were attending a disciplinary hearing which clearly was not the case and you had been repeatedly told this on a number of occasions. You were also allowed a very generous timescale e.g over two months in which to respond to our correspondence during which you were paid as a reasonable adjustment.

C. *You were asked to put everything in writing as our meetings with you were proving extremely lengthy and did not reach any conclusion, not even able to discuss all the issues listed for the agenda let alone make a decision. In fact it is clear that all LAS were doing is having meetings but not reaching any type of way forward. We are not in a position as a small charity to sit in lengthy meetings when we have a diverse employee workforce to attend to and our vulnerable service users that require our utmost attention.*

D. *All allegations against you relate to various reasons regarding our concerns about our relationship and us working together. I do not believe that Pete Hughes prejudged any outcome. At the actual hearing you were questioning Pete Hughes' findings in terms of the Leeds City Council and it was clear from the meeting that you did not trust us as an organisation. Pete Hughes is the Chief Executive, thus in charge of the organisation and is professionally competent to conduct his duties. It is perfectly reasonable given the size of the organisation for Pete to investigate and thus have a subsequent meeting to discuss these matters.*

E. *It is clear, although you claim to have only had two supervisions, you had plenty of other meetings to discuss and support you during your employment. Supervision can take all sorts of forms from return to work meetings to welfare and team meetings. Unfortunately, being very rigid and expecting supervisions to take place six times per year is unrealistic, given the activity levels of the organisation. Regardless of your level of supervision we are entitled to take action as appropriate.*

F. *In terms of the Settlement Agreement, given this is 'Without Prejudice' in nature, this will not be addressed in this correspondence. You make reference to alternatives to dismissal – these are unfortunately not possible given the poor state of the employment relationship, and your appeal submissions do not give any possibility of rebuilding it as you*

restate your beliefs in the deficiencies of the organisation and its managers. It is true to say you do not only have issues with Russ Tully and Yasmin Hussain but also Pete Hughes, the latter being senior managers within the organisation and thus you would struggle working with these individuals in the future.

G. *I would like to reiterate that we have done our very best to comply with the ACAS code of practice to ensure we have been as fair and transparent with you as possible and have entered into the spirit of fairness at every step of this process.*

In summary, I do not uphold any points of your appeal in relation to your dismissal on the basis of some other substantial reason and that the employment relationship has fundamentally broken down. Throughout the letter it has been clear how the managers at LAS struggle to work with you and for you to see and understand different points of views and how an organisation actually works.

As far as I am concerned, we have tried our very best to help and support you in every way possible. This is from making reasonable adjustments to holding lengthy meetings to support you but this has never met with your satisfaction.

We understand that you do have Autism but I am afraid as an employee of LAS this does not excuse your behaviours and how you should conduct yourself in the workplace. We have done our very best to work with you but it has reached a stage where we are unable to enter into lengthy discussions and never reach any type of conclusion, taking us away from our work in supporting service users. Furthermore, it has reached a very concerning point where our reputation has been damaged and the group that are most likely to suffer from this are our vulnerable service user group that our charity is designed to support. This is due to the amount of management time it takes to address and deal with all your issues while we only have a limited number of managers and trustees within the organisation, most of whom you appear to have a number of issues with.

We have many employees that have varying disabilities and we manage to work well with them in making reasonable adjustments and have exceedingly positive working relationships. Unfortunately, this is not the case with yourself.

To summarise, I agree with the original decision to terminate your employment and therefore the original dismissal stands in its entirety. You have now exhausted your right of appeal and I wish you all the best for the future.

THE LEGAL ISSUES

Time limits

251. Some of the conduct about which the Claimant complains occurred many months or even years before the Claimant presented his claim to the Tribunal on 21 May 2018. He did not raise his allegations of victimisation and harassment under the EqA and his allegations of detriment for raising health and safety concerns until 7 February 2019.

252. The Tribunal needed to decide whether it had power to deal with these allegations, in the light of the statutory provisions relating to time limits for making claims. (The Claimant did not benefit from any extension of time to accommodate the ACAS early conciliation process because his claim included a claim for interim relief and therefore he was exempt from the requirement to complete that process – see Regulation 3(1)(d) of the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014.)

253. A claim of detriment because of a protected disclosure or raising a health and safety concern must be presented before the end of the period of three months beginning with the date of the act or failure to act to which the claim relates or, where the act or failure is part of a series of similar acts or failures, the last of them. Where an act extends over a period, the date of the act is viewed as the last day of that period. If the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months, the Tribunal can hear the claim if it was presented within such further period as the Tribunal considers reasonable (Section 48(3) and (4) ERA).

254. A claim under the EqA must not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates or within such other period as the Tribunal thinks just and equitable (Section 123 EqA). Conduct extending over a period is treated as done at the end of the period. Failure to do something (which includes a failure to comply with the duty to make reasonable adjustments) is treated as occurring when the person in question decided on it. In the absence of evidence to the contrary, a person is taken to decide not to do something when they do an act inconsistent with doing it or, if they do no inconsistent act, on the expiry of the period in which they might reasonably have been expected to do it.

255. If a Claimant has presented his claims outside the statutory time limit, it is for him to satisfy the Tribunal that it should allow the late claim. It is the exception rather than the rule that a late claim will be considered.

Detriment claims

256. It is unlawful for an employer to subject an employee to a detriment on the ground that he has made a protected disclosure (Section 47B ERA). Likewise, it is unlawful for an employer to subject a worker to a detriment done on the ground that the worker has brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety (Section 44(1)(c) ERA).

257. Under the EqA, it is unlawful for an employer to subject an employee to a detriment by failing to meet the duty to make reasonable adjustments or because of something arising in consequence of his disability (Section 39(2)(d) read with Sections 15 and 21(2) EqA). Likewise, it is unlawful for an employer to subject an employee to a detriment because he has done a protected act, which includes alleging that the employer has contravened the EqA (Section 39(2)(d) read with Section 27 EqA).

258. The first issue for the Tribunal was whether the alleged detriment in fact occurred. That depended upon whether, on the basis of the evidence before the Tribunal, it found it more likely than not that the Claimant was subjected to treatment such that a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had to work (De Souza v Automobile Association [1986] ICR 514).

259. If the Tribunal was satisfied that the detriments had occurred, the next issue for the Tribunal was to identify the grounds or reason for those detriments.

260. When making its findings, the Tribunal needed to bear in mind that, in the case of detriments alleged to be on the ground of a protected disclosure, it is for the Respondent to show the ground on which any act, or deliberate failure to act, was done (Section 48(2) ERA). The Respondent's actions will be unlawful if they were materially influenced, that is, influenced in more than a trivial way, by a protected disclosure (Fecitt v NHS Manchester (Public Concern at Work intervening) [2012] ICR 372).

261. In the case of Panayiotou v Chief Constable of Hampshire Police (2014) ICR D23 the Employment Appeal Tribunal recognised that there is a distinction between the fact that a Claimant has made protected disclosures and the unreasonable manner in which he has done so. So, for example, in that case the Tribunal was entitled to find that the Claimant had been treated as he was because, having raised various complaints, if he was not satisfied with the answer he pursued the matter to ensure his view prevailed. The employer was having to spend a substantial amount of management time in dealing with his correspondence and complaints and he became unmanageable. It was those

factors that were the grounds or reason for the employer's actions, not the protected disclosures themselves.

262. The Tribunal bore in mind that, if there were facts from which the Tribunal could conclude, in the absence of any other explanation, that discrimination had occurred, it would need to uphold the claim unless the Respondent could show that it had not in fact acted unlawfully (Section 136 EqA). In the case of the alleged acts of discrimination arising in consequence of disability and victimisation, the Tribunal would need to be satisfied that the reason arising in consequence of the Claimant's disability or the protected act, as the case may be, had no significant influence on the outcome (Nagarajan v London Regional Transport (1999) ICR 877) or, to put it another way, was not an effective cause of the treatment (O'Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School (1997) ICR 33)).

263. In relation to the alleged acts of victimisation, the Employment Appeal Tribunal confirmed in Martin v Devonshire Solicitors [2011] ICR 352 that in some cases the circumstances of a protected act can be properly and genuinely separate from the act itself. In that case, the Claimant had repeatedly raised complaints of sex discrimination that, because of a mental health condition, she refused to accept were untrue. The reason for her dismissal was her mental ill-health and the management problems to which it gave rise, not her protected acts.

264. Some of the detriment claims that the Claimant made were allegations put in the alternative. He argued that each was done either because he had raised health and safety concerns, or because he had made protected disclosures, or because he had done protected acts (referred to collectively in these reasons as "the prohibited grounds"). For the purposes of time limits, the claim of detriment because of protected disclosures was presented on 21 May 2018. The claims of detriments because of raising health and safety concerns and victimisation were made in the Claimant's application to amend on 7 February 2019.

Detriment 1: removing a reasonable adjustment

265. The Claimant alleges that on the prohibited grounds at a meeting on 22 January 2018 Mr Tully took away a reasonable adjustment of allowing him to complete his online training at home.

266. As an allegation of detriment on grounds of a protected disclosure this claim has been presented to the Tribunal over a month outside the relevant time limits. As an allegation of detriment on grounds of raising health and safety concerns or because of doing a protected act, it has been presented over nine months out of time.

267. The Tribunal had no evidence to indicate that it was not reasonably practicable for the Claimant to present his claims of detriment on grounds of raising health and safety concerns or making a protected disclosure in time. It is clear from the evidence the Tribunal has heard about the Claimant's communications with the Respondent during his employment and his communications with the Tribunal when conducting this claim that he has at all times been well-informed about his rights and able to articulate them. As the Claimant's email to Mr Thomson in August 2017 complaining about the delay in holding his grievance hearing makes clear, he was aware of the three-month time limit for Tribunal claims at an early stage in his employment.

268. The Claimant said when submitting his document containing details of his claim on 5 July 2018 that he had been unwell until the end of June 2018, but the GP's letter he supplied to support this assertion said only that he had had a flare up in the symptoms of his ME around 13 June (when he was due to be attending the interim relief Hearing). He had been well enough to write to the Tribunal on several occasions in May and June to make detailed applications for postponements and reconsideration. The Tribunal does not accept that any ill-health the Claimant had in June or his dyslexia made it not reasonably practicable for the Claimant to present his claims in time.

269. The Tribunal does not accept that it has jurisdiction to deal with the claim of victimisation under the EqA either. There are no factors the Tribunal can identify from the evidence it has heard that could form the basis for a conclusion that the claim has been presented within another just and equitable period.

270. In any event, the Tribunal accepts Mr Tully's evidence that the Claimant had been allowed to complete his training, including his workbooks, at home when he first joined the Respondent because there was limited access to quiet rooms, computers and internet access at work. The Respondent then purchased two laptops, installed Wi-Fi and introduced quiet rooms at each of its locations, meaning that the Claimant no longer had a need to complete online training at home.

271. Further, the Tribunal accepts Mr Tully's clear and credible evidence that he withdrew the Claimant's permission to work on his training at home not on any of the prohibited grounds but because Mr Tully considered that the changes the Respondent had made to the equipment and workspaces available for employees to complete online training at work meant that it was now possible for the Claimant to do his training at work.

272. This claim therefore fails.

Detriment 2: disciplinary action on sick note

273. The Claimant alleges that on the prohibited grounds the Respondent began disciplinary action against him for having a late sick note.

274. The Respondent's sickness and absence policy and procedure states that an employee must provide a medical certificate from their doctor or hospital to cover absences exceeding seven days. For prolonged absences, the employee must ensure that the whole of the absence is covered by sequential certificates. The final certificate must contain a return date to indicate the employee is fit to return to normal duties. A failure to abide by this requirement will make the employee liable for disciplinary action.

275. As is apparent from the findings it has already made, the Tribunal accepts Mr Tully's evidence, which was supported by the documents the Tribunal saw, that the Claimant had failed to provide a sick note covering his absence from work since 7 December 2017. Miss Hussain wrote to the Claimant on 14 December asking him to provide a fit note. She wrote to him again on 19 December reminding him that he was required to produce one. He was asked to do so by 22 December but failed to do so. Because of the Claimant's failure to produce a sick note despite requests that he do so, Mr Tully wrote to him on 22 January 2018 inviting him to attend a disciplinary hearing to discuss his unauthorised absence. On 24 January the Claimant provided his sick note. No disciplinary action was taken against him.

276. Mr Tully's letter was sent to the Claimant on 22 January 2018. As an allegation of detriment because of a protected disclosure the claim has been been presented around a month out of time. As an allegation of detriment because of raising health and safety concerns or because of doing a protected act the claim has been presented over 9 months out of time.

277. The Tribunal is satisfied that it was reasonably practicable for the Claimant to present the claims of detriment because of making a protected disclosure or because of raising health and safety concerns in time and that the claim of detriment for doing a protected act has not been presented within another just and equitable period, for the reasons set out above.

278. In any event, the Tribunal is also entirely satisfied on the evidence it heard that Mr Tully wrote to the Claimant because he had not provided a sick note. His action was in line with the Respondent's sickness absence policy. The Tribunal finds that his action was in no way related to, caused by or influenced by any of the prohibited grounds.

279. This claim therefore fails.

Detriment 3: conditions for return to work

280. The Claimant alleges that on the ground of the protected disclosures he was not allowed to return to work in February 2018 until he had agreed certain conditions including that he had regular contact with staff leaders which included a member of staff against whom he had made the allegation of breaching the EqA by making inappropriate comments about rape.

281. This claim has been presented substantially out of time and the Tribunal is satisfied that it was reasonably practicable to present the claim in time, for the reasons set out above.

282. In any event, there is no evidence in the Claimant's witness statement or elsewhere to establish that this alleged detriment occurred.

283. This claim therefore fails.

Detriment 4: prioritising disciplinary meeting

284. The Claimant alleges that on or about 20 January 2018 and on the ground of the protected disclosures, the Respondent prioritised arranging a disciplinary hearing over arranging his return to work meeting.

285. This claim has been presented out of time and the Tribunal is satisfied that it was reasonably practicable to present the claim in time and that it has not been presented within a further reasonable period, for the reasons set out above.

286. In any event, the sole evidential basis for this allegation is the Claimant's assertion in his witness statement that the disciplinary hearing was given priority. From the findings above it is apparent that, at the same time as Miss Hussain and Mr Tully were managing the issue of the Claimant's failure to provide a sick note, they were seeking to arrange a return to work meeting for him. There is nothing in this protracted correspondence that indicates the Respondent was giving the Claimant's return to work meeting a lower priority than the disciplinary meeting, which was to deal with a discrete and separate issue. The Tribunal is not, therefore, satisfied that this alleged detriment occurred.

287. This claim therefore fails.

Detriment 5: failure to follow policy or investigate or act upon complaints and grievances

288. The Claimant alleges that on the prohibited grounds the Respondent failed to follow normal policies and act upon or investigate his various complaints and grievances.

289. The Claimant has not explained what he considers the Respondent's normal policies are, nor explained in what way he alleges the Respondent failed to follow them in relation to his numerous complaints and grievances. He did not raise this allegation in his extensive cross-examination of the Respondent's witnesses. The Tribunal had no evidence before it to substantiate this allegation. This aspect of the allegation therefore fails.

290. In relation to the allegation that the Respondent failed to investigate or act upon his various complaints and grievances, the Tribunal saw extensive documentary evidence confirming the content of the Claimant's various grievances, which raised complaints about many individuals. In relation to any other complaints that the Claimant raised, he did not provide the Tribunal with a comprehensive account of which individuals these other complaints related to and what exactly those people were said to have said or done. In the absence of that evidence, the Tribunal is not able to make a generalised finding that the Respondent failed to investigate or act upon any other complaints. In any event, Mr Tully did confirm in cross-examination, in evidence the Tribunal accepts as credible, that he had had conversations with staff members about the Claimant's concerns that he was being bullied, although he had not considered it necessary or appropriate to tell the Claimant about those conversations at the time.

291. In relation to the complaints that were included in the Claimant's grievances, the Tribunal saw evidence, by way of notes of interviews, that Neil Robinson, Team Manager, had had a conversation with NR on 28 April 2017 about complaints that the Claimant had made about her. The Tribunal also saw notes of another interview a manager had with her on 9 May 2017 specifically addressing the Claimant's complaint about the way she had reacted to him raising concerns about sleeping arrangements. During that interview RN gave a very different interpretation to the conversation she had had with the Claimant, and stated that she had felt disrespected and bullied by him: although she was senior to him, he was telling her what to do. In those circumstances, it is not possible to conclude that the Respondent failed to investigate or act upon the Claimant's complaint about RN: it had investigated his concern by speaking to RN and had taken no further action because her version of events was very different to that of the Claimant.

292. In relation to the complaints about individuals mentioned in the grievance dealt with by Mr Thomson, summarised by Mr Thomson in an email he sent the

Claimant on 3 August 2017, the Claimant confirmed at the grievance meeting on 13 September that he did not want these complaints investigated individually by Mr Thomson or for blame to be apportioned, he just wanted to establish a constructive way of dealing with these matters in the future.

293. It is clear from the number and repetitive nature of the Claimant's complaints and grievances that the Respondent's response to them did not meet with the Claimant's approval. He clearly felt that the Respondent was not addressing his concerns in a sufficiently thorough and systematic way. Having heard from the Respondent's witnesses, however, and having read the voluminous documentation relating to the Respondent's management of the Claimant to which it was referred, the Tribunal is satisfied that the Respondent did make extensive attempts to address the Claimant's complaints and grievances. It is apparent from the documentation alone that dealing with the Claimant's complaints took up a large amount of Miss Hussain and Mr Tully's time, as well as that of Mr Hughes and Mr Cant. Indeed, dealing with the Claimant's complaints made such a significant demand on management time that it was reported in brief to the Respondent's Board of Trustees.

294. The Tribunal is satisfied, having heard their evidence and the way in which they responded to extensive cross-examination from the Claimant, that the Respondent's managers acted in good faith and in an honest attempt to manage the Claimant with patience, respect and fairness. All the managers and trustees involved were doing their best to manage a demanding employee with limited management resources, whilst also running an organisation that had the challenging task of providing services to vulnerable people with diverse needs. Even if the Tribunal had been satisfied that there were shortcomings in the Respondent's investigation of, and actions upon, the Claimant's complaints and grievances, it would have found that that was not on any of the prohibited grounds.

295. This claim therefore fails.

Detriment 6: failure to put preventive measures in place

296. The Claimant alleges that on the prohibited grounds the Respondent failed to implement agreed measures put in place to deal with unwanted conduct (eg bullying) arising as a result of the Claimant raising health and safety or other concerns. The measures the Respondent failed to implement were those agreed as part of the reasonable adjustments agreed in August 2016 and in the probationary meeting in February 2017.

297. The Tribunal could find no reference in the Claimant's witness statement or in the "record of reasonable adjustments" form completed in August 2016 of any measures having been agreed at that time to prevent the Claimant being

bullied for raising concerns. In the absence of evidence that measures were agreed, the allegation that the Respondent failed to implement measures agreed in August 2016 must fail.

298. At the probationary review meeting the Claimant had with Mr Hughes on 15 February 2017, Mr Hughes acknowledged that the Respondent wanted to change the working culture so that employees who raised concerns about working practices, as the Claimant had done, would not be subject to negative responses or conduct by colleagues. The Claimant was told to raise any issues he had with his service manager rather than with his colleagues direct. Mr Hughes acknowledged that the management of this area needed improvement but that the new procedures the organisation was introducing would help address this and enable the new manager (Mr Tully) to deal robustly with matters so that the Claimant had protection if colleagues addressed him in a defensive or antagonistic way.

299. The Claimant has not clarified when and in what way the Respondent failed to protect him from unwanted conduct from his colleagues, whether after this conversation with Mr Hughes or earlier. Whatever those steps might have been, for the purposes of assessing whether the claim has been presented in time, the Tribunal considers that any steps that Mr Hughes could reasonably have been expected to take would have been taken within a week or two of this meeting. The claim has therefore been presented substantially out of time and for the reasons set out above, the Tribunal does not consider it has jurisdiction to hear it.

300. In any event, as the Claimant has not identified what the failures to act consisted of, the Tribunal would not have been in a position to conclude that the Claimant was subjected to the alleged detriment.

301. This claim therefore fails.

Detriment 7: disciplinary process

302. The Claimant alleges that on the prohibited grounds, the Respondent carried out the disciplinary process which ultimately led to the Claimant's dismissal, including the manner in which the dismissal process was handled.

303. The Tribunal's findings in relation to the dismissal process are set out separately below. As explained in those findings, the Tribunal finds that the Claimant was not in fact subject to a disciplinary process. After an extended period of trying to manage the Claimant, the Respondent concluded that the conflicts between the Claimant and the Respondent did not appear to be capable of settlement or resolution. The Claimant had no respect for, or trust in, a large proportion of the Respondent's management team, including its trustees.

As a result, he had become unmanageable. The employment relationship between the Claimant and the Respondent had become unworkable.

304. The Respondent has conceded that the Claimant's complaints amounted to prohibited grounds for action. The Tribunal is entirely satisfied, however, on the evidence it has heard and read, that it was not the complaints themselves that caused the Respondent to take the action that it did, but the fact that the Claimant had repeatedly shown by his words and actions that he had no confidence in or respect for the Respondent's management and had, by his unwillingness to accept the Respondent's decisions and management instructions, become unmanageable.

305. This claim therefore fails.

Reasonable adjustments allegations: the legal issues

306. If an employer adopts a provision, criterion or practice (PCP) that puts a disabled person at a substantial disadvantage in comparison with a non-disabled person, it is under a duty to make reasonable adjustments to prevent that disadvantage (Section 20 EqA). If it fails to make a reasonable adjustment and the disabled person is subjected to a detriment as a result, that amounts to unlawful conduct (Section 21(2) and 39(2)(d) EqA).

307. In relation to the Claimant's allegations of failure to make reasonable adjustments, the issues for the Tribunal were:

307.1 Has the claim been presented within the three-month time limit or within another just and equitable period?

307.2 If it has, did the Respondent adopt a PCP as alleged? The Court of Appeal has made clear that, in order to be a PCP, the conduct at issue needs to be such that it connotes a state of affairs indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. "Practice" "connotes some form of continuum in the sense that it is the way in which things generally are or will be done". There is no PCP if it is simply a "one-off decision in an individual case where there is nothing to indicate that the decision would apply in future" (Ishola v Transport for London [2020] EWCA Civ 112).

307.3 If the Respondent did adopt a PCP, did it put the Claimant at a substantial disadvantage in comparison with a non-disabled person?

307.4 If so, did the Respondent take such steps as it was reasonable to have to take to avoid the disadvantage?

Indirect discrimination allegations: the legal issues

308. The Claimant alleged in the alternative that all the matters that amounted to a failure to make reasonable adjustments also amounted to indirect discrimination. Indirect discrimination arises where an employer applies, or would apply, a PCP to the Claimant and to others but that PCP puts, or would put, people who share the Claimant's disability at a particular disadvantage compared with others and the employer cannot show the PCP to be a proportionate means of achieving a legitimate aim (Section 19 EqA).

309. In relation to the allegations of indirect discrimination, the issues for the Tribunal were:

309.1 Was the claim presented in time or within another just and equitable period?

309.2 If it was, did the Respondent apply a PCP as alleged?

309.3 If so, did, or would, that PCP put people who share the Claimant's disabilities at a particular disadvantage?

309.4 If so, did it or would it also put the Claimant at that disadvantage?

309.5 If so, had the Respondent shown that the PCP was a proportionate means of achieving a legitimate aim?

Discrimination arising from disability allegations: the legal issues

310. In relation to the Claimant's allegations of discrimination arising from disability, as defined in Section 15 EqA, the issues for the Tribunal were:

310.1 Was the claim presented in time or within another just and equitable period?

310.2 If it was, did the Respondent treat the Claimant unfavourably in the way he alleged?

310.3 If it did, was that treatment because of something arising in consequence of one or more of the Claimant's disabilities?

310.4 If it was, has the Respondent shown that treatment was a proportionate means of achieving a legitimate aim?

Reasonable adjustment/indirect discrimination 1: conducting disciplinary hearing by correspondence

311. The Claimant alleges that the Respondent failed to make reasonable adjustments to its practice of suspending disciplinary meetings that become difficult and conducting them via correspondence.

312. As explained below in relation to the allegations relating to the Claimant's dismissal, the Respondent abandoned its attempt to discuss with the Claimant the apparent breakdown in their relationship at the meeting on 26 March 2018. The Tribunal finds that this decision was taken because of the Claimant's conduct at that meeting, but was also informed by their experience of previous meetings with the Claimant, which had been lengthy but failed to result in any resolution of the Claimant's concerns or other clear outcome. There was no evidence to support this being a PCP. This was a one-off event responding to particular features of the Claimant's current and historic behaviour.

313. Further, even if it had been a PCP, there was no evidence before the Tribunal that it put the Claimant at a substantial disadvantage because of his disabilities. At the Preliminary Hearing on 12 March 2019 where his allegations were finalised, the Claimant amended his allegation relating to the Respondent's response to him tearing up his risk assessment by stating that, because of his disabilities, he was more likely to have difficulty with oral communications at times of high stress, so non-verbal communication (like tearing up the assessment) might be required. A meeting to discuss his continued employment was clearly likely to be a time of high stress. It could therefore even be argued that the Respondent's actions in deciding that the process should be completed on paper amounted to a reasonable adjustment for the Claimant: the Tribunal had substantial evidence that the Claimant can express himself clearly and fluently in writing.

314. This claim therefore fails.

315. The alternative allegation of indirect discrimination fails for similar reasons: there was no PCP and, even if there had been, there was no evidence that it put the Claimant at a particular disadvantage.

Reasonable adjustment/indirect discrimination 2: conducting hearings in writing

316. The Claimant alleges that the Respondent failed to make reasonable adjustments to its practice of conducting disciplinary meetings and appeal hearings in writing in certain circumstances.

317. The Respondent abandoned its attempt to hold a meeting in person to discuss the apparent breakdown in the Claimant's relationship with the Respondent because of his conduct at that meeting, but also informed by its experience of previous meetings with the Claimant, which had been lengthy but failed to result in any resolution of the Claimant's concerns or other clear outcome. There was no evidence to support this being a PCP. This was a one-off event responding to particular features of the Claimant's current and historic behaviour.

318. Even if it was a PCP, there was no evidence that it put the Claimant at a substantial disadvantage: the Tribunal had substantial evidence of the Claimant's ability to communicate clearly and fluently in writing. This claim therefore fails.

319. The alternative allegation of indirect discrimination fails for similar reasons: there was no PCP and, even if there had been, there was no evidence that it put the Claimant at a particular disadvantage.

Reasonable adjustment/indirect discrimination 3: detail of allegations

320. The Claimant alleges that the Respondent failed to make reasonable adjustments to its practice of providing only the level of detail or specificity on disciplinary allegations as appears in the letters sent prior to the disciplinary hearing and the appeal dated 7 March and 3 April 2018.

321. As explained below in relation to the allegations relating to the Claimant's dismissal, the Respondent wrote to the Claimant to explain why it was concerned about the future of their relationship. It was not putting disciplinary allegations to him. The letter was to give him a broad idea of the issues it needed to discuss with him. There was no evidence before the Tribunal to support this being a PCP rather than a one-off response to the particular history of the Claimant's employment.

322. Even if it was a PCP, the Tribunal had insufficient evidence to conclude that it put the Claimant at a substantial disadvantage compared with people who are not disabled. Even assuming in the Claimant's favour (the Tribunal had no evidence on the issue) that the Claimant's autism might lead him to be concerned to know exact details in advance of the meeting, the information he was given was detailed enough to indicate to him why the Respondent believed the employment relationship might not be sustainable and was a clear communication of the areas of concern it intended to address at the meeting.

323. This allegation therefore fails.

324. The alternative allegation of indirect discrimination fails for similar reasons: there was no PCP but, even if there was, the Tribunal is not satisfied that the PCP put the Claimant at a particular disadvantage.

Reasonable adjustment/indirect discrimination 4: evidence of disciplinary allegations

325. The Claimant alleges that the Respondent failed to make reasonable adjustments to its practice of not providing all the evidence in support of disciplinary allegations to the employee.

326. As explained below in relation to the allegations relating to the Claimant's dismissal, the Respondent was not making disciplinary allegations against the Claimant. The Tribunal finds that the Respondent did not adopt the PCP as alleged.

327. What the Respondent was doing was providing the documentary evidence it had relating to its areas of concern about the Claimant's behaviour. Even if this had been some form of PCP, the Tribunal would not have accepted that it put the Claimant at a substantial disadvantage compared with people who are not disabled. Even assuming in the Claimant's favour (the Tribunal had no evidence on the issue) that the Claimant's autism might lead him to be concerned to know exact details in advance of the meeting, the evidence he was given was detailed enough to indicate to him why the Respondent believed the employment relationship might not be sustainable. This was all the evidence Mr Hughes took into account, along with the Claimant's behaviour at the meeting on 26 March and his subsequent written comments, when making his decision on whether to dismiss.

328. This allegation therefore fails.

329. The alternative allegation of indirect discrimination fails for similar reasons: the Tribunal finds that there was no PCP as alleged, and that any PCP did not put the Claimant at a particular disadvantage.

Reasonable adjustment/indirect discrimination 5: sleep shifts

330. The Claimant alleges that the Respondent failed to make reasonable adjustments to its practice of requiring employees to work two sleep shifts per week.

331. A sleep shift is a 24-hour period during which the employee is required to sleep at the home.

332. As recorded above, at a supervision meeting with the then Deputy Manager Louise Hughes on 24 November 2015 the Claimant raised the issue of being expected to undertake two sleep shifts per week and that in his previous experience employees were only required to work one such shift a week. He explained that he would get only 3 to 5 hours sleep during these shifts and that the fatigue from lack of sleep was affecting his ME symptoms.

333. During the course of the Hearing, it emerged that the Claimant accepted that the Respondent did agree to his request to reduce the number of sleep shifts he was required to work to one per week. This is confirmed in a "record of reasonable adjustments" form that the Claimant signed on 12 August 2016. The Tribunal accepts that the requirement of two sleep shifts a week put the Claimant at a substantial disadvantage compared with employees who did not have ME, because the fatigue caused by the reduced sleep exacerbated the symptoms of his ME. Ms Hughes was put on notice of this when the Claimant raised the issue at his supervision meeting on 24 November 2015. By the summer of 2016, however, the Respondent had reduced this to one sleep shift per week, which is the adjustment that the Claimant sought. By that date, therefore, the alleged failure to meet the duty had ended.

334. The Claimant did not present his claim until almost two years later, substantially outside the 3-month time limit for a claim of failure to make reasonable adjustments. The Tribunal can identify no basis on which it could conclude that the claim has been presented within another just and equitable period. The Claimant was at all times aware of the Respondent's duty to make reasonable adjustments, as is apparent from his repeated complaints that it had failed to meet that duty. The Tribunal heard no evidence to establish that there was anything preventing him presenting a claim in relation to this issue within the 3-month time limit.

335. This claim therefore fails.

336. The allegation of indirect discrimination fails for similar reasons. The PCP requiring the Claimant to work two night shifts a week was no longer being applied after the summer of 2016 at the latest, the claim has been presented outside the three-month time limit and the Tribunal is not satisfied that it was presented within another just and equitable period.

Reasonable adjustment/indirect discrimination 6: completion of care certificate

337. The Claimant alleges that the Respondent failed to make reasonable adjustments to its practice of requiring employees undergoing induction to complete the Care Certificate.

338. The Tribunal accepts that the Respondent's practice was to require newly-recruited employees to complete the Care Certificate during their induction period. The Claimant successfully completed his probation in July 2016 and by that point the Respondent accepted that the Claimant had met any requirement it had imposed in relation to the Care Certificate. From that point, it was no longer applying any PCP in relation to the Care Certificate. This complaint has therefore been presented almost two years out of time. For the reasons set out above, the Tribunal is not satisfied that it has been presented within another just and equitable period.

339. In any event, the Claimant gave no evidence to satisfy the Tribunal that a PCP to complete the Care Certificate put him at a substantial disadvantage compared with employees without his disabilities. On the contrary, his evidence was that he had the competencies required to be awarded the Certificate. His complaint was about the way in which the Respondent required him to demonstrate those competencies, by completing work books in his own time rather than in the other possible ways he suggested.

340. This allegation fails.

341. The alternative allegation of indirect discrimination fails for similar reasons: the claim has been presented out of time and there was in any event no evidence before the Tribunal to establish that the PCP put the Claimant at a particular disadvantage.

Reasonable adjustment/indirect discrimination 7: completion of work books in own time

342. The Claimant alleges that the Respondent failed to make reasonable adjustments to its practice of requiring the Care Certificate to be completed by the employee completing 14 work books in their own time. The Claimant's evidence was that he was given some time during working hours to work on his work books but he was also told that he was expected to complete the work books in his own time. The Tribunal accepts, on the basis of this evidence, that the Respondent's practice was to require employees to complete the work books in their own time if they had not been able to complete them in the working hours allocated to this task.

343. The Tribunal accepts that this practice put the Claimant at a particular disadvantage as a result of his ME and dyslexia. Because of these conditions, it took him longer than it would take an employee without these conditions to complete the work books, and it therefore had a bigger impact on his non-work time, which he needed to use to rest to recover from the demands of work to avoid exacerbating the symptoms of his ME.

344. The Claimant had completed his probation, however, and met any requirement the Respondent imposed in relation to the Care Certificate, including the completion of work books, by July 2016. This claim has therefore been presented almost two years out of time. For the reasons set out above, the Tribunal does not accept that the claim has been presented within a further just and equitable period and it fails.

345. The alternative claim of indirect discrimination fails for similar reasons. The PCP relating to the completion of work books was not applied after July 2016. The claim has been presented almost two years out of time and not within a further just and equitable period.

Reasonable adjustment/indirect discrimination 8: completion of Care Certificate before probation ends

346. The Claimant alleges that the Respondent failed to make reasonable adjustments to its practice of requiring employees to complete the Care Certificate before their probationary period can be completed.

347. The Tribunal accepts that this was the Respondent's practice.

348. The Claimant completed his probation in July 2016. From that point, therefore, the Respondent was no longer applying this PCP to the Claimant. This complaint has been presented nearly two years out of time and not within another just and equitable period, for the reasons set out above.

349. This claim therefore fails.

350. The alternative claim of indirect discrimination fails for similar reasons. The PCP was no longer applied after July 2016. The claim has been presented nearly two years out of time and not within another just and equitable period.

Reasonable adjustment/indirect discrimination 9: completion of training in office

351. The Claimant alleges that the Respondent failed to make reasonable adjustments to its practice of requiring employees to complete online training in the office.

352. As is apparent from the findings above, the Tribunal accepts that the Respondent initially agreed to allow the Claimant to complete his online training at home because of the shortage of suitable facilities at work to enable him to carry out the training there. The Tribunal accepts Mr Tully's evidence that it was only when suitable equipment and workspace became available that the Respondent required the Claimant to do the training at work. On the evidence it has heard, the Tribunal does not accept that the Claimant has established that,

in these changed circumstances, this PCP put him at a substantial disadvantage compared with an employee without his disabilities.

353. This claim therefore fails.

354. The claim of indirect discrimination fails for a similar reason. The Tribunal does not accept, on the evidence it has heard, that the Claimant was put at a particular disadvantage by the PCP.

Reasonable adjustment/indirect discrimination 10: treatment of repeated complaints and concerns

355. The Claimant alleges that the Respondent failed to make reasonable adjustments to its practice of categorising the raising of a large number of complaints and concerns, sometimes repeatedly, as conduct which could form part of the grounds for disciplinary action or dismissal.

356. The Tribunal accepts that the Respondent regarded the Claimant's repeated raising of complaints and concerns as evidence of a breakdown in the employment relationship that might need to lead to dismissal. There was no evidence, however, that the Respondent considered it grounds for disciplinary action. Further, there was no evidence that it amounted to a PCP: the evidence indicated that it was a specific response to all the specific circumstances surrounding the Claimant's behaviour and employment history.

357. Even if the Respondent had adopted the alleged PCP, the Claimant gave no evidence to support his case, which appears to have been framed at the Preliminary Hearing on 24 January 2019, that any such PCP put him at a substantial disadvantage compared with people without his disabilities because his disability of autism made it more likely that he would raise complaints and persist with them if he felt that they had not been properly dealt with. He maintained throughout the Tribunal Hearing, and during the course of his cross-examination of witnesses, that it was the Respondent's unreasonable failure properly to investigate and act on his concerns that led him to repeatedly raising them. At no point did he state or imply that he was more prone to raising complaints, and to persisting with or repeating them, because of his autism.

358. As the Claimant has failed to establish the alleged PCP or that any such PCP put him at a substantial disadvantage, this claim fails.

359. The allegation of indirect discrimination fails for similar reasons. The Tribunal is not satisfied that there was a PCP as alleged or that, if there was, it put the Claimant at a particular disadvantage.

Reasonable adjustment/indirect discrimination 11: ripping up risk assessment

360. The Claimant alleges that the Respondent failed to make reasonable adjustments to its practice of identifying ripping up a risk assessment in a meeting as conduct which could form part of the grounds for disciplinary action or dismissal.

361. As recorded in the findings above, at his return to work meeting with Mr Tully and Miss Hussain on 1 February 2018, the Claimant ripped up the risk assessment that they had drafted. There was no evidence before the Tribunal that the Respondent identified the Claimant's conduct as grounds for disciplinary action and the Tribunal finds that there was no such PCP. The Tribunal does accept that this conduct was one of the many actions by the Claimant that caused the Respondent to be concerned that the relationship between the Claimant and management had broken down, and that that needed to be addressed. That was a response to the specific surrounding circumstances of the Claimant's conduct and the history of his employment, however, and the Tribunal does not accept that, on the evidence it has heard, it amounted to a PCP.

362. Further, even if it had been a PCP, the Tribunal does not accept that the evidence it heard supports the Claimant's assertion, recorded at the Preliminary Hearing on 12 March 2019, that any such PCP put him at a substantial disadvantage compared with people without his disabilities. He asserted that, as a result of his disabilities, he is more likely to have difficulty with verbal communication at times of high stress and fatigue, making it necessary for him to express himself non-verbally. On the evidence the Tribunal heard, it was clear that the Claimant had no difficulty in making clear to Mr Tully and Miss Hussain at the meeting that he thought their risk assessment was inadequate and why. He ripped up the risk assessment because he was not happy with the way they were responding to his concerns: as he put it in the documents he submitted for his appeal, he wanted to emphasise to Mr Tully that he needed his support, after talking and writing at length had not worked.

363. For this reason, this claim fails.

364. The allegation of indirect discrimination also fails. The Tribunal is not satisfied that there was a PCP as alleged or that, if there was, it put the Claimant at a particular disadvantage.

Reasonable adjustment/indirect discrimination 12: resubmitting allegations of bullying

365. The Claimant alleges that the Respondent failed to make reasonable adjustments to its practice of requiring the Claimant to resubmit, in writing,

allegations of ongoing bullying/victimisation as a result of raising health and safety issues in order for them to be acted upon, and setting a short deadline for this resubmission.

366. The Tribunal accepts that Miss Hussain did ask the Claimant on 5 December 2017 to give details of the allegations of bullying or victimisation that he wanted the Respondent to address, and gave him five working days to do so.

367. There was no evidence, however, that this amounted to applying a PCP. Rather, it was a response to all the circumstances of the Claimant's employment history, and in particular his lack of clarity about which of his allegations he viewed as unresolved. It was also in part due to the fact that Miss Hussain had only recently been appointed by the Respondent and did not fully understand the history of the Claimant's previous complaints and grievances.

368. In any event, if this had been a PCP, it was applied to the Claimant in early December 2017. If the Respondent was going to make adjustments to the PCP, it could reasonably have been expected to do so by the middle of that month, since the five-day deadline would have expired by then. The claim was not presented until 21 May 2018, over two months outside the statutory time limit. The Tribunal does not consider that the claim has been presented within another just and equitable period.

369. This claim therefore fails.

370. The alternative allegation of indirect discrimination fails for similar reasons. The Tribunal does not accept that the Respondent applied a PCP. If there was a PCP, it was applied for five working days from 5 December. The claim has therefore been presented over two months out of time and not within another reasonable period.

Reasonable adjustment/indirect discrimination: failure to act on complaints of discrimination

371. The Claimant alleges that the Respondent's failure to act properly on his complaints of discrimination amount to a failure to make reasonable adjustments, indirect discrimination and discrimination arising from disability.

372. As explained in the findings above, the Tribunal does not accept, from the evidence it heard, that the Respondent did fail to act properly on the Claimant's various complaints of discrimination. The Claimant has not made clear which complaints he is alleging were not properly acted upon, nor what a proper response would have been. For these reasons, all these claims must fail.

373. In any event, even if the Tribunal had accepted that the Respondent failed to act properly, it would not have accepted that this put the Claimant at a substantial disadvantage compared with someone without his disabilities, nor that it would have put him and those who share his disabilities at a particular disadvantage. Anyone, whether a disabled person or not, who complains to their employer about discrimination and finds that their employer does not deal with those complaints properly is put under a disadvantage. The Claimant has not provided evidence to establish that the disadvantage to which he, and anyone else with his disabilities, would be put would be any greater than the disadvantage caused to anyone else.

374. Further, even if the Tribunal had accepted that the Respondent failed to act properly, there was no evidence to indicate that that was because of something arising in consequence of the Claimant's disabilities. The Claimant has not explained what the "something" arising in consequence of his disabilities was that he alleges was the reason for the Respondent's failure to act.

375. For these reasons also, these allegations fail.

Allegations relating to dismissal

376. At the heart of the Claimant's claim, and the only complaint detailed in his original claim form, is his allegation that he lost his job because he had made a protected disclosure to Leeds City Council. When the Claimant provided further details of his claim, he alleged several detriments and added other prohibited grounds for his dismissal. This led to his claim becoming much more complex. During the course of the Hearing, in response to the Claimant's statements that he was finding it difficult to manage the Hearing and needed things to be less complex, the Tribunal invited him to consider whether he might want to focus and simplify his claim, but he did not do so.

Reason for dismissal

377. The first issue for the Tribunal in relation to the Claimant's allegation that his dismissal was unfair was, what was the reason, or, if more than one, the principal reason for his dismissal? If it was because he had made protected disclosures or raised health and safety concerns, his dismissal would be automatically unfair (Sections 100 and 103A ERA). If it was for some other reason, the Tribunal needed to decide whether that fell within the potentially fair reasons for dismissal in Section 98(1)(b) and (2) ERA. Those include the reason relied upon by the Respondent: "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held" (Section 98(1(b)).

378. In relation to the Claimant's allegation that his dismissal amounted to victimisation because he had done protected acts or was because of something arising on consequence of his disability, the Tribunal bore in mind that, if there were facts from which it could conclude, in the absence of any other explanation, that the Claimant had been dismissed for one of these reasons, it would need to uphold the claim unless the Respondent could show that it had not in fact acted unlawfully (Section 136 EqA). The Tribunal would need to be satisfied that the reason arising in consequence of the Claimant's disability or the protected act, as the case might be, had no significant influence on the decision to dismiss him (Nagarajan v London Regional Transport (1999) ICR 877) or, to put it another way, was not an effective cause of his dismissal (O'Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School (1997) ICR 33)). In relation to the allegation of victimisation, the Tribunal might need to consider whether the circumstances of the Claimant's protected acts could properly and genuinely be treated as separate from the acts themselves (Martin v Devonshire Solicitors [2011] ICR 352).

379. The Tribunal accepts Mr Hughes's clear and unequivocal evidence that the principal reason he dismissed the Claimant was that he had concluded that the Claimant had become unmanageable and that the employment relationship was no longer sustainable. This evidence was fully supported by the content and tone of the substantial evidence the Tribunal saw documenting the Claimant's repeated complaints and numerous grievances. He was not willing to accept the authority of the Senior Support Workers in the home where he worked, Mr Tully as his line manager or even Mr Hughes, the Respondent's Chief Executive. He expressly queried the competence of Mr Tully, Mr Cant and Mr Thomson, the Respondent's trustees, and Miss Hussain, the Respondent's Human Resources Manager.

380. As already recorded above, the Tribunal accepts that the Claimant is a very intelligent person. Although he held the most junior care position in the home where he worked, the Tribunal is fully prepared to accept that he was more intelligent than some of those whose job it was to manage him. His appeal documentation alone evidences that he was capable of a systematic and detailed analysis and critique of the actions of the Respondent's managers and trustees. The fact remains, however, that in order for the Respondent to maintain a functioning organisation, it was necessary for the Claimant to accept the authority and decisions of those more senior to him in the organisational hierarchy and Mr Hughes had concluded that he was unwilling to do so. The Tribunal accepts that this constituted "some other substantial reason" of kind such as to justify the Claimant's dismissal.

381. As the Tribunal has found above, some of the Claimant's challenges to the Respondent's actions incorporated the raising of health and safety concerns, protected disclosures or protected acts. It was, however, the Claimant's

resistance to line management and his repeated and widespread complaints about the Respondent's managers and trustees when they, objectively assessed, were making reasonable attempts in good faith to address his concerns, that led to Mr Hughes concluding that the relationship could not be sustained. The Tribunal does not accept that the principal reason for the Claimant's dismissal was that he had raised health and safety concerns or made protected disclosures. In particular, the Tribunal finds no basis for the Claimant's allegation, upon which he based his interim relief application, that the occupational health referral that he said set in train the decision to dismiss him was made because he had "blown the whistle" to Leeds City Council. On the evidence the Tribunal has seen, the referral was made before the Claimant had his telephone conversations with Ms Mitchell or informed the Respondent about them.

382. The claims of unfair dismissal under Sections 100 and 103A ERA therefore fail.

383. The Tribunal does not accept that the Claimant's protected acts had any significant influence on the decision to dismiss him or were an effective cause of his dismissal. All the evidence indicates that the Respondent had no concern about him raising allegations of discrimination; its concern was with his unwillingness to accept the authority and decisions of the Respondent's managers and trustees. His claim of victimisation by dismissal therefore fails.

Dismissal because of something arising in consequence of disability

384. During the course of the Preliminary Hearing on 24 January 2019, the Claimant clarified that he was also alleging that he was subjected to disciplinary action and then dismissed because of something arising in consequence of his disability, namely his behaviour. His allegation is recorded as being that, as a result of his autism he is more likely to make complaints and to persistently continue to complain if he feels that the issue has not been properly dealt with. As a result of this disability he became frustrated and sometimes struggled to communicate and therefore adopted behaviour which might ordinarily be seen as inappropriate, such as ripping up a risk assessment in a meeting.

385. As already mentioned above, this allegation is not supported by the Claimant's evidence. He at no point accepted, during his employment with the Respondent or during the Hearing of his Tribunal claim, that his behaviour had been in any way inappropriate or unreasonable or, more importantly, that it in any way arose in consequence of his autism or either of his other disabilities. His case throughout has been that it is the Respondent who has acted unreasonably by failing properly to address and act upon his grievances and complaints. He based his cross-examination of the Respondent's witnesses on that premise. Indeed, in the documents he submitted for his appeal, the

Claimant stated that tearing up the risk assessment was not inherently inappropriate or disrespectful but was reasonable and understandable in the context, as a means of getting through to Mr Tully that he needed his support after talking and writing at length had not worked. The Tribunal had substantial evidence, in documentation produced by the Claimant during the course of his employment and during this litigation, that the Claimant is very articulate and able to express himself clearly and assertively in writing and orally. He tore up the risk assessment because Mr Tully and Miss Hussain were not responding to him as he thought they should, not because he could not communicate his concerns about the risk assessment. In the absence of any evidence, medical or otherwise, to establish that there was a link between the Claimant's behaviour and all or any of his disabilities, the Tribunal is not willing to find that his behaviour or any aspect of it arose in consequence of his disabilities.

386. If the Tribunal had been satisfied that the Claimant's behaviour did arise in consequence of his disability, it would nevertheless have accepted that the decision to dismiss him was a proportionate means of achieving a legitimate aim. That aim was to ensure that the Respondent had sufficient management resources to manage the service it was providing to the charity's service users, all of whom are people with autism. As a small charity with limited resources and faced with the substantial drain on management time caused by the Claimant's behaviour and his failure to acknowledge the difficulties posed by it, the Respondent's decision to dismiss him was a proportionate means of conserving management resources for the principal task in hand, which was to manage the service.

387. This claim fails and is dismissed.

Dismissal: test of reasonableness

388. The Claimant alleges that his dismissal was unfair.

389. The issue for the Tribunal was whether Mr Hughes acted reasonably in all the circumstances (including the size and administrative resources of the Respondent's undertaking) in treating his belief that the Claimant had become unmanageable and that the employment relationship was no longer sustainable as a sufficient reason for dismissing the Claimant. That question had to be decided in accordance with equity and the substantial merits of the case (Section 98(4) ERA).

390. The Claimant alleged that the decision to dismiss him was unreasonable for these reasons:

390.1 The investigation into his conduct was not adequate.

390.2 It was not made clear to the Claimant that the hearing was a disciplinary hearing.

390.3 The Claimant was not given sufficient information about the allegations to enable him to prepare to answer the case at the hearing.

390.4 The Claimant was not provided with sufficient evidence in support of the allegations to enable him to prepare to answer the case at the hearing.

390.5 The Respondent adjourned the disciplinary hearing before it was completed to be dealt with by correspondence.

390.6 The Respondent refused the Claimant's request for a face-to-face disciplinary hearing.

390.7 The Respondent failed to provide the Claimant with the opportunity to attend an appeal hearing.

390.8 The Respondent took all the above steps in the light of its knowledge of the effects of the Claimant's disabilities.

390.9 The Respondent failed to obtain an occupational health report before taking the decision to dismiss.

390.10 Individuals against whom the Claimant had brought an outstanding grievance were involved in the process, including Mr Hughes and Miss Hussain.

390.11 The Respondent failed to take into account the effect and context of the Claimant's disabilities when assessing his behaviour.

390.12 The outcome of the Hearing was predetermined.

391 Dealing with these criticisms in turn, the Tribunal makes the following findings:

391.1 The Claimant was not facing a disciplinary charge and an investigation into alleged misconduct was not appropriate. The Respondent was already aware of the conduct that was causing it concern. It took reasonable steps to summarise this for the Claimant in the letter it wrote to him inviting him to the meeting and the attachments enclosed with it, and in a further letter on 3 April.

391.2 It was not made clear to the Claimant that it was a disciplinary hearing because it was not a disciplinary hearing. The letter Mr Hughes

sent to the Claimant on 7 March makes clear what the purpose of the meeting was: it was to discuss his relationship with the staff and managers and to consider whether his employment relationship was sustainable. He was warned that a potential outcome could be that he would be dismissed.

391.3 The Respondent gave the Claimant a reasonable amount of detail about the reasons why it considered the relationship might be unsustainable and sufficient documentary evidence to support its view. The Claimant might have wanted a detailed account of each and every statement he made, orally and in writing, that caused the Respondent concern and why, so that he could explain why his behaviour was a justified response to the Respondent's failure to act or to act appropriately in relation to each and every one of his numerous complaints and grievances. That would, however, not address the Respondent's overarching concern, which was that the Claimant was not willing to accept the authority and competence of his managers or the Respondent's trustees. The Respondent is a small charity with limited management resources. The steps it took to clarify its position and the basis for it were reasonable in all the circumstances.

391.4 The Tribunal also accepts that the Respondent's decisions to abandon the meeting on 26 March and to conclude it on paper and to conduct the appeal on paper only were reasonable in all the circumstances. At the meeting on 26 March, the Claimant failed to engage with the Respondent's fundamental concern, which was that his behaviour in repeatedly complaining about all who managed him and resisting line management was making his employment unsustainable. He failed to acknowledge the Respondent's repeated assertion that the meeting was not a disciplinary hearing. He wanted to go into detail of what had happened in the past rather than engage with the Respondent's concern about how the relationship was sustainable in the future. Mr Hughes reasonably concluded that the meeting was making no headway and that it would be better to give the Claimant a further explanation of the Respondent's concerns in writing and deal with the remaining issues in correspondence. It is noteworthy that even the Claimant's union representative confirmed at the meeting that he thought this was the better option, although he also said he "reserved the right to ask for a meeting at a future date".

391.5 The Tribunal accepts that the Respondent was aware that the Claimant took longer to deal with matters in writing because of his ME and dyslexia. It was also aware, however, from the numerous emails he had sent, that he was able to express himself clearly and in detail in writing. It gave him a substantial period of time, one month, to provide

details of what he wanted to say. He had also told the Respondent that he found meetings stressful. In these circumstances, it was reasonable for the Respondent to conduct its remaining dialogue with the Claimant, and consider his appeal, in writing.

391.6 From the content of Mr Tully's occupational health referral, it is apparent that he was intending to obtain an opinion on the concerns he had about the impact of the Claimant's disabilities on his ability to carry out his duties with due regard to the welfare of the home's residents. This was in the context of the Claimant's imminent return to work and the Tribunal accepts Mr Tully's evidence that he had not completed the referral form with any issue of discipline or dismissal in mind. In the event, the occupational health referral was not pursued. Mr Hughes gave no evidence that he or anyone else within the Respondent's management considered in the period running up to the Claimant's dismissal asking for occupational health advice specifically on whether his behaviour in repeatedly complaining about the Respondent's management and resisting line management was in any way linked to his autism or whether its approach to managing his behaviour should be adjusted in any way because of his autism. The Tribunal does not accept, however, that the Respondent acted unreasonably in all the circumstances in failing to seek that advice. The Claimant had not himself said that his behaviour was due in any way to his autism. His position was clear: it was the Respondent that was at fault and his repeated complaints were reasonable and justified. It was that position that made him unmanageable. It is difficult to see how occupational health advice could have assisted, even if it had identified that the Claimant's behaviour might be due to his autism. Mr Shepherd clearly did consider at the appeal stage whether the Claimant's behaviour may be in some way due to his autism, as he mentions the Claimant's autism in his letter confirming his decision on the appeal. He concluded, however, that even if the Claimant's behaviour was linked in some way with his autism, his behaviour in resisting line management was still unacceptable and the relationship had broken down.

391.7 Mr Hughes and Miss Hussain were two of the several individuals about whom the Claimant had complained. The Respondent is a small charity with limited resources and a limited number of managers able to conduct the meeting. Since Miss Hussain was the Human Resources Manager, it is difficult to see how the Respondent could have managed the situation without her support and the Tribunal does not accept, therefore, that her involvement made Mr Hughes's decision to dismiss the Claimant unreasonable. There was no evidence that Miss Hussain had any influence on Mr Hughes's decision-making. Whilst the Claimant had made complaints about Mr Hughes, the Claimant had also acknowledged

in the past that Mr Hughes had dealt with his concerns reasonably. There was no evidence before the Tribunal to indicate that he was in any way biased against the Claimant. The Respondent's Trustees were volunteers. One of them was needed to deal with any appeal if the decision was made to dismiss the Claimant. Two of the other trustees were the subject of complaints by the Claimant. Further, the Claimant had already expressed his doubts at the meeting on 26 March 2018 whether the trustees were competent to handle his complaints. In all the circumstances, the Tribunal accepts that it was reasonable for Mr Hughes, a senior manager able to understand the context of the Respondent's concerns while not being directly involved with his line management, to make the decision on whether the Claimant should be dismissed.

391.8 The Tribunal does not accept that the result of the meeting on 26 March was predetermined. Mr Hughes had taken considerable time and care to address the Claimant's concerns in the past and there was no evidence to indicate that he did not approach the Claimant's case with care on this occasion also. He certainly went into the meeting with very serious concerns about whether the Claimant's employment was sustainable. If the Claimant had been able to acknowledge, however, that his behaviour and attitude were making him unmanageable and had indicated he was willing to work with the Respondent to find a positive way forward, the Tribunal is in no doubt that Mr Hughes would have been prepared to consider trying to make an alternative approach work.

392. The Tribunal is satisfied that Mr Hughes's decision to dismiss the Claimant was reasonable in all the circumstances. The claim of unfair dismissal under the test of reasonableness in Section 98(4) ERA therefore fails.

Harassment

393. The Claimant alleged that all the various conduct alleged to be indirect discrimination, failure to make reasonable adjustment or discrimination because of something arising in consequence of his disabilities was harassment related to his disabilities.

394. As the claim of harassment was not raised until 7 February 2019, it has been presented several months out of time even in relation to the latest of the alleged acts of harassment, namely the decision to dismiss, and years out of time in relation to some of the other alleged acts. The Tribunal does not accept that the claims have been presented within another just and equitable period, for the reasons set out above. For this reason, the claims of harassment fail.

395. In any event, the Tribunal would have dismissed the allegations of harassment even if it had had jurisdiction to consider them, for the following reasons.

396. Harassment is defined in Section 26 EqA as unwanted conduct related to disability that has the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. In deciding whether conduct has the effect of creating that type of environment, the Tribunal must take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

397. The Claimant has not explained in what way all or any of the conduct he alleges to be harassment "related to" any of his disabilities. The Tribunal does not accept, on the evidence it has heard, that there is any basis for concluding that all or any of the Respondent's actions related to any of the Claimant's disabilities.

398. There was nothing in the evidence the Tribunal heard to indicate that anyone who did the various acts did them with the purpose of creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. As to whether that was their effect, the Tribunal accepts that the Claimant's perception was that they created a hostile environment for him: the Respondent's management team was not reacting in what he considered to be an appropriate way to the problems he was facing in his working environment. The Tribunal is not satisfied, however, that it was reasonable for their Respondent's actions to have had that effect. In particular, the surrounding circumstances included the fact that the Respondent had invested a very substantial amount of management time and effort in listening to the Claimant's concerns and addressing them in good faith, albeit that it had ultimately found that it could not sustain the Claimant's employment.

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Employment Judge Cox
Date: 11 May 2021