EMPLOYMENT TRIBUNALS

Claimant: Mr S Abdul

Respondent: North West Ambulance Service NHS Trust

Heard at: Manchester (in person/by CVP) **On:** 12-21 October 2021 and 16 November 2021 (in Chambers)

Before: Employment Judge Leach
Mr J Ostrowski
Mr D Lancaster

REPRESENTATION:

Claimant: …
Respondent: …

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant was not treated detrimentally on the grounds that he had made protected disclosures.

2. The claimant's complaints of unlawful discrimination (protected characteristic race) fail.

3. The claimant's complaint of unlawful discrimination (protected characteristic religion or belief) fail.

4. The claimant's complaints of unlawful discrimination (protected characteristic disability) and a failure to make reasonable adjustments fail.

5. The claimant was not constructively dismissed and therefore his complaint of unfair dismissal fails.

6. The claimant's complaint that the Respondent was in breach of the Working Time Regulations 1998 fails.

REASONS

A. Introduction

1. The claimant was employed by the respondent as a paramedic until his resignation in November 2019.

2. In January 2019 the claimant was one of a number of paramedics who attended an emergency call to patient in the Rochdale area. We refer to this patient as Patient A. Tragically Patient A died. The claimant had concerns about the way patient A was treated immediately before his death. These concerns were raised by the claimant to various parties including by email dated 11 January 2019. The respondent admits that this email was a protected disclosure by the claimant for the purposes of the whistleblowing protection provisions in the Employment Rights Act 1996.

3. The claimant claims that he was treated detrimentally following (and on the ground that) he made protected disclosures.

4. The claimant is British Asian of Indian national origin. He is a practising Muslim. The clamant claims that, during the same time period (January – November 2019) he was discriminated against because of his race and/or his religion.

5. The claimant claims that, at all relevant times, he had a disability for the purposes of the Equality Act 2010. He claims that the respondent failed to make reasonable adjustments to overcome disadvantages for him in the workplace.

6. The claimant also claims that the circumstances of his resignation in November 2019 amounted to a constructive dismissal which was unfair.

7. Finally, the claimant complains that the respondent was in breach of its obligations under the Working Time Regulations 1998 to provide daily rest periods.

B. List of Issues

8. A list of complaints and issues was identified at case management stage and a final, agreed list of issues was attached to the Case Management Summary of the preliminary hearing on 17 June 2020. We repeat this list below.

> ***Jurisdictional Issues***
>
> *1. Are any or all of the Claimant's claims which predate 26 March 2019 out of time?*
>
> *2. If so, do the allegations made by the Claimant amount to an act extending over a period of time so as to bring the Claimant's claims in time?*
>
> *3. Would it be just and equitable to extend the time limit for submitting such claims?*
>
> ***Public Interest Disclosure Detrimental Treatment*** *(Claim 1 as per C's ET1).*

4. The Respondent accepts that the Claimant made the following protected disclosures:

4.1. 11 January 2019 in relation to patient care which was already under review.

4.2. 18 June 2019 grievance.

4.3. 61 or 63 page document 11 July 2019.

5. Did the claimant make a protected disclosure by reading out on 11 July 2019 the paragraphs quoted in the Further Particulars provided by the claimant on 22 April 2020?

6. Did the Claimant suffer the following detriments as a result of making one or more protected disclosures?

6.1. Being invited to an Occupational Health appointment for a Friday, 26 April 2019;

6.2. Being forced to work solo by Marie Gamlin and Adam Forster at the station on 14 April 2019;

6.3. Being forced to work with a new emergency medical technician by Marie Gamlin and Adam Forster on 7 April 2019?

6.4. Being intimidated by a Senior Paramedic, Chloe Swan, and a standard paramedic, Donna Merrick, saying, on a date prior to 11 April 2019, in a conversation between them to which the claimant was not a party, but which was subsequently reported to the claimant, that the claimant should be brought down a peg or two.

6.5. Paul Monteith breaching the Claimant's confidentiality in ways alleged in the claimant's grievance pack.

6.6. The Claimant's complaint in relation to the report he made on 11 January 2019 in accordance with the Raising Concerns at Work Policy not being investigated by the Respondent in accordance with that Policy.

6.7. Being made by Niamh Nolan to work with a Senior Paramedic who the Claimant had raised a complaint about on 23 March 2019.

6.8. Being made to work Fridays by Marie Gamlin and Adam Forster and Marshal Kumawu (HR Manager) on 30 April, 21 May, 30 May and 18 June 2019.

6.9. Respondent commencing an overtime and meal plan investigation during March 2019; the Claimant alleges Marie Gamlin and Adam Forster commenced this investigation.

6.10. During May 2019, the Claimant was not given time off for Ramadan following a request made on 11 Feb 2019 to Marie Gamlin.

6.11. Chloe Swan or Donna Merrick saying, on a date prior to 11 April 2019, in a conversation to which the Claimant was not a party but which was reported to the Claimant that the Claimant should be brought down a peg or two and the Respondent failing to do anything about this when it was reported to them by Craig Greenfield and the Claimant.

6.12. By the manner in which Mr Foster conducted an investigatory interview on 14 August 2019 (Claim 9)

6.13. By continuing with the disciplinary investigation and the length of time taken to conduct it (Claim 10)

6.14. By the length of time taken to investigate the Claimant's grievance (Claim 12)

6.15. By referring the Claimant to the HCPC

Direct Discrimination

Race

7. Did the Respondent treat the Claimant less favourably than it treated or would have treated actual and/or hypothetical comparators by:

7.1. Marie Gamlin and Adam Forster making the Claimant work solo and sit at the station on 14 April 2019; (Claim 4). Actual comparator: RC.

7.2. By subjecting the Claimant to a disciplinary investigation for allegedly leaving work early (Claim 9). Actual comparator Mr Davenport.

7.3. By referring the Claimant to the HCPC. Actual comparator Mr Davenport (Claim 13).

8. If so, was the less favourable treatment above because of the Claimant's race (British Asian of Indian heritage), contrary to the Equality Act 2010?

Religion

9. Did the Respondent treat the Claimant less favourably than it treated or would have treated an actual and/or hypothetical comparator by:

9.1. Marie Gamlin and Mike Hynes failing to grant the Claimant long term annual leave after authorising his leave during May 2019. Actual comparator: Sean Brady.

9.2. Marie Gamlin pressuring the Claimant to complete a Flexible Working Request (FWR) form and and Marshall Kimawu threatening the Claimant with disciplinary action for failure to complete a FWR form on 30 April 2019. No actual comparator.

9.3. Marie Gamlin and Adam Forster forcing the Claimant to work the whole of Friday on 14 June 2019 (Claim 7). No actual comparator.

9.4. Failing to follow and delaying the investigation into: (Claim 8)

9.4.1. The complaint raised by the Claimant in January 2019 in connection with the Respondent's Raising Concerns at Work Policy;

9.4.2. The meal claim investigation during February 2019; and

9.4.3. The grievance raised by the Claimant during June 2019.

No actual comparator.

10. If so, was the less favourable treatment above because of the Claimant's religion (Muslim), contrary to the Equality Act 2010?

Indirect Discrimination

Religion

(Claim 5 & 7 and 12)

11. Did the Respondent apply a Provision, Criterion and/or Practice (PCP) for the purposes of section 19 of the Equality Act 2010 by?

11.1. Requiring its employees to attend Occupational Health appointments on Fridays.

11.2. Requiring its employees to work Fridays, including in particular Friday 29 November 2019?

12. If so, did that PCP put the Claimant as a practising Muslim at a disadvantage when compared with persons who do not share that protected characteristic i.e. non-Muslims as the Claimant's faith requires him to attend Friday Congregational prayers?

13. Did the above PCPs put the Claimant at the disadvantage claimed by the Claimant?

14. If so, can the Respondent show that the PCP was a proportionate means of achieving a legitimate aim of ensuring effective delivery of emergency services. (Claim 6)

15. Did the Respondent apply a PCP for the purposes of section 19 of the Equality Act 2010 by?

15.1. Requiring its employees to request/follow its procedures for booking long term annual leave?

16. If so, did that PCP put the Claimant as a practising Muslim at a disadvantage when compared with persons who do not share that protected characteristic i.e. non-Muslims as the Claimant could not take time off work?

17. Did the above PCP put the Claimant at the disadvantage claimed by the Claimant?

18. If so, can the Respondent show that the PCP was a proportionate means of achieving a legitimate aim of ensuring the effective delivery of emergency services.

Disability

19. Do the Claimant's following physical/mental impairment have a substantial and long-term adverse effect on his ability to carry out normal day to day activities?

Physical impairments

19.1. Hypothyroidism, diagnosed on 1 October 2009;

19.2. Chronic Metabolic condition (Claim 2)

Mental impairments

19.3. Depression, diagnosed on 26 May 2011;

19.4. Anxiety, diagnosed on 26 May 2011;

19.5. Stress related problems, diagnosed on 26 May 2011; and VI. Sleep disorder, diagnosed on 6 January 2015.

Duty to Make Reasonable Adjustments

20. In relation to each of the complaints of failure to make reasonable adjustments, Did the Respondent know that the Claimant had a disability and was likely to be placed at the disadvantage referred to and if so, when?

(Claim 2)

Disability relied upon = Chronic Metabolic Condition, Hypothyroidism and mental health disorder

21. Did the Respondent apply the following Provision, Criterion or Practice (PCP)?

21.1. The PCP is requiring employees to work without taking a twenty-minute break every six hours and/or without taking compensatory rest breaks where that twenty-minute break has not been taken.

22. If so, did the Claimant suffer the following disadvantage when compared to a non-disabled person, in that he was unable to?

22.1. provide patient care with adequate energy levels on 19 February 2019.

22.2. If so, to what extent did the Claimant suffer the disadvantage?

23. Would the following adjustments asserted by the Claimant have avoided any disadvantage?

23.1. Take a rest break after working six hours on 19 February 2019.

24. If so, was the above specified step reasonable for the Respondent to take?

(Claim 8)

Disability relied upon = Depression, Anxiety and Sleep disorder. - Rest Breaks PCP

25. Did the Respondent apply the following Provision, Criterion or Practice (PCP)?

25.1. Requiring employees to work without taking a twenty-minute break every six hours and/or without taking compensatory rest breaks where that twenty- minute break has not been taken.

26. If so, did the Claimant suffer the following disadvantage when compared to a non-disabled person, in that his depression, anxiety and sleep problems were aggravated?

27. If so, to what extent did the Claimant suffer the disadvantage?

28. Would the following adjustments asserted by the Claimant have avoided any disadvantage?

28.1. Allowing the claimant to take a twenty minute rest break every six hours work or to

28.2. take compensatory rest break if that break not possible at the six hour point.

29. If so, were any of the specified steps reasonable for the Respondent to take?

Disability relied upon = Depression, Anxiety and Sleep disorder. – Disciplinary Procedure PCP

30. Did the Respondent apply the following Provision, Criterion or Practice (PCP)?

30.1. Not dealing with disciplinary matters in a reasonable time.

30.2. Arranging disciplinary hearings whilst an employee was on sick leave (Claim 10)

31. If so, did the Claimant suffer the following disadvantage when compared to a non-disabled person, in that his depression, anxiety and sleep problems were aggravated?

32. If so, to what extent did the Claimant suffer the disadvantage?

33. Would the following adjustment asserted by the Claimant have avoided any disadvantage?

33.1. Conducting its disciplinary proceedings within a reasonable time.

34. If so, were any of the specified steps reasonable for the Respondent to take?

Disability relied upon = Depression, Anxiety and Sleep disorder – Conduct of Disciplinary Process PCP

35. Did the Respondent apply the following Provision, Criterion or Practice (PCP)?

35.1. Conducting disciplinary processes in an aggressive manner.

36. If so, did the Claimant suffer the following disadvantage when compared to a non-disabled person, in that his depression, anxiety and sleep problems were aggravated?

37. If so, to what extent did the Claimant suffer the disadvantage?

38. Would the following adjustments asserted by the Claimant have avoided any disadvantage?

39. Not conducting its disciplinary processes in an aggressive manner.

40. If so, were any of the specified steps reasonable for the Respondent to take?

Disability relied upon = Depression, Anxiety and Sleep disorder. – Grievance Procedure PCP

41. Did the Respondent apply the following Provision, Criterion or Practice (PCP)?

41.1. Not dealing with grievance procedures in accordance with its own policies or otherwise in a timely manner.

42. If so, did the Claimant suffer the following disadvantage when compared to a non-disabled person, in that his depression, anxiety and sleep problems were aggravated?

43. If so, to what extent did the Claimant suffer the disadvantage?

44. Would the following adjustments asserted by the Claimant have avoided any disadvantage?

44.1. Conducting its grievance procedure in accordance with the timescales set out in its policies.

45. If so, were any of the specified steps reasonable for the Respondent to take?

***Harassment** (Claim 4)*

46. Did the Respondent engage in unwanted conduct related to the Claimant's race (British Asian with Indian heritage) for the purposes of the Equality Act 2010 by:

46.1. Making the Claimant work solo and sit at the station on 14 April 2019.

47. If so, did the unwarranted conduct have the purpose or effect of:

47.1. violating the Claimant's dignity; or

47.2. creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

48. If so, having regard to all the circumstances of the case, was it reasonable for the conduct to have that effect on the Claimant?

***Working Time Regulations** (Claim 2)*

49. On 19 February 2019 was the Claimant denied a break within 6 hours of commencement of an 8-hour shift in accordance in Regulation 12 of the Working Time Regulations 1998 (WTR)?

50. If so, does the Claimant's role involve the need for continuity of service in order to provide treatment or care by hospitals or similar establishments as per Regulation 21(C)(1)?

51. If so? Did the Respondent:

51.1. Provide the Claimant an equivalent period of compensatory rest; and

51.2. Offer the Claimant such protection as may be required to safeguard his health and safety.

Unfair Dismissal

52. Was the Claimant constructively dismissed?

52.1. Did the Respondent engage in conduct which entitled the Claimant to terminate his employment without notice by doing the matters referred to above and in addition, by continuing with the disciplinary investigation and arranging a disciplinary hearing.

52.2. Did the Claimant resign for this reason?

53. If the Claimant was constructively dismissed, was the reason or principal reason for dismissal (the breach) one of the following "automatically unfair" reasons?

53.1. Because the Claimant had made a protected disclosure – s.103A ERA?

53.2. For a reason in s.101A(1)(a) or (b) ERA?

53.2.1. Did the Claimant refuse or propose to refuse to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the WTR when the Claimant did not make himself available for work when he took a compensatory rest break on 19 February 2019 after working more than 6 hours without a break, by not having his radio with him, and by asserting, in a disciplinary investigation meeting on 14 August 2019 that he was entitled to do so? (section 101A(1)(a) ERA))

53.2.2. Did the Claimant refuse or propose to refuse to forgo a right conferred on him by the WTR by not making himself available for work when he took a compensatory rest break on 19 February 2019 after working more than 6 hours without a break, by not having his radio with him, and by asserting, in a disciplinary investigation meeting on 14 August 2019 that he was entitled to do so? (section 101A(1)(b) ERA).

53.3. For a reason in s.100(1)(e) ERA?

53.3.1. On 19 February 2019, by taking a break and not having his radio with him, was the Claimant, in circumstances of danger, which the Claimant reasonably believed to be serious and imminent, take appropriate steps to protect himself or

other persons from the danger? The Claimant says that he would have been a danger to himself and others had he driven when exhausted.

52.4 For a reason in s.104 ERA (asserting a relevant statutory right) – the Claimant relies on bringing Tribunal proceedings to enforce a right to take breaks in accordance with the WTR (s.104(1)(a)) and alleging in his grievance that the Respondent had breached the requirements of the WTR in relation to taking breaks (s.104(1)(b)?

54. If the Claimant was constructively dismissed but the constructive dismissal was not for one of the automatic reasons,

54.1. Was the constructive dismissal for some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the Claimant held (SOSR); and

54.2. Did the Respondent act reasonably or unreasonably in all the circumstances in constructively dismissing the Claimant for that reason?

9. Mr Campion raised with us two other issues to add to the list of issues for determination at this hearing; whether any compensatory award for unfair dismissal should be reduced on the grounds that the claimant had caused or contributed to his dismissal (under s123(6) Employment Rights Act 1996) and/or whether and to what extent to take into account covert recordings, when deciding the amount of a compensatory award on just and equitable grounds (under s123(1)ERA). This included "Polkey" arguments.

10. We discussed with the claimant that, whilst the issues in this hearing related to liability only, it would be helpful to consider these arguments too. We explained that any remedy due (including the amount of an unfair dismissal compensatory award) would be considered at a separate remedy hearing if appropriate. However, we would consider and decide during this liability hearing whether there should be any deduction to the amount of compensation that we would award. If we decided that there should be, then we would express that in percentage terms. The claimant did not object to these issues being added to the long list of issues to be determined at this hearing.

11. We therefore added the following issues to the existing list:-

Remedy – contributory conduct/just and equitable award? (s122(2), s123(1) and (6) Employment Rights Act 1996

55. If the claimant was unfairly dismissed:-

54.1 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

54.2 If so, should the claimant's compensation be reduced? By how much?

54.3 If the claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct?

54.4 If so, would it be just and equitable to reduce the claimant's compensatory award? If so, by how much?
54.5 Was the conduct of the claimant before the dismissal such that it would be just and equitable to reduce the amount of the basic award? (s122(2) ERA). If so, by how much?

The Hearing

12. The final hearing on liability took place over 9 days. Day one was spent reading into the case and in initial discussions with the parties. As well as confirming the issues to be decided on:-

12.1 We were told that both parties wanted us to listen to a recording of a meeting on 14 August 2019. We discussed this and agreed that we could (and should) listen to the recording in private, knowing that a typed transcript of the meeting in question, was available in a bundle of documents which had been placed in the Tribunal room for members of the public.

12.2 We discussed the likely running order for witnesses.

12.3 The claimant was concerned that he had not had enough time to be able to add some comments to his statements, noting that there had been late compliance by the respondent with some case management orders. We informed the claimant that, at the beginning of his evidence, he would be provided an opportunity to add any supplementary evidence. We noted that this included:-

12.3.1 Evidence about the covert recordings;

12.3.2 Evidence about a supplementary statement made by Adam Foster (AF) and a supplementary bundle of documents.

The claimant was given this opportunity on the morning of day 2.

13. We were provided with a bundle of documents which, with a number of additions provided, comprises some 1900 pages. Reference below to page numbers are to this bundle.

14. We started to hear the evidence on the morning of day two. We first heard from the claimant and 2 of his 3 witnesses. One witness not in attendance was Michael Rose (MR). As we note below, MR is the local Unite representative. The claimant was concerned that MR might not attend. We informed the claimant of the possibility of applying for a witness order to require his attendance. The claimant told us that he decided he would not take further steps to ensure MR attended. He told us that he had heard that MR was unwell and did not want to disturb him further. We noted that whilst MR had been involved in some of the key events and his evidence might be helpful, his witness statement said very little. The claimant agreed.

15. On day 5 an issue arose about whether the claimant had disclosed all audio recordings that he had relevant to the issues. On day 6, the claimant confirmed that he had, although we note Mr Campion was critical of the claimant in relation to the retention of relevant audio recordings.

16. We were able to complete the evidence and submissions within the nine days but we needed to meet on a further day in order to reach our decision. Judgment was therefore reserved.

Findings of Fact.

The claimant's employment history with the respondent.

17. The claimant began his employment with the respondent in 2001 as a student paramedic. Initial training was provided to him. After this training the claimant was able to operate as an Ambulance Technician. This job title subsequently changed to an Emergency Medicine Technician (EMT). There are two levels of seniority for EMTs, EMT1 and 2 (with 2 being the more senior level).

18. The claimant carried out his initial training at Warrington. In this early stage of his employment, the claimant raised concerns about whether his new job would allow him to attend congregational prayers on Fridays. The claimant is a practising Muslim and it is important to him that he is able to attend Friday congregational prayers. During his initial training the claimant learned that the job did not provide for set meal breaks. Given the emergency, unforeseeable incidents attended by ambulance crew, there had to be some flexibility (and therefore uncertainty) on a day to day basis about when an ambulance technician might be able to break for a meal. The need for continuity of treatment sometimes meant that meal and rest breaks (we refer to these collectively as rest breaks) sometimes needed to be delayed or even missed altogether.

19. A meeting took place between the claimant, his lead trainer at the time and a member of the respondent's HR team. Both parties agree that the claimant was given assurances. However, there is disagreement about the extent of assurances given. The claimant's position is that he was told that he would not have to work Fridays and that this was applicable to the whole of his employment with the respondent.

20. The respondent says that the assurances provided were as set out in a file note of the meeting. The file note is at page 158. The claimant's response is that the note is not accurate and was created (fraudulently) to further the respondent's position in these proceedings.

21. We accept the file note as a broadly accurate record of this discussion. There is a flaw to the note as the claimant understandably points out. The note is dated Friday 28 October 2001. However, that date was a Sunday. Having considered the error we decided that it did not make us less inclined to accept the note as genuine. Such an error would make for a very poor fraud.

22. We also note that:-

21.1 any assurances about working on Fridays related to the role he had at the time. As we detail below, there were changes made to the claimant's role and hours over his long period of employment with the respondent.

21.2 The claimant's need for time off on Fridays changed at some stage between 2001 and 2019. The file note states:-

Soyeb explained that whilst undertaking his training at Ladybridge Hall he had been taking some time off on a Friday to attend prayers at his Mosque. He explained that Fridays were a holy day for

> *Muslims and they needed to attend a public prayer during certain hours. In the winter that time was 12.30-1.00pm and in the summer that time was 1.30- 2.00pm. Soyeb stated that he did not mention this at interview as he thought he would be able to attend the Mosque during his lunch break. Delwyn Wray explained that the Service does not run to set meal breaks and that generally people are not allowed off-site during their breaks.*
>
> *Shift patterns were then discussed with Delwyn questioning how Soyeb would feel about working Friday nights. Soyeb stated that he would be happy to work those night shifts and wouldn't mind doing a Friday day shift as a one-off but if it was anymore than that he wouldn't be too happy as his religion is very important to him.*

23. In 2001 the claimant was willing to work Fridays as a "one off" (which we find means on a very occasional basis). He was also willing to attend a mosque local to his place of work, during a lunch break on Fridays, to take part in congregational prayers. At a later stage, the claimant's requirements changed. He could not miss Friday prayers, even on a very occasional basis. Further, he required the whole of Friday up to 4pm as non-working time so that he could attend his mosque in Blackburn before then travelling to work. At all relevant times the claimant was based in Rochdale.

24. Almost all of the claimant's period of employment with the respondent was spent with him working as an EMT. The claimant's hours of work changed over the years in part due to him developing a depressive condition.

25. In late 2012 the claimant worked on a job share basis on what the respondent refers to as a shared line. This meant that he shared a full-time rota with a job share partner. The claimant chose the hours that he wished to work and then the respondent matched him with a job share partner who would work the remaining hours of the full-time rota. The claimant opted not to work Fridays.

26. In 2014 the claimant's job share partner retired. There was difficulty in finding another job share partner and the claimant was informed that he would need to be placed on a reserve line until another partner was found. The working hours for employees on reserve are not fixed. They are provided with details of the shifts allocated to them four weeks in advance. Where an employee works less than full time hours (such as the claimant) then they will be provided shifts which accord with their reduced working week.

27. The uncertainty of working hours caused anxiety for the claimant which led to a long period of sickness absence (February 2015-August 2015) and to the claimant submitting a grievance. However, a job share partner was identified in mid-2015 which resolved matters and led to the claimant's return to work in August 2015. Again, the job share arrangements were such that the claimant was not required to work on Fridays.

28. The claimant's work changed again in 2017 when the claimant attended University to undertake his paramedic training. This was part of his employment with the respondent. The respondent sponsors a number of EMTs every year to study for

a paramedic qualification. During this time the claimant worked shifts in University holidays but not during term time. He was no longer job sharing.

29. When the claimant chose to attend University, he knew that the job-share arrangements then in place would end. He also knew that, once qualified as a paramedic he would need to go back on a reserve line, pending allocation to a fixed line. This is what happened on the claimant's completion of his paramedic training and when he started in his new paramedic role in or around September 2018. The claimant continued to be based at Rochdale ambulance station.

30. On commencement of his paramedic role, the claimant continued to be line managed by Marie Gamlin (MG), an experienced paramedic who, at the time, held the role of operations manager at Rochdale ambulance station. MG had just returned from a 6-month career break when the claimant started in the role of Newly Qualified Paramedic (NQP). MG had, by then, managed the claimant for about 8 years. Throughout the period September 2018 to the end of the claimant's employment in November 2019 MG worked on a part time basis. Her work pattern was 6 weeks on and 6 weeks off. In other words, MG would work full time for 6 weeks and then not work at all for the following 6 weeks and so on.

31. During the six week periods that MG did not work, the Operation Manager role was filled (on an acting up basis) by Adam Foster (AF), a senior paramedic. This meant that outstanding management tasks had to be passed between AF and MG on a regular basis and sometimes led to delays as we note below.

Allocation of shifts

32. Shifts are initially allocated to ambulance crew (EMTs and paramedics) by the respondent's central control team, using a computer system called GRS. At all relevant times, once GRS had "generated" a rota for Rochdale, this was reviewed by a member of the administration team called Leanne Gilligan (LG). LG then made changes to the rota to take account of known or expected absences, particularly sickness, holidays and training. GRS did not account for these automatically.

33. After the claimant returned from his University studies and started his role as a Newly Qualified Paramedic (NQP) MG spoke with him about working on Fridays. MG informed the claimant that as he was now on a reserve line, he might be allocated a shift on a Friday. MG also said that she would try to ensure that he was not allocated a Friday shift but that even if he were, he could then attempt to swop that shift with another paramedic. MG also spoke with LG and instructed her to try to ensure the claimant was not allocated a Friday shift. The claimant's evidence is that this conversation took place I April 2019. MG's evidence is that it took place in late 2018 just after the claimant began working as a NQP. We prefer the evidence of MG. Logically the conversation would need to take place on the claimant's return and his commencement of a paramedic role.

34. We accept the evidence of MG that, at the time, the claimant did not raise any concern about this message. We also note and accept that the claimant was hardly ever allocated a shift on a Friday throughout his employment with the respondent. Those Friday shifts that were allocated to the claimant started late enough in the afternoon to enable him to first attend Friday prayers. The claimant accepts he was

allocated shifts on 3 occasions in December 2017 and early January 2018. We note that these shifts were probably worked whilst the respondent was supporting the claimant on his University paramedic course and the claimant was working shifts during the University Christmas holidays.

35. The nature of a reserve line means that there is some uncertainty about the work that an employee on a reserve line might be asked to undertake and the crew with whom they might work. Shifts are published four weeks in advance but then local variations can occur to take account of absences, training and so on.

Events of 8 January 2019

36. On 8 January 2019 the claimant and his crew member that day attended an emergency incident. They were not the first crew to attend. In total 3 ambulance crews attended the incident. The crews attended a patient who we refer to as Patient A.

37. Patient A suffered a cardiac arrest. Whilst cardiac arrest is not a particularly unusual medical situation for the claimant and his colleagues, patient A was only 21 years old.

38. By the time the first crew arrived, patient A's heart had already stopped. Various resuscitation techniques were tried but without success and patient A was pronounced dead.

39. The senor paramedic in attendance was Niamh Nolan (NN). The claimant did not agree with all of the resuscitation methods being used. In the course of the resuscitation attempts he expressed his disagreement. He did not consider he was being listened to. The circumstances of the event itself (the death of a young man) and his feelings of being ignored, affected the claimant. All crew members were affected by the episode. NN and other crew members considered that there had been poor communication between crew members, particularly with the claimant.

40. Where ambulance crews have attended a difficult/harrowing incident there is the option of holding what the respondent calls a "Hot debrief." We refer to this further below

Raising concerns.

41. Immediately after the incident on 8 January 2019, NN tried to discuss with the three ambulance crew what had just happened. We heard from NN and from Daniel Smith (DS) (area consultant paramedic) that this was normal practice between ambulance crew colleagues particularly after a difficult call out such as this. Feedback, differences in views about treatment, effectiveness of equipment and other matters relevant to what had just happened, can (and should) be aired through this process.

42. When he was approached by NN, shortly after the crews stopped trying to resuscitate Patient A, the claimant informed NN that he did not wish to discuss the issues. His ambulance was the first to leave the scene.

43. On her return to the station, NN spoke with MG as part of a "hot debrief" which MG had quickly arranged. 2 of the 3 ambulance crews attended the debrief. The

claimant and his crew member colleague did not attend. The claimant explained that he did not attend the debrief because his ambulance had been called out to another incident. Given the concerns he had and wished to raise, we do not understand why he did not ensure that he was stood down in order to attend. We find that he could have "stood down" with the respondent's Control Centre and ensured that he and his crew member ("SB") attended the hot debrief meeting but that he chose not to.

44. At the debrief MG was informed that there were communication issues at the incident and specifically that the claimant had lost his temper about disagreement over the administration of fluids. She therefore met separately with the claimant and SB later that day on their return to the station and held a debrief with them. That is not the respondent's usual practice. Hot debriefs are held with all crews together who have been involved in the relevant incident.

45. In that meeting MG asked the claimant about whether there had been any communication issues. The claimant did not respond at that time. However about 10 minutes after that meeting, he returned to MG to tell her that he did not agree with the way which the cardiac arrest had been managed and that he wanted to raise a complaint. Both the claimant and MG then contacted Paul Monteith (PM). At that time, PM was one of the two advanced paramedics employed by the respondent for the Greater Manchester area.

46. The claimant sent an email to PM dated 11 January 2019. The respondent accepts that in doing so, the claimant made a "protected disclosure" as defined in the Employment Rights Act 1996 ("ERA"). Unfortunately, the claimant did not receive a prompt response.

47. The claimant had not heard anything from PM by 25 January 2019 when the claimant sent an email chasing a response. The claimant copied a yet more senior paramedic in to his email (DS). DS also chased PM to tell him to respond.

48. PM sent an email to the claimant on 31 January 2019 apologising for the delay, noting that he was waiting for a "Patient Referral Form" and asking the claimant whether he had spoken with NN.

49. The claimant replied that same day stating he did not wish to have a discussion with NN, that it had been recommended that he contact PM and asking for a discussion with him.

50. PM then asked the claimant to complete a "Datix." This is the respondent's standard procedure for raising an incident. It ensures that the concern is logged and a process of investigation commences.

51. The claimant's reply to PM's suggestion that he raise a "Datix" is dated 1 February.

> *Thank you for your email.*
>
> *A Datix was primarily suggested by Gary Eaton and did occur to me as an established method of raising concern.*

> *However, it is my understanding that a Datix is forwarded to all local SPs and I wanted to show discretion, hence I did not complete one. My wish was to keep this matter confidential from Niamh's SP peers, and I also wanted to remain anonymous.*

52. No steps had been taken by the respondent to keep the complaint anonymous. The claimant had no reasonable expectation that they would do so. The practice of the respondent is to engage in open debrief discussions and to air different views about clinical treatments within teams.

53. We note here that one of the complaints made by the claimant is that the respondent did not treat his complaint as a confidential complaint and that it should have done so. The claimant refers to the respondent's "Raising Concerns at Work (Whistleblowing) Policy and Procedure" (page 1558-1567). We note the following about this policy:-

52.1 It encourages employees to raise genuine concerns.

52.2 It recognises that an employee may want to raise a concern in confidence under the policy. At 3.3 of the policy states *"If you ask us to protect your identity by keeping your confidence we will not disclose it without your consent. If the situation arises where we are not able to resolve the concern without revealing your identity… we will discuss with you whether and how we can proceed."*

52.3 At 3.4 of the policy *"Anonymous Complaints. If you do not tell us who you are it will be much more difficult for the Trust to look into this matter, protect your position or give you feedback. The Trust will consider what action may be justified by an anonymous report on the information available."*

52.4 At 4.7 of the policy it states: *"when raising the concern it should be explicit that the disclosure is being made under the Raising Concerns at Work policy to assist the Trust in accurately recording and progressing concerns."*

54. The claimant did not state on or about 1 February 2019 what he expected to be done differently other than somehow treating his complaint more confidentially than it was treated and possibly that he be treated as an anonymous complainant.

55. The claimant completed and submitted a Datix form on 6 February 2019. At this stage PM sought the involvement of one of his senior colleagues, Alex Tatman (AT). AT acted quickly and arranged to see the claimant on 10 February 2019. The claimant attended that meeting with his union representative, Mike Rose (MR).

56. Notes of that discussion (which we accept as accurate) are at page 1770. 5 concerns were discussed. AT went through 4 of them and, as part of the discussion, explained why in his view the claimant did not need to be concerned. The 5th concern was about the administration of adrenaline. AT agreed with the claimant that it was more contentious and needed further review. The meeting notes record (which we accept) that AT informed the claimant that he would obtain further details from the clinicians involved and carry out a review *"in an attempt to resolve the event."*

57. On 13 February 2019 PM wrote to the claimant to attempt to set up a facilitated meeting. This was essentially a delayed "hot debrief" but this time between all clinicians who had attended the incident on 8 January 2019. The claimant queried this as he had been told by AT that there was to be a clinical review. He expected the clinical review to occur first.

58. A facilitated meeting was not inconsistent with an ongoing clinical review particularly given AT's acceptance at the meeting of 10 February 2019 that guidelines had not been followed. It was also clear from views expressed by PM (for example in his email to AT dated 13 February 2019 – page 1774) that there was a theme of ineffective communications at the incident and a facilitated meeting would help address this.

59. What then followed was some confusion about the process to be adopted. The claimant emailed the respondent on 27 February 2019 expressing concern about the delay and noting there appeared to be disinterest. By 6 March 2019, MG had met with the claimant and also spoken with AT. The email from AT to the claimant dated 7 March 2019 notes the following agreed way forward:

> *Good morning Soyeb*
>
> *Following a discussion with Marie Gamlin, the following actions have been agreed:*
>
> *• I will complete a clinical review of the incident, based on all the evidence that has been gathered*
>
> *• recommendations will be made and submitted to the East Sector Manager for consistency review*
>
> *• once agreed, appropriate actions will be taken to ensure that appropriate reflection and learning takes place*
>
> *I would like to thank you for raising the concerns in the first instance, and assure that any and all such concerns are taken seriously as appropriate, and to reassure you that there is no disinterest in this case.*
>
> *As stated above, appropriate actions will be taken with those concerned. If you require any further support please do not hesitated to contact me.*

60. The delay in resolving these issues were not only affecting the claimant. NN was also adversely affected, for example with sleep disturbance.

61. AT completed his clinical opinion report by late March 2019. One of the report's conclusions/recommendations was to hold 3 facilitation meetings, one with each individual crew, rather than one joint facilitated meeting.

62. A meeting with NN took place on 4 April 2019.

63. On 5 April 2019 AT provided the claimant with a summary of the clinical report and also arranged to meet on 24 April 2019. Initially that date was not convenient for MR (who the claimant wanted to accompany him) due to annual leave. By 17 April 2019 MR had confirmed that he would attend. Consequently, AT travelled to Rochdale

ambulance station expecting to be able to hold the supported reflection meeting with the claimant.

64. On attending, the claimant informed AT that MR was not attending and that he would not hold the meeting without MR being present.

65. AT attempted to fix a different meeting date. The claimant was about to begin a long period of annual leave (see below). AT offered 9 May and 10 June 2019 noting that whist those dates fell within the claimant's annual leave, overtime would be provided to the claimant to assist his attendance.

66. The claimant declined 9 May 2019 and accepted 10 June 2019. Unfortunately, AT then became ill and started a period of long-term sickness absence. The meeting did not therefore take place on 10 June 2019.

67. There were delays in the process of resolving the claimant's concerns. We find the causes of the delay to be:-

a. initial reluctance by the claimant to air his concerns after the incident;

b. ineffectiveness on the part of PM during his final weeks in the respondent's employment;

c. the claimant's disquiet about attending a facilitated meeting in the light of AT's clinical review;

d. the time taken to undertake the clinical review;

e. non availability of MR and difficulty in agreeing meeting dates;

f. AT's illness.

68. The claimant himself started a period of long-term absence from early July 2019 until his resignation. The supported reflective meeting with the claimant did not take place.

<u>Annual Leave for Ramadan – 2019</u>

69. The claimant intended to take much of Ramadan in 2019 as annual leave. In 2019 Ramadan was over 5-weeks from early May to early June.

70. The claimant had been able to book annual leave for most of that period. He did so at the end of August 2018. However, there was one week within the period (at the end of May and beginning of June 2019) that the claimant had not been able to book leave for. The claimant was therefore able to book leave for substantially the whole of Ramadan but not all. There is no evidence that the claimant informed the respondent at that time of the purpose of his annual leave or that he raised any concern when he was told that some of the leave application had not been accepted.

71. In late January 2019 other leave days became available and he was contacted by LG who asked whether he wished to add to his existing leave. LG informed the claimant by email on 31 January 2019 and (specifically in relation to availability of the whole of the week commencing 27 May 2019) on 7 February 2019.

72. Later on 7 February 2019, the claimant replied to LG and confirmed that he would like to take week commencing 27 May 2019 as annual leave.

73. On 11 February 2019 LG informed the claimant that approval would be needed as this would take the period of leave to 5 consecutive weeks. The respondent's Annual Leave policy provides as follows: -

> *In special circumstances, employees may request extended periods of annual leave, e.g. four weeks leave at any one time. Requests for extended leave will not be unreasonably refused but will also be considered in light of service requirements and arrangements for cover.*
>
> *Requests for annual leave of more than two consecutive weeks must be authorised in writing by a more senior manager than the immediate line manager (e.g. Patient Transport Services Area Manager or Paramedic Emergency Services Sector Manager). There is no automatic right to extended holidays, i.e. over two weeks and it will only be approved if service needs allow.*

74. In accordance with these requirements, MG (the claimant's manager) asked the claimant to provide details as to why he was asking for a period of extended leave. The claimant emailed MG on 13 February 2019:-

> "*Hi Marie,*
>
> *Thank you for your email. My reasoning is because I will be fasting during this summer month. I am planning to work some overtime shifts and would have more control over what I work."*

75. In turn, MG emailed her manager, Mike Hynes (MH) asking for authorisation. In her email, MG stated that there was annual leave available and that she had no objection to the claimant taking this leave.

76. The response from MH was less positive and he wanted more detail. His response to MG was as follows:- *"not convinced Marie, so can we have a chat to convince me please?"*

77. MG acted on this by contacting the claimant's supervisor at the time, Gary Eaton (GE). MG does not recall having received any further information from GE.

78. This issue was not taken up again until the 2 May 2019 when AF (MG was away from work at the time) contacted the claimant about it. The information he was asking for had already been requested by MG. The claimant replied on 3 May:-

> *Thank you for your email.*
> *I did ask Marie to authorise it with the sector manager a while ago, but have now given up on the idea as I never received a reply and it is now a little late to make planned arrangements for this week.*
>
> *Thanks, but I will just work that week now.*

79. At the Tribunal hearing the claimant told us that he had intended to go away to a mosque for the whole of Ramadan but that he was unable to do that; by the time AF contacted him, it was too late to change his arrangements.

80. The claimant did not tell the respondent that is what he intended to do. The claimant told the respondent that he intended to work overtime shifts during this week (see paragraph 73 above).

81. The claimant took the majority of Ramadan in 2019 as annual leave. He was only required to work 4 shifts during the whole of Ramadan, these being in the week of 27 May 2019.

82. Whilst the claimant's request for leave on this week had not been granted, it had not been refused either. It was unfortunate that AF was asking for the same information that MG had already asked for. This was due to poor communication between managers including when AF took over MGs responsibilities for six weeks.

Mess Room Incident.

83. Some of the claimant's complaints relate to comments which he says were made about him by a paramedic called Donna Merrick (DM) in the mess room on or around 10 April 2019.

84. The claimant did not witness these comments. He was told about them by a work colleague called Craig Greenfield (CG). CG attended the Tribunal hearing to provide evidence about this incident.

85. Our findings (having heard from CG and DM) are as follows:-

a. CG heard parts of a conversation between DM and a senior paramedic, Chloe Swain(CS). DM and CS discussed a notice that had been produced for the attention of Ambulance crew. A copy of the notice had been left in the mess room. Someone had written on that notice. CG's evidence is that there were only highlighted parts of the leaflet and that no one had written on the notice. We prefer the evidence of DM on this point; comments had been written. Whilst DM could not now recall what those comments were, her recollection is that they were disparaging.

b. CS questioned those in the mess room about the disparaging comments. She wanted to know who had made them.

c. Another paramedic, Leigh Howarth (LH) left the room and met CG (who had not been in the mess room when the discussion noted above took place). LH told CG what had been said. She also told CG that CS had said that she knew that the claimant had written the comments on the notice.

d. In fact, already CG knew that it was the claimant who had written on the notice because he had been with the claimant a little earlier and had spoken with him about the notice and witnessed the claimant writing on it.

e. About 5 or 6 minutes later CG went into the mess room. DM and CS were in conversation. He heard DM say that someone (CG did not hear DM say who that someone was) needed bringing down a peg or 2.

86. We find that CG overheard a conversation and made a number of assumptions leading to the claimant. He assumed from the events noted above that DM was speaking about the claimant.

87. No one spoke with DM about these comments at the time. We accept that she cannot recall what she said on this particular day in 2019. We also accept that, on balance, DM was not aware of the claimant's protected disclosures at the time. Although she knows NN socially and they were neighbours at the time, we accept DMs evidence that it was not until later in 2019, that she became aware that the claimant had raised concerns about NN's clinical practice at the incident on 8 January 2019.

88. On balance we find that the discussion had moved on by the time that CG went into the mess room. It was not still about the claimant. Some 8 or 9 minutes had passed between the time that LH heard CS's comments and CG's arrival in the mess room. It is more likely than not that the conversation had moved on to another topic.

89. CG informed the claimant of the incident and the claimant asked that CG contact MG which he did.

90. MG arranged to meet with the claimant. The meeting took place on 16 April 2019. The claimant attended the meeting with MR, a local union representative. MG spoke with the claimant about the respondent's dignity at work policy and provided the claimant with an option of submitting a complaint under this policy. The claimant told MG that he would think about this option.

91. MG also proposed to send out an email to all staff, reminding them of their obligations under the dignity at work policy. We find that both the claimant and MR agreed to this way forward. The proposed email did not refer to the claimant or his concerns. It was to be a general reminder.

92. On 17 April 2019 MG sent a draft email to MR. MR's reply is as follows:-

> *Hi Marie*
>
> *I have read the email and as far as Unite are concerned, we fully back it and agree with all points raised.*
>
> *Regards Mike*

93. MG also sent the draft to the other recognised union, Unison who proposed a couple of changes which were made before the email was sent out to all employees locally.

94. There was nothing in the message that would indicate to DM or anyone else that the reminder about dignity at work followed the discussion in the mess room.

95. The claimant raised no objection at the time to the message and this method of resolving his concerns. The claimant did not submit a dignity at work complaint.

Friday working and the flexible working application

96. At the end of 2018 and beginning of 2019 the claimant was on a reserve line. MG spoke with him and told him that it was possible he could be allocated a shift on a Friday but she would try to ensure that did not happen (see para 31 and 32 above).

97. The claimant was not allocated a Friday shift until 14 June 2019. The claimant had logged on and identified this shift on the respondent's system on 9 May 2019 during his annual leave. The shift was not due to begin until 3pm. MG gave evidence (which we accept) that she and LG had gone though all possible options and were struggling with gaps in the rota on that day. They decided that they needed to allocate the claimant to a shift on that Friday but arranged for him to only cover from 3pm as they thought he would be able to attend prayers beforehand. Had it been during winter months this would have allowed the claimant to attend congregational prayers at his home Mosque in Bradford. However, during summer months, prayers start and finish later and so the claimant would not be able to start work in Rochdale before 4pm if he first attended prayers in Blackburn.

98. The claimant and respondent were able to make arrangements so that the claimant was not required to work the shift on 14 June 2019. Whilst not clear, it appears this was achieved through a shift swap.

99. This episode led MG to obtain advice from the respondent's HR department about what arrangements could be made to assist the claimant going forwards. She was told that the claimant could (and should) submit a flexible working application.

100. In accordance with that advice, MG asked the claimant to complete a flexible working request (FWR) application form and offered to meet with the claimant.

101. The claimant was disappointed with this approach. He wanted to know why his attendance at Friday prayers could no longer be accommodated. MG sought to assure the claimant (in emails and in meetings) that had never been said and the reason she wanted the claimant to follow the FWR process was to put his requests in a formal setting, provide him with an outcome letter and safeguard the arrangement in the event of a change in management. We are satisfied that MG wanted to help the claimant.

102. On 30 May 2019, the claimant (accompanied by MR) met with MG and MK to discuss the flexible working request process. We make the following findings about this meeting:-

a. The claimant told MG and MK that he did not want to make an FWR request because he already had an implied contractual term that he was not required to work on Fridays.

b. The other three attendees (including MR, the claimant's union representative) tried to persuade the claimant to submit his request.

c. The claimant was told that the FWR process was needed for audit purposes, to provide a record of the request and approval of the flexible working arrangement.

d. Significant indications were made that the request would be granted. He was told that this was an opportunity to formalise an arrangement to ensure he did not have to work on Fridays. MR recognised this and wanted the claimant to complete and submit the form.

e. The claimant asked MK what would happen if he did not complete the FWR request form. MK responded that he might face disciplinary action for failing to follow a reasonable instruction. We find MK had become frustrated in the meeting.

f. The claimant left the meeting on occasions to make calls. MG and MK understood the claimant was getting advice about his situation, separate to the advice being provided by MR/Unite.

g. With MR's assistance, the claimant completed the FWR form at the end of the meeting.

103. We accept MK's evidence that the flexible working request discussed (and which was requested on the form the claimant eventually completed) related to the whole of Friday, not just a period of time to attend Friday prayers.

104. Although the claimant completed an FWR form, on 4 June 2019 he told MG that he wanted to pause his FWR request. Then on 18 June 2019 he sent an email saying that he wished to withdraw his application altogether, noting that

> *"I was not in the correct frame of mind when I filled in the application on 23 May 2019 especially when* [MK] *mentioned that I could be disciplined if I did not."* (page 403)

105. MG replied:-

> *"Thanks for your reply. I will ensure the application is archived and no longer live. Just to ensure you are aware this could potentially result in you being allocated any shift, with the exception of a full night due to OHD's recommendations. As always feel free to contact me if you have any queries."*

<u>The decision to conduct a disciplinary investigation about the claimant's conduct on 19 February 2019.</u>

106. Pat McFadden (PM) was the Head of Service for Greater Manchester, before his retirement in March 2020. In 2018, he was concerned about the number of disciplinary hearings involving members of staff who were delaying their meal and rest breaks, taking them at the end of their shift but using that as a means to leave site early and before the end of the shift on which they were rostered.

107. A notice went out to all employees in November 2018. The claimant received this notice by email. There were also hard copies placed in the mess room at Rochdale. The notice included the following:

"To clarify the trust's position, staff must remain on site until the end of their rostered shift. Radios must not be locked away whilst staff are on a rest break. before vehicle handover or shift finish. Until shifts officially end, staff are required to be available, for example, in the event of a major incident."

108. The purpose of the notice was to remind employees of their obligations in the hope that it would stop the need for disciplinary hearings on the issue.

109. The respondent's meal/rest break policy includes the following:-

> *2.1 All staff will be entitled to one 30 minute meal break which will be taken at the earliest opportunity when the meal break window opens. Meal break windows will be 3 hours duration and will normally commence after 3 hours of the shift start time and finish at the end of the 6th hour within the shift. E.g. Within 0700-1900 shift, the "meal window" opens at 10.00 and closes at 13.00 hours.*
>
> *……..*
>
> *2.7 If the crew have not completed their meal break by the 6th hour, they will be returned to station after completion of the incident that they are attending and made unavailable for a full, undisturbed 30 minutes. They will also receive a compensatory payment set out in the table below.*
>
> *……..*
>
> *4.1 Any crew not able to commence their break within the meal break window will be compensated in line with the table below;*

110. A table then sets out compensation amounts of between £5 and £20 depending how far outside a meal break window the meal is taken. A payment of £20 is payable if there is a missed meal.

111. The purpose of the policy on meal and rest breaks is to ensure that (1) ambulance crew receive break times in accordance with (and beyond) the minimum requirements set out in the Working Time Regulations 1998 whilst (2) also ensuring continuity of the vital service that the respondent provides so that (3) compensatory rest can be provided where it has been necessary to continue working and a break missed.

112. The policy provides that whilst ambulance crew are on meal breaks, they will generally not be disturbed. However, the policy includes a section called Exceptions. According to this section, where there is a "major incident" then crew may be disturbed whilst taking a meal break.

113. Following the notice in November 2018, the respondent carried out regular reviews of the times booked by ambulance crew working shifts, particularly whether there were indications that ambulance crew were leaving site before the end of their shift.

114. At the end of February/beginning of March 2019, a manager called Philip Keogh (PK) raised with MG some concerns about times logged by a particular crew. He noted that an ambulance had returned to site, 50 minutes before the end of a shift, there was no record of the crew standing down for their meal but they had claimed for a missed meal. At that stage, MG did not know who the ambulance crew was. She agreed that PK should look into it.

115. The claimant was one of the 2 members of the crew being investigated. The other crew member (a recently qualified EMT) was Rod Cape (RC).

116. On 21 March 2019, PK wrote to both the claimant and RC in the same terms. His letter included the following

> *"I refer to our recent conversation and confirm that you are required to attend a meeting to give an account of the 19th February 2019 where you signed off your shift some 34 minutes early.*
>
> *The meeting will be held on Monday 1st April at* [XX]*hrs at Rochdale Station and you should report to myself on arrival. I confirm that the meeting is to investigate this matter with you and is not a disciplinary hearing, although you should be aware of the possibility that disciplinary allegations could ensue.*
>
> *You are entitled to be accompanied to the meeting by a Trade Union Representative, work colleague or friend not acting in a professional capacity.*

117. RC attended a meeting on 1 April 2019 and provided a statement (see below). The claimant did not attend a meeting on that day. Early in the morning he sent an email to PK to say that MR (the local UNITE representative) was unavailable that day. He was later informed that the meeting had been rearranged for 16 April 2019 to enable his trade union representative to attend.

118. Parts of RC's account of the shift in question is unhelpful to the claimant. Essentially his account is that, as a relatively new and inexperienced employee he was led astray by the claimant who told him that they could leave work before the end of their shift and that they did this. His statement taken during the investigation interview, provides his account of the evening in question. His account also includes an allegation that the claimant told him they should book another 15 minutes on to the end of their shift. He summarised his actions

> *"I do feel I've been naive, coupled with my inexperience on the road and the advice I received from my more senior colleague, I was made to believe that this was normal practise.*
>
> *I have finished on my meal or break on previous shifts but I have never gone home early before or since. This was because nobody had ever suggested that it was normal practice before."*

119. The claimant was interviewed on 16 April 2019 and was sent a draft statement on 28 April 2019. On 22 May 2019 he emailed MG to say that he had been unable to properly review it and asked for time to be made available on a shift for him to do this. The claimant would not review the statement in his own time but required time to be taken out of an allocated shift.

120. On 28 May 2019, the claimant returned the statement with a number of changes and additional information. His account included the following:-

a. That the respondent was in breach of the Working Time Regulations.

b. That he was exhausted on the night in question which was exacerbated by his chronic metabolic condition.

c. That the claimant does not remember booking the ambulance off at 23.33 and indicates that this may be a system error.

d. That he was not aware of the notice sent by Mr McFadden in November 2018 and as far as he was aware, he was following the meal break policy.

e. That he did not go home early as he worked until 23.45 and then went to the car which was parked outside of the station and ate his sandwiches in his car.

121. Once MG received the statement of both crew, she wrote a first draft of an investigation report (page 415). MG was by that stage about to be away from work for 6 weeks and she sent the draft report to AF to continue and conclude the investigation to AF.

122. AF decided that he needed to interview the 2 employees again in order to conclude the report. He interviewed RC on 9 July 2019. He had hoped to be able to interview the claimant on 11 July 2019 but this was not possible (see below under "Grievance") and the meeting between AF and the claimant did not take place until 14 August 2019.

123. The claimant caused the meeting on 14 August 2019 to be covertly recorded (see para 162 below). He told us that the meeting was conducted in an aggressive manner. Both parties asked us to listen to the covert recording of the meeting and we did so. The meeting was not conducted aggressively. We have no criticism of AF's conduct of the meeting. He asked his questions calmly and methodically. The pace of the meeting was slow. The claimant had every reasonable opportunity to say what he wanted. The claimant's typed transcript includes comment about where he says AF interrupted him and/or spoke over him. We find that AF did not interrupt the claimant. Occasionally in the meeting we heard 2 people speaking at the same time but only to the extent that happens in most discussions.

124. AF completed his report in late August 2019. He concluded that there was a case to answer:-

a. The claimant had completed his time record showing that he worked until 12.15pm, when he did not and had left work before the end of his shift;

b. The claimant had claimed for a missed meal when he had an opportunity to take a meal break during the shift.

125. Part of the respondent's disciplinary process requires a review by a consistency panel before deciding whether to proceed to a disciplinary hearing. AF submitted his final draft report to the consistency panel on 27 August 2019. That panel made some comments and raised some queries on the draft report. We have seen an email

exchange between a member of that panel (Ms Valentine) and AF. This took about 4 weeks. Following the receipt of some further information by AF, the panel was satisfied with the amended report in relation to both the claimant and RC except that they recommended that the allegation regarding the claim for the missed meal should be removed. The claimant was informed by letter dated 3 October 2019 that the matter would proceed to a disciplinary hearing (page 867).

126. On 11 October 2019 the respondent wrote to the claimant to inform him that the disciplinary hearing would take place on 13 November 2019. The full pack of information (including the disciplinary investigation report) was sent to the claimant shortly afterwards on 23 October 2019.

127. On 12 November 2019 the claimant sent an email to the respondent, stating that he could not attend the hearing because he was absent due to sickness, as was his union representative, MR.

128. The disciplinary hearing with RC went ahead and he received a first written warning.

129. The respondent was unable to hold a disciplinary hearing with the claimant. The claimant resigned on 25 November 2019 (see below).

130. As for the events of 19 February 2019 (the shift in question) we find as follows:-

a. The claimant's shift began at 4pm.

b. He and his colleague crew member (RC) were called to assist a victim who had been stabbed and was seriously injured (the patient).

c. The patient needed emergency care. The claimant and RC assisted the patient in their ambulance and took him to Manchester Royal Infirmary (MRI).

d. They arrived at MRI and needed to hand over the care of the patient to hospital staff. They also needed to be involved to some extent in the care of the patient whilst at the hospital.

e. The inside of the ambulance needed cleaning; the patient had been bleeding heavily. Blood was on a number of surfaces. Dressing packaging and other items also needed clearing.

f. The claimant and RC had cleaned the ambulance by 10.30pm. At that stage they chose to drive back to Rochdale (rather than take their break before driving back). They arrived in Rochdale at 11.10pm.

g. They then chose to continue work by restocking the ambulance rather than take their break immediately following their return.

<u>Occupational Health appointment on 26 April 2019</u>

131. The claimant sent an email to MG on 5 April 2019 in which he raised concerns about the stress that he was under and the impact it was having on his health.

132. MG spoke with the claimant on 6 April 2019 and told him that she would arrange an occupational health appointment.

133. The respondent outsources its occupational health activities to another NHS Trust, (Stockport NHS Foundation Trust – (Stockport))

134. Stockport contacted the claimant by letter dated 24 April 2019 with details of an appointment on 26 April 2019 at Stepping Hill Hospital in Stockport.

135. On 25 April 2019, the claimant wrote to MG to inform her that this appointment had been arranged at short notice and that he would not be able to attend. He asked that the appointment be rearranged so that it was not on a Friday, was at a date and time when the claimant was working on a shift (i.e. so his attendance would be during his paid working time) and that the venue was nearer to his home.

136. There was a further attempt to arrange the claimant's attendance at an OH appointment (in May, not on a Friday) but the appointment did not take place due to some confusion about the claimant's working hours on that day. The appointment finally took place on 10 June 2019 (a Monday) at a venue in Rochdale.

Requirement to work with NN

137. On 23 March 2019 the claimant was on a rota to work an overtime shift, with NN. The crewing arrangements for that overtime shift had been arranged by a resource coordinator called Lorraine Dunlop. NN contacted LD to inform her that it would be better not to require the claimant to work with her and to request a change.

138. At about the same time, the claimant also saw that he had been crewed with NN for a shift on 23 March 2019. Independently of NN's contact with LD, he raised the matter with MG who took her own steps to ensure the 2 were not required to work together.

139. We find that the arrangements for the claimant and NN to work together as ambulance crew on 23 March 2019 were made as part of a genuine resourcing exercise. As soon as MG and LD were informed about the arrangements, they were changed.

Requirement to "work solo" and with a newly qualified EMT

140. In April 2019, the claimant remained employed on a reserve line basis and did not therefore have a regular ambulance crew partner. When shifts were allocated the claimant would usually be paired up with an EMT. By this stage however, one available EMT, RC was refusing to work with the claimant. MG informed the claimant of this.

141. Even though shifts are published some 4 weeks in advance, we accept the evidence provided by the respondent (particularly AF) that it is not unusual for a member of ambulance crew to attend work at the start of a shift and not have a crew partner – for example due to sickness. The arrangements in those circumstances are for the respondent's central control centre to be informed of crew without a partner on that day and then for the control centre to attempt to match those individuals. Usually,

(9 times out of 10) it is possible to pair up paramedics and EMTs to make up a crew but not always.

142. Both AF and MG accept that it is possible the claimant was not paired up on 14 April 2019, as he alleges. However, their evidence (which we accept) is that this is not an action they manage. The pairing of "spare" crew members is carried out by central control. They are unable to provide any specific detail about 14 April 2019 as the claimant did not raise a complaint about this at the time. We also note that this is the only date that the claimant alleges that he needed to work "solo".

143. We were provided with a document called a skill mix matrix. This document shows different roles of ambulance crew, whether one role can be paired with another role to make up an effective crew and, if so, what that crew can be required to do. The claimant is an experienced ambulance technician and (at the time) a recently qualified paramedic. RC was a recently qualified EMT. As RC was a more junior employee with less experience and qualifications than the claimant, it was more difficult to find a sufficiently experienced crew member to pair RC with than the claimant.

144. There may well have been an option for Central Control to pair either RC or the claimant with a paramedic at the start of the shift on 14 April. We accept that where the employer is faced with a situation such as this, for operational reasons, it would be sensible to first pair up the inexperienced EMT. There would be a higher chance of being able to pair up the paramedic when the next crew shortage arose.

145. The claimant complains about another day, 7 April 2019, when he was paired with an inexperienced EMT. In a document in which he provided additional information about his complaints to the Tribunal, the claimant stated that an incident report was submitted *"as a seriously ill patient was treated and transported to hospital without adequate back up."* (page 64). The incident report is not in the bundle. There is an email exchange in the bundle (pages 341-342) which indicates that the claimant raised an incident report about being paired with an inexperienced EMT but no indication that harm was caused to a patient.

146. We also note that:-

a. RC was also an inexperienced EMT and the claimant has not complained about having been paired up with him earlier in 2019

b. As already noted, rotas are drawn up by Central Control. According to the skills mix matrix, a recently qualified paramedic can be paired with a recently qualified EMT but that crew can only then carry out more limited tasks (urgent care and intermediate care). In essence, this pairing is not ideal but is permitted by the skills matrix for more limited duties/call outs.

c. The claimant does refer to these incidents in his undated grievance document provided in late June 2019 (see page 663). There appears to be copied into that document an email (Email 12) which is dated 14 April 2019 and addressed "to whom it may concern." It appears to raise a serious concern that a patient died as a result of the claimant and his inexperienced EMT being unable to provide the patient with adequate treatment due to inexperience. We note a copy of the email itself is at page 348 and is

addressed to MR, Unite representative. There is no evidence that this was provided to one of the claimant's managers, as a Datix report or as a concern under the Raising Concerns at Work policy or similar.

147. We find that the claimant was paired with a newly qualified EMT but that a serious incident did not occur on their duty on 7 April 2019 as a result of their pairing. Had it occurred the claimant would have raised it at the time, through the processes that he knew about and had used in the recent past.

Investigating the claimant's grievances.

148. On 18 June 2019, the claimant sent a formal grievance to AF and MG. The claimant asked for the grievance to be dealt with confidentially and quickly. The claimant's grievance form named MR, Unite representative as his chosen representative.

149. The claimant described his grievances on the formal grievance form as follows:-

"I have experienced harassment, victimisation after raising a genuine concern regarding the sub-standard treatment given to a patient, which I have never experienced in my 18-year career. No protection under the Public Interest Disclosure Act was given.

I have been subject to multiple counts of discrimination by religion/race, as well as disability discrimination, which is in direct contravention of the Equality Act 2010.

NWAS has failed to make reasonable adjustments to remove any disadvantage in relation to my employment regarding my disability. Moreover, NWAS has aggravated my disability by failing to resolve matters within reasonable time-limits. Consequently, I feel unwelcome at work, humiliated and my health has been negatively affected, suggesting employer negligence.

My confidentially has been breached, which is reportable to the information commissioner.

Senior staff have breached Duty of Candour policy sections 3.2, 3.3, 3.4, 4.3, 5.1, 6.1 and 7.2.

Senior staff have breached the Raising Concerns at work policy sections 1.1, 1.7, 3.1, 3.2 and 3.3.

Senior staff have breached the Health and Wellbeing Strategy, in that it has not 'provided support...to maintain [my] health, well-being and safety'."

150. A grievance meeting took place on 11 July 2019. AF had tried to meet with the claimant earlier than this but the claimant had not been available.

151. The claimant attended the grievance meeting on 11 July with his nephew Yasin Patel (YP) and a trade union representative. YP attended this meeting with the intention of secretly recording it on his mobile 'phone. However, YP had already covertly recorded a discussion between the claimant and a colleague called Ross

Davenport and his phone battery did not have any charge left in order to successfully record the meeting with AF. (see further below under "Covert recordings.")

152. It was at this meeting (not before) that the claimant provided a 61-page document. He also read out a statement at the beginning of that meeting. We accept that the script read by the claimant is the document at pages 731 to 741. In it the claimant complaints that he had been subjected to unlawful treatment; he had been treated detrimentally on the grounds that he made protected disclosures, he had been victimised, discriminated against on the basis of disability, race and religion; that the respondent had breached obligations of confidentiality and its duty of candour in not reporting failings in treatment involving patient A.

153. AF decided he could not deal with the grievance. The extent and complexity of the grievance now set out over the 61 page document meant that a full investigation needed to be carried out and he would not be able to do that. He noted particularly that he was already undertaking a disciplinary investigation concerning the claimant. The claimant was informed that Shahid Ali, Head of Planning and Development, (SA) would carry out an investigation and would be in touch with the claimant

154. SA met with the claimant on 22 August 2019. The reason for a delay of some 5 weeks was:-

a. The complex and long grievance. We accept that SA had to set considerable time aside to go through the grievance document.

b. Holidays – in particular those of the HR Manager, Joanne Jones, who had been assigned to assist with the grievance.

c. 22 August 2019 was the date that SA had agreed with the claimant, when he wrote to the claimant on 2 August 2019.

155. Following the meeting on 22 August 2019, SA undertook his investigations. SA was not in a position to report his findings and hold a grievance outcome meeting until November 2019. We accept that SA was delayed in this task by the impact of his substantive role and the length of time that this investigation was taking. We also accept there were some specific delays:-

a. SA was unable to interview MR until 1 October 2019 – MR returned his interview meeting notes on 8 October 2019).

b. Although CG had been interviewed on 17 September 2019, he did not return draft notes of his interview meeting until 9 October 2019.

c. MG was not interviewed until 7 November 2019, when she had just returned from a period of 6 weeks away from work.

156. SA met with the claimant on 19 November to report his findings which we summarise below:-

a. Grievance about being required to make a Flexible working request – not upheld, noting that whilst job share arrangements had been in place in

previous years (by which the claimant was not required to work Fridays) the claimant had recently qualified as a paramedic and was on a relief shift. Essentially, the request not to work Fridays under the new role and new arrangements had to be formalised and the respondent's FWR process was the method to do this.

b. Failure to authorise annual leave for Ramadan – partly upheld although noted that the claimant's original request for annual leave was not made using the appropriate procedure. SA found that there was inadequate communication amongst the claimant's managers in the period February to April 2019. The grievance outcome also noted that the claimant had only been required to work 4 shifts over the entire 36 day period of Ramadan in 2019.

c. Grievance about conducting the disciplinary investigation into the meal break claim. SA decided not to investigate this as a grievance as the meal break claim remained subject to a disciplinary process.

d. Harassment by being required to work with NN - not upheld. Allocating the overtime shifts was carried out by LD who would not have been aware that there would potentially be issues had NN and the claimant worked together.

e. Victimisation – events in the mess room on or about 10 April 2019 – not upheld. The actions taken by MG to address the matter were appropriate.

f. Delay in outcome to investigation in to concerns raised by the claimant about treatment of Patient A on 8 January 2019 – SA found that there should have been a quicker resolution to this although noting that claimant had been asked to confirm a date to attend an incident learning review, yet the review had not taken place.

g. Breach of the respondent's/NHS Duty of Candour (in relation to the treatment of Patient A) – not upheld.

h. Breach of the respondent's raising concerns at work policy – not upheld.

i. Breach of the respondent's health and wellbeing strategy – not upheld.

157. SA's recommendations were:-

a. To ensure that the clinical incident review meeting took place as soon as possible.

b. To ensure an early meeting to deal with requests for leave over Ramadan for 2020.

c. To revisit the issue about working on Fridays.

<u>The claimant's health and disabilities</u>

158. The respondent admits that the claimant has a Hypothyroidism condition. This is the same as the condition referred to in his further particulars document (at page 60) and elsewhere as "Chronic Metabolic Condition."

159. The claimant was diagnosed with mental impairments in 2011 and has been absent from work because of these on a number of occasions since then. We have reviewed occupational health reports from 2011, 2012, 2015 and 2019. There is not a label that has been consistently applied to the claimant's mental impairment. We find that the claimant has an anxiety and depression condition, the symptoms of which are brought on in stressful circumstances. It is generally controlled through anti-depressant medication – Citalopram – which the claimant has been prescribed since 2011. We find that the claimant has had a mental impairment since 2011. Although the impact of the impairment on the claimant has fluctuated over the years it has at all times been likely to recur.

160. Without the intervention of the medication, the claimant's ability to concentrate, sleep and engage with others would be significantly affected.

161. We note the terms of the most recent occupational health report dated 10 June 2019.

> *Soyeb indicates that after many years of working as an EMT, he trained up to be a paramedic and he has been working as a paramedic since September 2018. He reflects that he has been very much enjoying his work.*
>
> *I understand that of late he has felt that his mood has been lower. This coincides with the time that he submitted a statement of concern in regard to how he felt first crew on site dealt with a case. He feels that he has felt uncomfortable because of people's reactions.*
>
> *I understand he awaits some feedback on his Datix submission. Soyeb explains that he has had to submit a coroner statement in respect to the case in question and at this time it's not known whether he will need to be at the coroner's court.*
>
> *He is reporting being low in mood with some impairment of sleep and related function.*

162. The claimant's impact statement provided for the purposes of these proceedings provides a more serious description. For example:

> *As 2019 progressed, my well-being reached an ultimate low and symptoms included debilitating palpitations, inability to concentrate, no motivation to get out of bed/shower/get dressed, loss of appetite, loss in interest in everyday activities, difficulty understanding, difficulty following simple instructions, difficulty making decisions, panic attacks, shortness of breath, abdominal pain, pins and needles, being fearful of the respondent, feeling of dread, insomnia, hopelessness, self-hatred, guilt, and having thoughts of being better off dead. I eventually tried to avoid the respondent in order to mitigate some of these symptoms.*

163. We prefer the account in the OH report. That was written following attendance by the claimant and a description of symptoms that the claimant gave at that time. We note that the reference to "impairment of sleep and related function" was a report of the claimant's symptoms when taking prescribed ant depressant medication. Without that medication the impact of the impairment would have been greater.

<u>Covert Recordings</u>

164. The claimant attended various internal meetings with his nephew, Yasin Patel ("YP"). The claimant informed the respondent that he needed YP to attend and support him in light of his mental impairments. The respondent allowed this.

165. On or shortly before 11 July 2019, the claimant and YP discussed whether to record the meetings they attended. The claimant told YP that recording meetings might assist the claimant given his health conditions.

166. The account provided by the claimant and YP (we heard from both) is that once the claimant had raised with YP the possibility of recording the meetings, YP made arrangements to do so but without telling the claimant and so the claimant did not know that the meetings were being recorded. Further, the evidence from the claimant and YP is that the recordings were not mentioned by YP following the meetings and that the claimant did not become aware that YP had made recordings until after the case management hearing in this case (when the disclosure of audio recordings was included in the case management orders).

167. We do not accept these accounts. We do not believe that the claimant and YP did not discuss the recordings made. For example, as noted above, YP was unsuccessful in recording the grievance meeting on 11 July 2019. He believed he was recording the meeting to assist the claimant and having been asked by the claimant to do so. In those circumstances he would in our view have informed the claimant that his phone battery had died.

168. We find that the claimant was aware that YP was recording the meetings he attended and that the claimant had asked YP to do this.

169. Having listened to the covert recordings of a discussion between the claimant and a colleague (Ross Davenport (RD)) on 11 July 2019 and the disciplinary investigation meeting on 14 August 2019, we make the following relevant findings:-

a. 11 July 2019; the claimant's colleague, RD did not know that a discussion between him and RD was being recorded.

b. During this discussion the claimant made references to RC. He refers to RC as a *"Judas"* and then states (in relation to RC *"30 pieces of silver"* and *"you get him, and a rope."* The claimant told us that these words were in jest, (the term he used was "banter"). It is difficult from the words themselves to accept this but, having heard the recording and particularly the voice of the claimant when stating these words, we are very clear that these words were not said in jest or as "banter."

c. AF's conduct of the investigation interview on 14 August 2019 was appropriate. (see 122 above).

<u>Ross Davenport</u>

170. The claimant's colleague (RD) was also investigated due to concerns that he may have left work before the end of his shift. We accept the evidence of AF that the result of an initial investigation showed that there was no evidence that he did so. Whilst (like the claimant) he took his rest break right at the end of the shift, the evidence

was that he retained his radio and remained contactable at the workplace until the end of the shift.

The claimant's resignation

171. The claimant resigned on 29 November 2019 with immediate effect. At the time he resigned:-

a. He had not attended the disciplinary hearing arranged for 13 November 2019 and was aware that hearing was being rearranged.

b. He had just received the grievance outcome, when most of his grievances were not upheld.

172. The contents of the claimant's resignation letter are set out in the attached Schedule.

Referring the claimant to the HCPC

173. The respondent referred concerns about the claimant to the relevant regulatory body called the Health and Care Professions Council ("HCPC"). The referral was made by Mike Jackson, the respondent's chief consultant paramedic (MJ).

174. We accept the evidence of MJ that, prior to the referral, a copy of an anonymised disciplinary investigation report was provided to other consultant paramedics so that a consensus decision about referral could be made. The decision to refer the claimant was made by a number of consultant paramedics, aware of the disciplinary allegations but not aware that the allegations were against the claimant.

175. We also accept the evidence of MJ and PM that the respondent would consider a referral to the HCPC where an employee has resigned prior to the conclusion of a disciplinary process in which they faced allegations of misconduct. An employee's resignation in these circumstances would not a referral less likely.

Shift allocation – 29 November 2019.

176. On an unknown date prior to the claimant's resignation (when on long term sickness absence) the claimant logged on to the respondent's system and saw that he had been allocated a shift on a Friday. This was an initial "computer generated allocation and the claimant knew this. The processes already described by us had not been carried out, there had been no local review by LD including making arrangements to cover all shifts that the computer had allocated to the claimant, given his long term absence.

Submissions

177. The claimant and Mr Campion provided us with written submissions and also had the opportunity to make oral submissions. We do not repeat the submissions here. We thank both parties for their documents which we have carefully considered in reaching our decisions.

The Law

Constructive and unfair dismissal

178. The claimant claims (1) that his resignation amounted to a constructive dismissal and (2) that this dismissal was unfair under s98 of the Employment Rights Act 1996 (ERA).

179. Dismissal for the purposes of s98 includes the circumstances stated at s95(1)(c). *"…..an employee is dismissed by his employer if…….the employee terminates the* contract *under which he is employed (with or without notice) in circumstances in* which *he is entitled to terminate it without notice by reason of the employer's conduct."*

180. In considering the issue of constructive dismissal, an Employment Tribunal is required to consider the terms of the contractual relationship, whether any contractual term has been breached and, if so, whether the breach amounts to a fundamental breach of the contract (*Western Excavating (ECC) Limited v. Sharp* [1978] QC 761).

181. It is an implied term of every employment contract that the employer shall not without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee (see for example *Malik v. BCCI* [1997] IRLR 462 at paras 53 and 54). I refer to this term as "the Implied Term."

182. In considering the Implied Term, Browne-Wilkinson J in *Woods v WM Car Services (Peterborough) Limited* [1981] ICR 666 (Woods"), said that the tribunal must *"look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it."*

183. A course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal following a "last straw" incident, even though the "last straw" is not, by itself, a breach of contract: *Lewis v Motorworld Garages Limited* 1986 ICR 157 CA.

184. In the judgment of the Court of Appeal in *Omilaju v Waltham Forest London Borough Council 2005 1 All ER 75.* Dyson LJ stated as follows in relation to the last straw.

> *"A final straw, not in itself a breach of contract, may result in a breach of the implied term of trust and confidence. The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase "an act in a series" in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach although what it adds may be relatively insignificant."*

185. The Court of Appeal decision in *Kaur v Leeds Teaching Hospitals NHS Trust* [2018] IRLR 833 ("Kaur"), commented on the last straw doctrine. The judgment

includes guidance to Employment Tribunals deciding on constructive dismissal claims. At paragraph 55 of the judgment, Underhill LJ states:-

> *"In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:*
>
> *(1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?*
>
> *(2) Has he or she affirmed the contract since that act?*
>
> *(3) If not, was that act (or omission) by itself a repudiatory breach of contract?*
>
> *(4) If not, was it nevertheless a part (applying the approach explained in* [LB Waltham Forest v. Omilaju [2005] ICR 481] *of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the* [implied term of trust and confidence]*? ……*
>
> *(5) Did the employee resign in response (or partly in response) to that breach?*
>
> *None of those questions is conceptually problematic, though of course answering them in the circumstances of a particular case may not be easy.*

186. Once repudiatory breach of contract has been established, it is necessary to consider the part it played in the claimant's decision to resign. The following passage from the judgment of the Court of Appeal in Nottinghamshire County Council v. Meikle [2004] IRLR 703, is helpful:

> "33. *It has been held by the EAT in Jones v Sirl and Son (Furnishers) Ltd [1997] IRLR 493 that in constructive dismissal cases the repudiatory breach by the employer need not be the sole cause of the employee's resignation. The EAT there pointed out that there may well be concurrent causes operating on the mind of an employee whose employer has committed fundamental breaches of contract and that the employee may leave because of both those breaches and another factor, such as the availability of another job. It suggested that the test to be applied was whether the breach or breaches were the 'effective cause' of the resignation. I see the attractions of that approach, but there are dangers in getting drawn too far into questions about the employee's motives. It must be remembered that we are dealing here with a contractual relationship, and constructive dismissal is a form of termination of contract by a repudiation by one party which is accepted by the other: see the Western Excavating case. The proper approach, therefore, once a repudiation of the contract by the employer has been established, is to ask whether the employee has accepted that repudiation by treating the contract of employment as at an end. It must be in response to the*

> *repudiation, but the fact that the employee also objected to the other actions or inactions of the employer, not amounting to a breach of contract, would not vitiate the acceptance of the repudiation."*

187. In the event that an Employment Tribunal decides that the termination of a claimant's employment falls within s95(1) the employer must show the reason for dismissal and that the reason for dismissal was a potentially fair one under s98(1) and (2) ERA. In a constructive dismissal claim, the reason for dismissal is the reason why the employer breached the contract of employment (*Berriman v. Delabole Slate Limited [1985] IRLR 305* at para 12).

Covert recordings

188. There are issues concerning covert recordings in this case. The EAT's judgment in **Phoenix House Limited v. Stockman [2019] IRLR 160 (at para77-78) includes the following guidance:-**

> *We do not think that an ET is bound to conclude that the covert recording of a meeting necessarily undermines the trust and confidence between employer and employee to the extent that an employer should no longer be required to keep the employee. An ET is entitled to make an assessment of the circumstances. The purpose of the recording will be relevant: and in our experience the purpose may vary widely from the highly manipulative employee seeking to entrap the employer to the confused and vulnerable employee seeking to keep a record or guard against misrepresentation. There may, as Mr Milsom recognised, be rare cases where pressing circumstances completely justified the recording. The extent of the employee's blameworthiness may also be relevant; it may vary from an employee who has specifically been told that a recording must not be kept, or has lied about making a recording, to the inexperienced or distressed employee who has scarcely thought about the blameworthiness of making such a recording. What is recorded may also be relevant: it may vary between a meeting concerned with the employee of which a record would normally be kept and shared in any event, and a meeting where highly confidential business or personal information relating to the employer or another employee is discussed (in which case the recording may involve a serious breach of the rights of one or more others). Any evidence of the attitude of the employer to such conduct may also be relevant. It is in our experience still relatively rare for covert recording to appear on a list of instances of gross misconduct in a disciplinary procedure; but this may soon change.*
>
> *That said, we consider that it is good employment practice for an employee or an employer to say if there is any intention to record a meeting save in the most pressing of circumstances; and it will generally amount to misconduct not to do so. We think this is generally recognised throughout employment except perhaps by some inexperienced employees. This practice allows both sides to consider whether it is desirable to record a meeting and if so how. It is not always desirable to record a meeting: sometimes it will inhibit a frank exchange of views between experienced representatives and members of management. It may be better to agree the outcome at the end. Sometimes if a meeting is long a summary or note will be of far more value than a recording which may have to be transcribed.*

189. When determining compensation for unfair dismissal, employment tribunals must apply s123 ERA

> *"s123(1) ….the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant n consequence of the dismissal in so far as that loss is attributable to action taken by the employer.*
>
> *…..*
>
> *S123(6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding."*

190. Compensation is reduced under just and equitable principles under s123(1) in 2 broad categories of cases:-

(1) Where the employer can show that the employee was guilty of misconduct which would have justified dismissal, even if the employer was not aware of this at the time of the dismissal.

(2) Where it is just and equitable to apply a "Polkey" reduction (applying the case of **Polkey v. AE Dayton Services Limited [1988] AC 344)** to reflect the chance that the claimant would have been dismissed in any event.

Both categories potentially apply here.

191. Compensation is reduced under s123(6) where a claimant's actions caused or contributed to the dismissal. We note the guidance in the case of **Nelson v BBC** [**1980] ICR 110.**

192. Provisions for an adjustment to the basic award are at section 122(2) ERA which requires a tribunal to reduce the amount of a basic award where it is just and equitable to do so, having regard to the claimant's conduct before the dismissal.

Protected Disclosures

193. The claimant claims that he was subjected to detriments on the grounds that he had made protected disclosures. Section 47B Employment Rights Act 1996 ("ERA") provides as follows:

> *"(1) A worker has the right not to be subjected to any detriment by any act or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."*

194. We do not need to consider further the definition of protected disclosure in this case as the respondent admits that the claimant made a protected disclosure. According to the list of issues there is potentially one disclosure which has not been admitted (whether the claimant made protected disclosures when reading out a statement at the meeting with AF on 11 July 2019) but Mr Campion accepted that one more protected disclosure at this stage in the chronology, made no difference. We agree.

195. The term "detriment" is not more accurately defined in the legislation. It means putting under a disadvantage and that should be looked at from the point of view of the worker. (Ministry of Defence v. Jeremiah [1980] ICR 13 CA).

Claims under the Equality Act 2010 (EA)

Disability

196. The claimant claims he has a disability for the purposes of section 6 Equality Act 2010 (EQA). Section 6 provides as follows:-

> *(1) A person (P) has a disability if-*
>
> *a. P has a physical or mental impairment, and*
>
> *b. The impairment has a substantial and long-term adverse effect on P's ability to carry out normal day to day activities.*

197. S212(1) of the EQA defines "substantial" as meaning *"more than minor or trivial."*

198. We have also considered:-

(i) Part one of schedule one to the EQA regarding the definition of disability.

(ii) The Secretary of States guidance on matters to be taken into account in determining questions relating to the definition of disability. (Guidance)

(iii) The EHRC Employment Code

199. We note from the materials above and from relevant case law:-

a. That we are to apply this definition at around the time that the alleged discrimination took place; **Cruickshank v. VAW Motorcast Limited [2002] ICR 729;**

b. That we should apply a sequential decision-making approach to the test (see for example **J v. DLA Piper [2010] WL 2131720)** addressing the following in order

- did the claimant have a mental and/or physical impairment? (the 'impairment condition')
- did the impairment affect the claimant's ability to carry out normal day-today activities? (the 'adverse effect condition')
- was the adverse condition substantial? (the 'substantial condition'), and
- was the adverse condition long term? (the 'long-term condition').

Direct Discrimination – section 13 EA

200. Section 13 states:

"A person (A) discriminates against another if, because of a protected characteristic, A treats B less favourably7 than A treats or would treat others."

201. An important question for us is whether the claimant's race and/or religion was an effective cause of the treatment which we find. As was made clear in the case of **O'Neill v. St Thomas More Roman Catholic School [1996] IRLR 372** the relevant protected characteristic need not be the only cause of the treatment in question. We also note the following:-

a. the House of Lords in ***Nagarajan v London Regional Transport 1999 ICR 877, HL***, held *"discrimination may be on racial grounds even if it is not the sole ground for the decision……..If racial grounds or protected acts had a significant influence on the outcome, discrimination is made out."* (judgment of Lord Nicholls)

b. Paragraph 3.11 of the EHRC Employment Code which states that *'the characteristic needs to be a cause of the less favourable treatment, but does not need to be the only or even the main cause'*

Indirect Discrimination

202. We note the definition of indirect discrimination at section 19 EQA.

Section 19 EqA Indirect discrimination –

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if:

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,
(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

203. We comment below on PCPs

Duty to Make Reasonable Adjustments

204. The claimant raises claims under s20(3) EqA. This imposes a duty on an employer *"where a provision criterion or practice of [the employer] puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage."*

205. We note that, for the duty to make reasonable adjustments to apply, a claimant needs to show that s/he has been put to a substantial disadvantage in relation to a relevant matter in comparison to persons who are not disabled.

PCPs

206. For a provision criterion or practice to be a valid PCP for the purposes of s19 and 20 of the EQA, it must be more widely applied (or would be more widely applied.

207. The judgment in Charles Ishola v. Transport for London [2020] EWCA Civ.112 is a recent authority on this point. We note particularly the following paragraphs of the judgment:

> *"The words "provision, criterion or practice" are not terms of art, but are ordinary English words. I accept that they are broad and overlapping, and in light of the object of the legislation, not to be narrowly construed or unjustifiably limited in their application. I also bear in mind the statement in the Statutory Code of Practice that the phrase PCP should be construed widely. However, it is significant that Parliament chose to define claims based on reasonable adjustment and indirect discrimination by reference to these particular words, and did not use the words "act" or "decision" in addition or instead. As a matter of ordinary language, I find it difficult to see what the word "practice" adds to the words if all one-off decisions and acts necessarily qualify as PCPs, as Mr Jones submits. Mr Jones' response that practice just means "done in practice" begs the question and provides no satisfactory answer. If something is simply done once without more, it is difficult to see on what basis it can be said to be "done in practice". It is just done; and the words "in practice" add nothing.*
>
> *36. The function of the PCP in a reasonable adjustment context is to identify what it is about the employer's management of the employee or its operation that causes substantial disadvantage to the disabled employee. The PCP serves a similar function in the context of indirect discrimination, where particular disadvantage is suffered by some and not others because of an employer's PCP. In both cases, the act of discrimination that must be justified is not the disadvantage which a claimant suffers (or adopting Mr Jones' approach, the effect or impact) but the practice, process, rule (or other PCP) under, by or in consequence of which the disadvantageous act is done. To test whether the PCP is discriminatory or not it must be capable of being applied to others because the comparison of disadvantage caused by it has to be made by reference to a comparator to whom the alleged PCP would also apply. I accept of course (as Mr Jones submits) that the comparator can be a hypothetical comparator to whom the alleged PCP could or would apply.*
>
> *37. In my judgment, however widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief which the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor disability related*

> *discrimination is made out because the act or decision was not done/made by reason of disability or other relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP.*

Burden of Proof – EQA Claims

208. We are required to apply the burden of proof provisions under section 136 EA when considering complaints raised under the EQA.

209. Section 136 states:

> *(1) This section applies to any proceedings relating to a contravention of this Act.*
>
> *(2) If there are any facts from which a court could decide in the absence of any other explanation, that a person (A) has contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) But subsection 2 does not apply if A shows that A did not contravene the provision."*

210. We have also considered the guidance contained in the Court of Appeal's decision in **Wong v. Igen Limited [2005] EWCA 142**. This case concerned the test as set out in discrimination legislation that pre-dated the EqA but the guidance provided in there remains relevant. The annex to the judgment sets out guidance.

211. We are also clear that the wording of the statute itself, s136 EqA is the key reference in relation to burden of proof when reaching decisions about whether there has been a contravention of the EqA.

212. Finally, on the issue of burden of proof, we are mindful of guidance from case law indicating that something more than less favourable treatment may be required in order to establish a prima facie case of discrimination; see for example **Madarassy v. Nomura International [2007 ICR 867]** where the following was noted in the judgment:

> "*The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."*

Burden of Proof – Detriment claims

213. We have noted the requirements of s48(2) – that on a complaint that an employee has been subjected to a detriment contrary to s47(B) ERA, it is for the employer to show the ground on which any act or deliberate failure to act, was done.

214. The judgment in **Kuzel v. Roche Products Limited [2008] ICR 799 (Kuzel)** notes that the application of s48 is not directly analogous to the statutory reversal of burden of proof at s136 Equality Act 2010. Where a Tribunal rejects the employer's purported reason for the act or omission in question it may (but is not obliged to) find

for the employee. The following extract from the judgment of Simler J. in Kuzel, (at paragraph 53) is relevant:

> "*The identification of the reason will depend on the findings of fact and inferences drawn from those facts. Depending on those findings it remains open to it to conclude that the real reason was not one advanced by either side."*

Working Time Regulations

215. Under Regulation 12(1) of the Working Time Regulations 1998 (WTR) workers are entitled to a rest break if their daily working time is more than 20 minutes. The entitled is to an uninterrupted rest break of at least 20 minutes unless:-

a. A collective or workforce agreement provides for different arrangements;

b. An exclusion applies.

216. The respondent's case is that Regulation 21(C)(i) of WTR is applicable. This provides that, subject to an obligation to provide compensatory rest under Regulation 24, the entitlement to a rest break under Regulation 12(1) does not apply:-

> *"Where the worker's activities involve the need for continuity of service or production as may be the case in relation to services relating to the reception, treatment or care provided by hospitals or similar establishments……"*

Discussion and Conclusions

The credibility of the claimant/witnesses

217. One point raised by Mr Campion in his submissions relates to the credibility of the claimant's evidence. He noted that the claimant's denial of any knowledge of the covert recordings was "incredible." We agree.

218. Mr Campion also noted that the description of the reference to RC as "Judas" as banter was at odds with the transcript and audio. We agree.

219. Mr Campion makes similar points about the claimant's description of AF's behaviour at the disciplinary investigation meeting on 14 August 2019. We agree with Mr Campion.

220. Mr Campion raises 2 other points in attacking the credibility of the claimant's evidence. Firstly, in relation to what he described as the limited disclosure of audio recordings and secondly because, in his disability impact statement (page 146) the claimant has overstated the impact of his mental impairment. We have not made a finding of fact about a limited disclosure of audio recordings and therefore have not considered Mr Campion's criticism of this. Whilst we agree that the impact statement is exaggerated in parts, we recognise that is sometimes the result of parties being involved in litigation. We did not place any significant weight to the impact statement .

221. Our decision not to believe the claimant in these respects, did not mean that we disbelieved him in every respect. We considered each point based on the evidence before us. However, where there was disputed evidence then our conclusions in

relation to the claimant's evidence on the key points above, had some impact on our decision to prefer the evidence provided by the respondent's witnesses.

222. We were impressed with the respondent's witnesses. We found the witnesses MG AF, NN, DM, MH and DS to be dedicated paramedic professionals with high standards of integrity. PM and MG have both retired from their service with the respondent but their recollection of events was generally good and their evidence was believable. MK and SA also provided credible evidence. We were impressed that MK did not try to defend his reference to disciplinary action made when feeling frustrated at the FWR meeting.

Jurisdictional Issues

> *1. Are any or all of the Claimant's claims which predate 26 March 2019 out of time?*
>
> *2. If so, do the allegations made by the Claimant amount to an act extending over a period of time so as to bring the Claimant's claims in time?*
>
> *3. Would it be just and equitable to extend the time limit for submitting such claims?*

223. Response: We have heard evidence relating to all complaints brought and, whilst those complaints predating 26 March 2019 are potentially out of time (subject to an argument that they amount to a continuing act) we decided that it was just and equitable to extend the time limits to the extent required and so for us to reach decisions on these complaints.

Public Interest Disclosure Detrimental Treatment *(Claim 1 as per C's ET1).*

> *4. The Respondent accepts that the Claimant made the following protected disclosures:*
>
> *4.1. 11 January 2019 in relation to patient care which was already under review.*
>
> *4.2. 18 June 2019 grievance.*
>
> *4.3. 61 or 63 page document 11 July 2019.*
>
> *5. Did the claimant make a protected disclosure by reading out on 11 July 2019 the paragraphs quoted in the Further Particulars provided by the claimant on 22 April 2020?*

224. Response to 5. See para 151 above. We accept that the claimant read out a statement. The terms of that statement were consistent with previous protected disclosures. We accept that the content of the statement amounted to a further protected disclosure by the claimant.

> *6. Did the Claimant suffer the following detriments as a result of making one or more protected disclosures?*
>
> *6.1. Being invited to an Occupational Health appointment for a Friday, 26 April 2019;*

225. Response to 6.1. Please see our finding of fact at paras 130-135. An external occupational health provider sent him details of an appointment on a Friday. This was not convenient to the claimant and so it was rearranged. Nothing more sinister than that occurred. The initial date was not provided to the claimant as a result of his protected disclosures (or for any other unlawful reason).

6.2. Being forced to work solo by Marie Gamlin and Adam Forster at the station on 14 April 2019;

226. Response to 6.2. We accept the evidence of MG and AF. See findings of fact at paras 139-145. In addition:-

- Rotas are drawn up by Central control who would not have known about the claimant's protected disclosures;

- RC would not work with the claimant due to the incident giving rise to the disciplinary investigation;

- Where a paramedic needed a colleague to pair up with and there was a choice between a "spare" paramedic and a spare EMT, the paramedic (RC) would be paired first, for operational reasons;

- 14 April 2019 was the only date raised when the claimant worked solo;

- This was not a series of dates giving rise to a concern that the claimant might have been "ostracised" by the respondent.

6.3. Being forced to work with a new emergency medical technician by Marie Gamlin and Adam Forster on 7 April 2019?

227. Response to 6.3. See our findings of fact at paragraphs 139-145 above. The claimant may well have been required to work with a recently qualified EMT but this was not because the claimant made protected disclosures or for any other unlawful reason.

6.4. Being intimidated by a Senior Paramedic, Chloe Swan, and a standard paramedic, Donna Merrick, saying, on a date prior to 11 April 2019, in a conversation between them to which the claimant was not a party, but which was subsequently reported to the claimant, that the claimant should be brought down a peg or two.

228. Response to 6.4 – see our findings of fact at paragraphs 82-94 above. This comment was not made about the claimant.

6.5. Paul Monteith breaching the Claimant's confidentiality in ways alleged in the claimant's grievance pack.

229. Response to 6.5. when first raised by the claimant there was no reasonable expectation that the matter would be kept more confidential than it was. The matter was already subject matter of discussion/debriefing between the 3 ambulance crews and, further, he did not say it was a matter under raising concerns at work on an anonymous basis. In addition, once he submitted a DATIX incident, he knew the matter would not be confidential.

230. It is not clear from the claimant's grievance document what he says PM did that he should not have done or what he expected to be done differently in terms of keeping his concerns confidential.

231. The claimant complaints (page 675) that NN wanted to meet with him to discuss the incident with him and that, had the respondent kept the claimant's complaint as confidential, she would not have known about the claimant's complaints. Our findings of fact make clear the respondent's practices about having debriefs following attendance by ambulance crew at a potentially upsetting incident (see particularly para 43 above).

> *6.6. The Claimant's complaint in relation to the report he made on 11 January 2019 in accordance with the Raising Concerns at Work Policy not being investigated by the Respondent in accordance with that Policy.*

232. Response to 6.6. See response to 6.5 above. Further, had the matter been expressly raised under the Raising Concerns at Work policy, there is no evidence that the matter would have been dealt with any differently. The claimant has not at any stage said what he expected from an investigation carried out confidentially. Only a small number of people were involved on the day in question and it was always clear that the claimant was the one person in the group of 6 who was dissatisfied with the treatment provided. Although not treated confidentially in the sense that NN for example knew the claimant had concerns about her decision making and treatment on that day, there is no evidence that this was a topic which had been widely disclosed and discussed within the respondent organisation. Those who needed to know about the concerns, knew about them.

> *6.7. Being made by Niamh Nolan to work with a Senior Paramedic who the Claimant had raised a complaint about on 23 March 2019.*

233. Response to 6.7. See our findings of fact at para 136-138. The claimant was not made to work with NN.

> *6.8. Being made to work Fridays by Marie Gamlin and Adam Forster and Marshal Kumawu (HR Manager) on 30 April, 21 May, 30 May and 18 June 2019* (this should be 14 June 2019).

234. Response to 6.8. Of these dates, only 14 June 2019 was a Friday. The other dates referred to are the dates of meetings at which the claimant says he was told to work on Fridays. At these meetings, the claimant was encouraged to proceed with a flexible working request application so that the issue of Friday work would be resolved.

235. As for the 14 June 2019, the claimant was allocated a shift on this date but was not made to work it because the claimant and respondent were able to make other arrangements.

> *6.9. Respondent commencing an overtime and meal plan investigation during March 2019; the Claimant alleges Marie Gamlin and Adam Forster commenced this investigation.*

236. Response to 6.9. This investigation did take place but the matter was investigated due to genuine concerns about the claimant's conduct not on the grounds that he had raised a protected disclosure or for any other unlawful reason.

> *6.10. During May 2019, the Claimant was not given time off for Ramadan following a request made on 11 Feb 2019 to Marie Gamlin.*

237. Response to 6.10. The claimants request for time off was a long running matter predating the protected disclosures. In fact, following the protected disclosures there was the prospect of more leave becoming available and so the claimant being in a more advantageous position. As matters transpired the claimant did not take that additional time off. As the grievance outcome acknowledges this was in part due to poor management communication.

> *6.11. Chloe Swan or Donna Merrick saying, on a date prior to 11 April 2019, in a conversation to which the Claimant was not a party but which was reported to the Claimant that the Claimant should be brought down a peg or two and the Respondent failing to do anything about this when it was reported to them by Craig Greenfield and the Claimant.*

238. Response to 6.11. See 6.4 above.

> *6.12. By the manner in which Mr Foster conducted an investigatory interview on 14 August 2019 (Claim 9)*

239. Response to 6.12. See findings of fact. We have no criticism of AFs handling of the investigatory interview.

> *6.13. By continuing with the disciplinary investigation and the length of time taken to conduct it (Claim 10)*

240. Response to 6.13. We have no criticism of the decision to continue with the investigation. There are multiple reasons why the investigation took as long as it did (see findings of fact) but there was no delay was on the grounds that the claimant had raised protected disclosures or for any other unlawful reason.

> *6.14. By the length of time taken to investigate the Claimant's grievance (Claim 12)*

241. Response to 6.14. As with the disciplinary investigation, there are various reasons (referred to in the findings of fact) as to why the grievance investigation took as long as it did. There was no delay on the grounds that the claimant made protected disclosures or for any other unlawful reason.

> *6.15. By referring the Claimant to the HCPC*

242. Response to 6.15. See findings of fact at 171-174. The claimant was not referred to HCPC on the grounds that the claimant had raised protected disclosures or for any other unlawful reason.

Direct Discrimination

Race

7. Did the Respondent treat the Claimant less favourably than it treated or would have treated actual and/or hypothetical comparators by:

> *7.1. Marie Gamlin and Adam Forster making the Claimant work solo and sit at the station on 14 April 2019; (Claim 4). Actual comparator: RC.*

243. Response to 7.1 See response to 6.2 above. A hypothetical comparator would have been treated in the same way as the claimant in the same or similar circumstances.

7.2. By subjecting the Claimant to a disciplinary investigation for allegedly leaving work early (Claim 9). Actual comparator Mr Davenport.

244. Response to 7.2. The claimant was investigated but the claimant's race was irrelevant to the decision to investigate the claimant. The named comparator was also investigated. The result of that investigation was that there was no evidence that the comparator had left work before the end of his shift (see para 169 above). That is why the investigation into RD went no further and the reason for the difference in treatment between the claimant and RD.

7.3. By referring the Claimant to the HCPC. Actual comparator Mr Davenport (Claim 13).

245. Response to 7.3. See response to and 6.15 and 7.2 above.

8. If so, was the less favourable treatment above because of the Claimant's race (British Asian of Indian heritage), contrary to the Equality Act 2010?

246. Response to 8**.** As noted in the responses to 7.1 to 7.3 above, the claimant was not treated less favourably than his named comparator or a hypothetical comparator was or would have been treated in the same or very similar circumstances.

Religion

9. Did the Respondent treat the Claimant less favourably than it treated or would have treated an actual and/or hypothetical comparator by:

9.1. Marie Gamlin and Mike Hynes failing to grant the Claimant long term annual leave after authorising his leave during May 2019. Actual comparator: Sean Brady (SB).

247. Response to 9.1. The claimant's line manager and SB's line manager both approved their request. When that approval was referred to MH, he was satisfied with the reasons for extended leave provided by SB but wanted more information about the claimant's reasons, noting that he intended to take most of his leave in one period and would work some overtime shifts during the period of leave. It prompted a request for more information. It did not result in a refusal. Unfortunately, there was then poor communication at management levels which meant that the requests for information were repeated by AF in his email on 2 May 2019. At that stage the claimant decided, given the passage of time, he no longer wanted to take leave for week commencing 27 May 2019.

248. The respondent did not fail to grant the claimant's leave as the claimant alleges.

9.2. Marie Gamlin pressuring the Claimant to complete a Flexible Working Request (FWR) form and Marshall Kimawu threatening the Claimant with disciplinary action for failure to complete a FWR form on 30 April 2019. No actual comparator.

249. Response to 9.2. the flexible working request (FWR) was an attempt by the claimant's managers to resolve the claimant's concerns about being required to work on Fridays. We are satisfied that had the FWR been made by the claimant it would have been looked on favourably by the respondent and approved by them, because of the claimant's religion and the need for him to attend Friday prayers.

As for the threat of disciplinary action. This was an ill-informed comment by MK who had become frustrated during the meeting with the claimant's intransigence, even in the light of assurances by his managers and his chosen union representative recommending that he complete the process. The prospect of disciplinary action was not raised with the claimant because of his religion. MK would have treated a comparator of a different religion or no religion, the same in the same or similar circumstances.

9.3. Marie Gamlin and Adam Forster forcing the Claimant to work the whole of Friday on 14 June 2019 (Claim 7). No actual comparator.

250. Response to 9.3. The claimant was not forced to work the whole of Friday 14 June 2019. See finding of facts and response to 6.8 above.

9.4. Failing to follow and delaying the investigation into: (Claim 8)

9.4.1. The complaint raised by the Claimant in January 2019 in connection with the Respondent's Raising Concerns at Work Policy;

251. Response to 9.4.1 – see response to 6.6 above

9.4.2. The meal claim investigation during February 2019; and

252. Response to 9.4.2 – see response to 6.13 above

9.4.3. The grievance raised by the Claimant during June 2019.

253. Response to 9.4.3. See response to 6.14 above.

No actual comparator.

10. If so, was the less favourable treatment above because of the Claimant's religion (Muslim), contrary to the Equality Act 2010?

254. Response to 10. No. We have found that the claimant was threatened with the possibility of disciplinary action but see response to 9.2 above.

Indirect Discrimination

Religion

(Claim 5 & 7 and 12)

11. Did the Respondent apply a Provision, Criterion and/or Practice (PCP) for the purposes of section 19 of the Equality Act 2010 by?

11.1. Requiring its employees to attend Occupational Health appointments on Fridays.

255. Response to 11.1 No such PCP was applied. The respondent outsourced its occupational health activities and the third party provider diarised appointments. Further, the respondent requested arrangements for the claimant to attend an OH appointment on a working day but not a Friday.

11.2. Requiring its employees to work Fridays, including in particular Friday 29 November 2019?

256. Response to 11.2. This respondent did require employees scheduled to work a shift on Friday 29 November 2019 to work that shift.

12. If so, did that PCP put the Claimant as a practising Muslim at a disadvantage when compared with persons who do not share that protected characteristic i.e. non-Muslims as the Claimant's faith requires him to attend Friday Congregational prayers?

257. Response to 12. The claimant was not required to work on this day. See findings of fact at 174 above.

13. Did the above PCPs put the Claimant at the disadvantage claimed by the Claimant?

258. Response to 13. See 12 above

14. If so, can the Respondent show that the PCP was a proportionate means of achieving a legitimate aim of ensuring effective delivery of emergency services. (Claim 6)

259. Response to 14. Not applicable

15. Did the Respondent apply a PCP for the purposes of section 19 of the Equality Act 2010 by?

15.1. Requiring its employees to request/follow its procedures for booking long term annual leave?

260. Response to 15.1. Generally, yes, although the claimant himself did not follow the correct process in 2018 for booking a period of 5 week's leave in 2019, yet 4 of those 5 weeks were approved.

16. If so, did that PCP put the Claimant as a practising Muslim at a disadvantage when compared with persons who do not share that protected characteristic i.e. non-Muslims as the Claimant could not take time off work?

261. Response to 16. No. there is no evidence that Muslims are placed at a particular disadvantage by requiring employees follow procedures for booking annual leave. There may be occasions when employees with various religions and none will want or need a period of extended leave. In order to obtain this, they will generally need to follow the respondent's procedures for requesting leave.

17. Did the above PCP put the Claimant at the disadvantage claimed by the Claimant?

262. Response to 17. Not relevant - See above

18. If so, can the Respondent show that the PCP was a proportionate means of achieving a legitimate aim of ensuring the effective delivery of emergency services.

263. Response to 18. Not relevant - See above

Disability

19. Do the Claimant's following physical/mental impairment have a substantial and long-term adverse effect on his ability to carry out normal day to day activities?

Physical impairments

19.1. Hypothyroidism, diagnosed on 1 October 2009;

19.2. Chronic Metabolic condition (Claim 2)

264. Response to 19.1 and 19.2 These terms describe the same condition. The respondent has admitted that the claimant was disabled at the relevant time, on the basis of the physical impairment of Hypothyroidism.

Mental impairments

19.3. Depression, diagnosed on 26 May 2011;

19.4. Anxiety, diagnosed on 26 May 2011;

19.5. Stress related problems, diagnosed on 26 May 2011; and VI. Sleep disorder, diagnosed on 6 January 2015.

265. Response to 19.3, 19.4 and 19.5. We have applied the sequential decision making process set out in J v. DLA Piper.

266. We accept that the claimant had a mental impairment at the relevant time. We find that this was a condition of anxiety and depression. (see paras 158-162).

267. As for the adverse effect condition; usually the symptoms of this condition were controlled by prescribed medication although stressful events sometimes exacerbated the symptoms. The condition was diagnosed in 2011. We accept that, without the benefit of the medication, the claimant's sleep would be affected as would his ability to concentrate.

268. Whilst the extent of the adverse conditions fluctuated we accept that there were times when the adverse effect was substantial. Further, the adverse effects of the claimant's condition were reduced throughout this period by prescribed medication. Without that medication the adverse effects would have been worse and more frequent.

269. The impairment was long term. It was diagnosed in 2011 and the claimant has had this condition since then, albeit with fluctuating impacts. We accept that the client's mental impairment amounted to a disability at the relevant time.

Duty to Make Reasonable Adjustments

20. In relation to each of the complaints of failure to make reasonable adjustments, Did the Respondent know that the Claimant had a disability and was likely to be placed at the disadvantage referred to and if so, when?

(Claim 2)

Disability relied upon = Chronic Metabolic Condition, Hypothyroidism and mental health disorder

270. Respondent 20. The respondent does not deny knowledge of the claimant's impairments. The respondent does however deny knowledge that the claimant was likely to be placed at the disadvantages referred to in various reasonable adjustment complaints., To the extent necessary, we record our findings on this knowledge as part of our response to the reasonable adjustment complaints below.

21. Did the Respondent apply the following Provision, Criterion or Practice (PCP)?

21.1. The PCP is requiring employees to work without taking a twenty-minute break every six hours and/or without taking compensatory rest breaks where that twenty- minute break has not been taken.

271. Response 21.1: Such a PCP was not applied. In fact, the respondent's policy and practice was to take all reasonable steps to ensure that breaks were taken and, if not, that compensatory rest was provided.

22. If so, did the Claimant suffer the following disadvantage when compared to a non-disabled person, in that he was unable to?

22.1. provide patient care with adequate energy levels on 19 February 2019.

272. Response to 22.1 (Note, we record our findings on this complaint in case our conclusion under 21.1 is wrong and the possibility of employees working more than 6 hours without a rest break does amount to a PCP). The claimant had opportunities to manage his working time and rest periods differently on 19 February 2019. For example, he could have taken a rest break in Manchester; he could have opted not to drive from Manchester to Rochdale but to ask his crew member to drive; he could have taken his rest break immediately on return to Rochdale. What he chose to do however was to take his rest break at the latest possible opportunity on that shift. That was his choice, not because of the application of the PCP relied on by the claimant.

273. The claimant worked for the respondent for many years. During that period, he made various visits to occupational health and adjustments were recommended and carried through in order to assist him. Notably these included an adjustment to ensure the claimant did not work nights. Even though the respondent arranged for these visits and acted on recommendations arising, at no stage was an issue raised about the respondent's rest break arrangements

22.2. If so, to what extent did the Claimant suffer the disadvantage?

274. Response to 22.2. See response to 22.1 above.

23. Would the following adjustments asserted by the Claimant have avoided any disadvantage?

23.1. Take a rest break after working six hours on 19 February 2019.

275. Response to 23.1. The claimant could have taken a rest break on 19 February 2019 earlier than he did but chose not to. That adjustment was available to the claimant after about 6.5 hours of work.

24. If so, was the above specified step reasonable for the Respondent to take?

276. Response to 24. It would not be a reasonable adjustment to allow a paramedic to stop applying emergency care to a patient whilst a 20 minute rest break is taken.

(Claim 8)

Disability relied upon = Depression, Anxiety and Sleep disorder. - Rest Breaks PCP

25. Did the Respondent apply the following Provision, Criterion or Practice (PCP)?

25.1. Requiring employees to work without taking a twenty-minute break every six hours and/or without taking compensatory rest breaks where that twenty- minute break has not been taken.

26. If so, did the Claimant suffer the following disadvantage when compared to a non-disabled person, in that his depression, anxiety and sleep problems were aggravated?

27. If so, to what extent did the Claimant suffer the disadvantage?

28. Would the following adjustments asserted by the Claimant have avoided any disadvantage?

28.1. Allowing the claimant to take a twenty minute rest break every six hours work or to

28.2. take compensatory rest break if that break not possible at the six hour point.

29. If so, were any of the specified steps reasonable for the Respondent to take?

277. Response to 25 -29. See our responses to 21 to 24 above

Disability relied upon = Depression, Anxiety and Sleep disorder. – Disciplinary Procedure PCP

30. Did the Respondent apply the following Provision, Criterion or Practice (PCP)?

30.1. Not dealing with disciplinary matters in a reasonable time.

30.2. Arranging disciplinary hearings whilst an employee was on sick leave (Claim 10)

278. The employee did not apply this PCP. The respondent's PCP was to handle disciplinary matters in accordance with its disciplinary policy. The claimant's complaint relates to his particular circumstances. As noted in Ishola, the concept of a PCP does not apply to every act of unfair treatment. There is no evidence that, in other disciplinary situations, the respondent has taken (or would take) such a length of time. Further, there are various reasons for the length of time the disciplinary process took, including the claimant's own availability/delay (see 117-122 for example).

We do note that the time gap in this case between the completion of AF's report in late August 2019 and informing him of the outcome (11 October 2019) is excessive. As we note above, however there is no evidence that a PCP on not dealing with disciplinary matters in a reasonable time was applied by the respondent.

279. We are not required to make findings under 31-34

31. If so, did the Claimant suffer the following disadvantage when compared to a non-disabled person, in that his depression, anxiety and sleep problems were aggravated?

32. If so, to what extent did the Claimant suffer the disadvantage?

33. Would the following adjustment asserted by the Claimant have avoided any disadvantage?

33.1. Conducting its disciplinary proceedings within a reasonable time.

34. If so, were any of the specified steps reasonable for the Respondent to take?

Disability relied upon = Depression, Anxiety and Sleep disorder – Conduct of Disciplinary Process PCP

35. Did the Respondent apply the following Provision, Criterion or Practice (PCP)?

35.1. Conducting disciplinary processes in an aggressive manner.

280. Again, this is a compliant about a one-off incident (meeting on 14 August 2019) and, applying Ishola, is not a PCP. Further, we have not found that disciplinary processes (specifically the meeting about which the claimant has complained) were conducted in a disciplinary manner.

We are not required to make findings under 36-39 below.

36. If so, did the Claimant suffer the following disadvantage when compared to a non-disabled person, in that his depression, anxiety and sleep problems were aggravated?

37. If so, to what extent did the Claimant suffer the disadvantage?

38. Would the following adjustments asserted by the Claimant have avoided any disadvantage?

38.1. Not conducting its disciplinary processes in an aggressive manner.

39. If so, were any of the specified steps reasonable for the Respondent to take?

Disability relied upon = Depression, Anxiety and Sleep disorder. – Grievance Procedure PCP

40. Did the Respondent apply the following Provision, Criterion or Practice (PCP)?

40.1. Not dealing with grievance procedures in accordance with its own policies or otherwise in a timely manner.

281. Again, this is not a valid PCP. We refer again to the decision in Ishola. What it amounts to is a complaint about a particular act – the length of time that Shahid Ali took to investigate the claimant's grievances. There is no evidence that the respondent's policy was to take such length of time when dealing with grievances.

We are not required to make findings under 41-44 above.

41. If so, did the Claimant suffer the following disadvantage when compared to a non-disabled person, in that his depression, anxiety and sleep problems were aggravated?

42. If so, to what extent did the Claimant suffer the disadvantage?

43. Would the following adjustments asserted by the Claimant have avoided any disadvantage?

43.1. Conducting its grievance procedure in accordance with the timescales set out in its policies.

44. If so, were any of the specified steps reasonable for the Respondent to take?

***Harassment** (Claim 4)*

45. Did the Respondent engage in unwanted conduct related to the Claimant's race (British Asian with Indian heritage) for the purposes of the Equality Act 2010 by:

45.1. Making the Claimant work solo and sit at the station on 14 April 2019.

282. Response to 45.1. No. See response to 6.2 above. The claimant knew that he would commence his paramedic role on a reserve list and therefore that he would work on various crew arrangements. On 14 April 2019 he was scheduled to work with RC. RC refused to work with the claimant because of the outstanding disciplinary issue (see finding of fact above). This was not related to the claimant's race.

283. The respondent was able to use RC to work alongside another paramedic. The choice at the start of the shift was to either pair RC with that person or pair the claimant. RC was chosen because he was able to work with a paramedic but not an EMT. The claimant remained available in case the respondent were short with another crew. There was a greater chance of being able to form a functioning crew with the claimant than with RC (having regard to the skill mix matrix). This was not related to the claimant's race.

284. In the light of these findings, there is no requirement to reach findings on 46 and 47.

46. If so, did the unwarranted conduct have the purpose or effect of:

46.1. violating the Claimant's dignity; or

46.2. creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

47. If so, having regard to all the circumstances of the case, was it reasonable for the conduct to have that effect on the Claimant?

Working Time Regulations

48. On 19 February 2019 was the Claimant denied a break within 6 hours of commencement of an 8-hour shift in accordance in Regulation 12 of the Working Time Regulations 1998 (WTR)?

49. If so, does the Claimant's role involve the need for continuity of service in order to provide treatment or care by hospitals or similar establishments as per Regulation 21(C)(1)?

285. Response to 49 and 50 (our response to 22.1 is also relevant here). The claimant was not able to take a break from his work until the seriously injured patient had been taken to hospital and the claimant and crew member colleague were able to hand the patient over to hospital medical staff. The claimant and colleague started their shift at 4pm. They could have taken their rest break soon after 10pm, although though they chose not to.

286. The continuity of the reception, treatment, or care of the patient was necessary and therefore these activities fall within the exception at Regulation 21(C)(i) WTR.

50. If so? Did the Respondent:

50.1. Provide the Claimant an equivalent period of compensatory rest; and

50.2. Offer the Claimant such protection as may be required to safeguard his health and safety.

287. Yes. We are satisfied that the terms of the policy do this and that, had the claimant wanted to, applying the terms of that policy, he could have taken his break at an earlier stage of the shift on 19 February 2019.

Unfair Dismissal

51. Was the Claimant constructively dismissed?

51.1. Did the Respondent engage in conduct which entitled the Claimant to terminate his employment without notice by doing the matters referred to above and in addition, by continuing with the disciplinary investigation and arranging a disciplinary hearing.

288. Response; on the basis of our conclusions above, no. Applying the sequence in Kaur, the most recent act in the long list of complaints was scheduling the claimant in the rota for 29 November 2019. We have no criticism of the respondent's actions in relation to this rota (see paragraph 287) or the delay to the disciplinary process. It was not by itself a repudiatory breach. It has not been part of a course of conduct which, when viewed cumulatively, amounted to a repudiatory breach.

289. We have considered here the act of the respondent that we have been critical of – the time taken to inform the claimant of the outcome of the disciplinary investigation. We do not find that the length of time that the disciplinary investigation took was in itself a repudiatory breach. Had the claimant shown a willingness to engage in the disciplinary process without delay (and possibly complaining about the length of time the investigation was taking) then we may have been more critical of the overall time that the process took and might have found a repudiatory breach. However, the claimant contributed significantly to the delay in the process overall and particularly at the earlier stages. We find that the respondent's acts in the delay to tell the claimant about the disciplinary investigation outcome was not a repudiatory breach. We also find that it was not part of a course of conduct which, when viewed cumulatively, amounted to a repudiatory breach. We also note that it is barely mentioned in the resignation letter. It is the fact and outcome of the investigation, rather than delay, that the claimant refers to in his resignation letter. We have no criticism of the decision to conduct the investigation or its outcome.

51.2. Did the Claimant resign for this reason?

290. We are satisfied from the timing of the claimant's resignation, that he resigned in order to avoid attending a disciplinary hearing. By that stage, he had been away from the workplace (and therefore the unfair treatment he says he was subject to) for many months. The claimant had refused to attend one disciplinary hearing date on 13 November 2019 and knew the respondent would propose a second date.

291. Significantly, by the time that the claimant chose to resign, whilst we have criticised the respondent for the time taken in informing the claimant of the outcome of the investigation (see 276 above), by the date he resigned, he had known about the outcome for about 6 weeks.

The claimant was not constructively dismissed.

52. If the Claimant was constructively dismissed, was the reason or principal reason for dismissal (the breach) one of the following "automatically unfair" reasons?

52.1. Because the Claimant had made a protected disclosure – s.103A ERA?

52.2. For a reason in s.101A(1)(a) or (b) ERA?

52.2.1. Did the Claimant refuse or propose to refuse to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the WTR when the Claimant did not make himself available for work when he took a compensatory rest break on 19 February 2019 after working more than 6 hours without a break, by not having his radio with him, and by asserting, in a disciplinary investigation meeting on 14 August 2019 that he was entitled to do so? (section 101A(1)(a) ERA))

52.2.2. Did the Claimant refuse or propose to refuse to forgo a right conferred on him by the WTR by not making himself available for work when he took a compensatory rest break on 19 February 2019 after working more than 6 hours without a break, by not having his radio with him, and by asserting, in a disciplinary investigation meeting on 14 August 2019 that he was entitled to do so? (section 101A(1)(b) ERA).

52.3. For a reason in s.100(1)(e) ERA?

52.3.1. On 19 February 2019, by taking a break and not having his radio with him, was the Claimant, in circumstances of danger, which the Claimant reasonably believed to be serious and imminent, take appropriate steps to protect himself or other persons from the danger? The Claimant says that he would have been a danger to himself and others had he driven when exhausted.

52.5 For a reason in s.104 ERA (asserting a relevant statutory right) – the Claimant relies on bringing Tribunal proceedings to enforce a right to take breaks in accordance with the WTR (s.104(1)(a)) and alleging in his grievance that the Respondent had breached the requirements of the WTR in relation to taking breaks (s.104(1)(b)?

53. If the Claimant was constructively dismissed but the constructive dismissal was not for one of the automatic reasons,

53.1. Was the constructive dismissal for some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the Claimant held (SOSR); and

53.2. Did the Respondent act reasonably or unreasonably in all the circumstances in constructively dismissing the Claimant for that reason?

292. Given our findings that the claimant was not constructively dismissed, we do not need to reach conclusions on issues 52-53 or the added issues on remedy noted at paragraph 11

Employment Judge Leach
Date: 6 December 2021

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON 7 DECEMBER 2021

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions
Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

SCHEDULE

Claimant's resignation letter dated 29 November 2019

After 18-years of service and without awaiting employment; it is with great regret, distress and sadness that I have been forced to resign from my employment as a paramedic.

My resignation is due to the cumulative effects of the treatment I have received this year after making public interest disclosures. I reasonably believe that there had been wrongdoing, including that there had been a failure to comply with legal obligations, and that patient health and safety was being or was likely to be endangered. I made the disclosures in the public interest to ensure that these things do not happen again.

After which, a campaign of detriment was instigated against me.

What I have endured, I have never experienced previously in what was a satisfying and unblemished career with the ambulance service. Since I made my first protected disclosure, I have been treated differently. I believe that this change in treatment was down to my disclosures and/or my race and/or religion. Some of the detriment I have highlighted below:

- I have not been protected from multiple counts of discrimination.
- I have not been protected from humiliation in front of my peers.
- I have been subject to bullying from management, the people who should be protecting me from such harm.
- I have been subject to words of intimidation by management and a paramedic, which was not investigated by higher management when highlighted by my colleagues.
- I have been bullied and threatened with disciplinary action by human resources, the people who are supposed to maintain working relationships.
- I have suffered multiple counts of victimisation and harassment.
- My confidentially has been breached with the manager in question. The manager who failed to follow key protocols and procedures, which could have impacted on the patient's outcome, was told I had raised concerns in her treatment of a patient.
- I have been forced to work with brand new staff when I am not qualified to do so, which potentially could have impacted on patient safety.
- Management have started making changes to the way I work by rostering me shift during Friday congregational prayer time, when knowing that I have not worked this time during my 18-year career. Moreover, they have bullied me into completing a flexible working application that I later withdrew after taking legal advice.
- Management have failed in their legal requirement to protect me from detriment/discrimination. They have failed to protect a disabled person, from bullying, victimisation, harassment, and have aggravated my underlying anxiety, depression and insomnia.
- Knowingly, no consideration was made for my illness, even though by law I am considered to be a disabled person, again suggesting failures.
- Disciplinary allegations were made against me that I am totally innocent of, allegation that are baseless. These allegations suggested that I went home early at

the end of my shift, which had ended after 7% hours of work without rest. At this point, I was entitled to an unpaid and undisturbed meal break.
- Moreover, my line-manger falsely quoted policies and procedures as well as government legislation and stated that I had to remain available, meaning I was own-call even though my break was unpaid and undisturbed. Not only is this a misuse of powers, it is also a form of bullying. In addition to this, the disciplinary investigation was discriminatory as others who have gone home early have not been investigated, even though management was made aware. Please note that I did not go home early as per the allegation. This is another example of failures to comply with their legal obligations.
- It is reasonable to believe that the disciplinary investigation was intentionally drawn out, not independently conducted, and carried out in an aggressive manner because of the public interest disclosures.
- I raised a grievance on the 18th of June 2019 and provided factual evidence in the form of a sixty-page document to support my complaints. I waited patiently for 5 months hoping that the grievance findings would be positive and restore my trust in my employer. However, last week, on the 19th of November 2019 I was given a conclusion to my grievance, which was not upheld on multiple counts. This conclusion report contained a significant amount of material that was not factual. I believe this shows that there was collusion between management and that my grievance was not investigated independently.
- Even fundamental human rights were not respected.
- After all the above was highlighted, management still failed to listen and have continued to discriminate by rostering me for a shift during Friday congregational prayer time on the 29th of November 2019. If I returned to work, again I would be forced to choose between my work and my religion.

I have had an unblemished 18-year career. To the best of my knowledge, I have followed all internal policies and procedures and have fulfilled my legal and contractual obligations as an employee.

I want my resignation to be immediate. I cannot attend work anymore as I am fearful of more detriment and I cannot trust management to protect me from further bullying, humiliation, intimidation, victimisation and discrimination. I am awaiting CBT therapy, my illness has deteriorated further after receiving the grievance outcome, and my health cannot tolerate anymore. I feel that I would not be able to carry out my paramedical duties optimally within such a working environment.

I will truly miss my colleagues and the patients of Greater Manchester.