EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Dr B Wright	**v**	**Brunel University London**

Heard at: Watford (by CVP) **On**: 20-24 & 27-30 September 2021; 1st October 2021; and 8 November 2021 (in chambers)

Before: Employment Judge R Lewis
Members: Mr C Grant
Mr A Scott

Appearances
For the Claimant: In person
For the Respondent: Mr O Holloway, Counsel

RESERVED JUDGMENT

1. The claimant was not dismissed by the respondent, and his claims of unfair dismissal, including any claim of automatically unfair dismissal and / or constructive dismissal, are dismissed.

2. The respondent did not discriminate against the claimant on grounds of disability (blindness) in any respect, and all claims to that effect are dismissed.

3. The claimant was not a person with disability within the meaning of s.6 Equality Act by virtue of depression, and any claim based on depression is dismissed.

4. The respondent did not discriminate against the claimant on grounds of race, and his claim to that effect is dismissed.

5. The claimant made a protected disclosure or disclosures in June and August 2018.

6. The respondent did not subject the claimant to any detriment on grounds of a protected disclosure, and any claims to that effect are dismissed.

7. The respondent has not paid the claimant holiday pay. His claim for holiday pay succeeds. A remedy hearing has been listed in accordance with a separate Order.

REASONS

Glossary

1. The following acronyms or abbreviations are used in these reasons:

    - ATW: Access to Work
    - BUL: The respondent
    - CMB: College Management Board
    - EQA: Equality Act 2010
    - ERA: Employment Rights Act 1996
    - ESRC: Economic and Science Research Council
    - ETBB: Equal Treatment Bench Book
    - OH: Occupational Health
    - UCU University and College Union

2. In these reasons all references to documents refer to the page numbering of the hearing bundle. All references to witness statements are to the statements which were used at this hearing.

Procedural history

3. This was the hearing of a claim presented on 24 June 2019. Day A was 15 April and Day B was 28 May.

4. Before this hearing there had been three preliminary hearings. They were before Employment Judge Skehan on 30 March 2020 (42), Employment Judge Hawksworth on 25 January 2021 (58), and Employment Judge McNeill QC (30 July 2021, Order not in the bundle).

5. The claimant was initially represented by solicitors who presented the ET1. From shortly before the first preliminary hearing, and at all times since then, the claimant has acted in person.

6. The three previous case management orders indicate that the parties had had difficulty in preparing for this case. In the 18 months between presentation of the claim and the hearing before Judge Hawksworth, they had been unable to agree a list of issues. Judge Hawksworth undertook this task, and it is apparent from her order that the task was challenging and the outcome in some ways unsatisfactory. Nevertheless, the following July, the clamant applied to amend, and in refusing permission, Judge McNeill QC stressed the importance of adhering to the list of issues, and to the structure and discipline which it required. We respectfully agree.

Procedure at this hearing

7. We now summarise events at this hearing. Judge Skehan had listed this case for all issues to be determined in the 10 days of this hearing. Shortly before the hearing, the parties were notified by the tribunal office that the final listed day was no longer available and therefore they should proceed on the basis of a 9-day hearing. In the event, and on the afternoon of the last listed day, the tribunal and Mr Holloway agreed to be available the following morning, so that this stage of the hearing could be completed.

8. The tribunal met the parties at the start of the first day and agreed to read material from the reading lists provided on both sides. It was agreed that this hearing would be for liability only, the claimant to be heard first. It was agreed that the claimant had permission to record the hearing, provided that he used the recordings for the purposes of these proceedings only and made copies available to the respondent.

9. The Judge told the claimant that he could not recall having previously heard a case involving a blind claimant, and he invited the claimant to explain to the tribunal, when necessary, any adjustment which might be necessary or helpful. The Judge has added a note as the final paragraph of these Reasons. On occasions when the claimant appeared to the tribunal to be unwell, or at least very tired, the Judge asked the claimant whether he considered himself able to do justice to the case which he wished to present. When he answered that question in the negative, the correct course was not to proceed.

10. Following the hearing in July, and in response to Judge McNeill's suggestion, the claimant had applied to the tribunal by letter on 11 August for funding support to pay for the services of either or both of those who assisted him during the hearing. This request, which was not a judicial matter, had not been dealt with by the tribunal administration before the start of this hearing. Although they were largely off screen, we understood that the claimant was accompanied for all or most of the hearing by his wife and by a long-term support worker, Ms Chapman. We thank both of them for their assistance to the tribunal.

11. There was discussion of witness evidence, as a result of which on the first and second days (1) the claimant withdrew his application for a witness order against Dr Stan Gaines;(2) he stated that he would not call any of the other witnesses whose written statements he had provided, but asked that they be read; and (3) he identified five of the respondent's witnesses for whom he had no questions, so their statements could be read. (4) Despite objection from the respondent, the claimant submitted a second witness statement. We excluded the first five pages, which dealt with matters not before the tribunal, and despite its lateness admitted the rest, which seemed to us not to take the respondent by surprise.

12. We noted, when reading the claimant's evidence, that it went beyond the parameters of the list of issues. We told the parties that those were points which were not before us, no matter how important they were to the witness. It was therefore not necessary to cross examine on them.

13. Mr Holloway said at the start of his cross examination that he had consulted the ETBB, and would follow its guidance, by reading aloud the documents on which he cross examined. While we understood that the claimant could not read the bundle, he appeared familiar with its contents, and, with the courteous assistance of Mr Holloway, appeared able to navigate it and locate any item to which he was referred.

14. The claimant gave evidence and was cross examined for all of the second and third days of the hearing and the morning of the fourth. The tribunal took frequent breaks. The claimant finished his evidence in the early

afternoon of the fourth day, Thursday 23 September. It seemed to us right to adjourn for the claimant to start cross examination the following day.

15. On the morning of Friday 24 September, the claimant asked for an adjournment to the following Monday. He said that he was confident that this would add to the speed and efficiency of his cross examination. He referred to an IT problem, and to lack of preparation. Although Mr Holloway opposed the adjournment, it seemed to us in the interests of justice to allow it, while stressing that responsibility for preparing a case rests entirely on the party.

16. When the claimant cross examined, the judge advised him of the powers of the tribunal under Rule 45, and of the necessity to proceed in a way which used time efficiently. The Judge offered from time to time, if helpful, to remind the claimant of the time, and the claimant accepted the offer.

17. On Monday 27 September, the claimant cross examined Ms Drysdale all day. On the morning of 28 September, he cross examined Ms Bailey. After the mid-morning break, he reported not being well enough to continue. We adjourned to 12pm and then to 4pm and then to the following morning. On Wednesday 29 September the claimant cross examined Dr Dovey all morning and Professor Hellewell all afternoon, and again asked to finish the hearing early.

18. The tribunal sat early on the morning of Thursday 30 September, the ninth day of hearing. Professor Hellewell's evidence finished about mid-morning, and the final witness, Mr Thomas, gave evidence until the lunch break.

19. During an extended lunch break, Mr Holloway sent the tribunal and claimant his written submissions, to which he then spoke concisely. We agreed to sit the following morning in order to hear the claimant's reply, as it had been established that Mr Holloway's diary commitments would make it difficult to find another day promptly for the claimant's reply.

20. The tribunal met at 9.30am on Friday 1 October. We made clear to the parties that we would have to finish by 11am. The claimant asked for an adjournment and stated that he was not ready to reply. He said that he had not known that a closing submission was required of him, although Mr Holloway commented that that was a matter which the tribunal had explained at the start of the hearing.

21. Mr Holloway opposed the adjournment. He submitted that the tribunal had shown considerable flexibility in order to accommodate the claimant. We refused to adjourn, and asked the claimant to give as much of his submission as he felt able to. The claimant spoke fluently for about an hour but then said that there were a number of points which he had not had time to deal with and suggested that he deal with them by written submission. Although we were very reluctant to build in the opportunity for delay and/or reiteration, the tribunal felt that we had no alternative but to agree and we adjourned on the basis that the claimant would send the tribunal any written submissions by 5pm on Monday 4 October; but that he was not obliged to do so. If he did so, and if the respondent wished to reply (which it was not obliged to do) its reply should be sent to the tribunal and the claimant by 5pm on Monday 18 October.

22. In the event, the claimant had not been heard from by the time the tribunal wrote to the parties at the judge's direction on Friday 8 October to say that it would proceed in reliance on the material already before it.

Witnesses

23. The tribunal read the statements of the following witnesses for the claimant, none of whom gave live evidence:

- Ms K Chapman, who wrote that she had been the claimant's Disability Assistant from 1998 until 2019;
- Mrs A Wright, the claimant's wife;
- Dr S Gaines, Chair, UCU Branch at BUL;
- Professor N Chater, who had supervised the claimant's PhD;
- Ms A Brewster, former student;
- Ms C Bell, a colleague in the claimant's current employment;
- Dr J Essex, former colleague until August 2017;
- Dr A Dowker, former undergraduate post graduate teacher;
- Dr M Olyedemi, former student.

24. While these witnesses wrote with affection, respect and warmth of Dr Wright as student, teacher and supervisor, friend and mentor, or colleague, the majority of their evidence was not about the disputes which this tribunal had to decide, and almost all gave evidence which was not from their personal knowledge, but was repetition of what they were told by the claimant.

25. The following witnesses were called as live witnesses by the respondent:

- Ms J Drysdale, Director of HR until December 2019;
- Ms G Bailey, Deputy Director of HR from 1 April 2017 and Ms Drysdale's successor;
- Dr T Dovey, Reader in Psychology, the claimant's line manager since the summer of 2018;
- Professor P Hellewell, Dean and Vice Provost since August 2014 and the claimant's "grandparent" line manager;
- Mr P Thomas, Chief Operating Officer until retirement in 2020.

26. The respondent relied in addition on the written statements of the following witnesses, for whom the claimant said that he had no questions:

- Professor T Wydell, the claimant's line manager until July 2018;
- Professor A Blakemore, Head of Life Sciences;
- Mr C Stock, Services Manager;
- Ms M Ihekoronye, HR Business Partner.

The bundle

27. Everyone worked from a PDF of the bundle. The claimant used assistive IT and was supported by the two helpers. The Judge thanks the respondent's solicitor, who accommodated his request to be provided with a paper bundle.

28. The parties added a modest number of additional pages to the bundle in the course of the hearing. On each occasion when an additional page was produced, the tribunal observed that any objection to late disclosure would be dealt with when the document in question came to be considered. In the event, no such objections were made.

29. The bundle contained a number of pages of documents, redacted by the respondent because, it was said, they related to protected conversations. This point appeared to us to be capable of creating a distraction, and in the event, we made no adjudication on it.

30. The bundle was the product of a public service workplace where the written word is held in high regard. It contained a large number of office emails, many of them lengthy. They were frequently presented in reverse chronology, and many email trails were repeated in the bundle. A single chronological core bundle would have assisted; but in light of our comments above about the inability of parties to agree a list of issues, we understand that this probably could not have been agreed with proportionate time and cost.

31. The claimant commented on what he complained was incomplete disclosure by the respondent, mentioning in closing that for example, he was not allowed access to inboxes. We accept Mr Holloway's response which was that general disclosure issues had been raised at preliminary hearings, but that the claimant had not made any specific request. We add that the claimant's comment about access to inboxes was not well made. A moment's thought tells us that the claimant was a prolific user of email, with many years' service. Access to his inbox would yield up thousands of items, opening up extensive lines of enquiry which could not be relevant or proportionate.

Notes of meetings

32. The bundle contained notes of meetings, often in handwritten original and typed transcript. Our general expectation of notes of a meeting is that they are an accurate summary, but not a transcript of everything that has been said. It is good practice in our experience that meeting notes should be circulated promptly after a meeting to all those who attended, so that the notes can be agreed while recollections are fresh. When commenting on draft meeting notes, attendees should be careful to distinguish between (a) ensuring that the note is an accurate summary of what was said; versus (b) adding in afterthoughts which were not said at the meeting. When we read meeting notes, our expectation is that they are no more than working tools, which should be given their ordinary and natural meaning.

33. The claimant invited the tribunal to find that BUL's meeting notes were systematically and repeatedly distorted by notetakers, so as to exclude and omit any record of issues which he had raised; and with a view to misleading any tribunal in which the matter would be considered. That is a broad allegation, which was unsupported by other evidence and we reject it.

34. We saw no notes of meetings made by the claimant's support worker, Ms Chapman, although the claimant's evidence was that she had been present

at all, or almost all, meetings and had made notes on her workplace computer. He said that Ms Chapman's notes had been lost during the unexpected upgrade of her computer from Windows 7 to Windows 10. (We understood this to refer to an exchange on 20 and 21 November 2018, 865-6). He implied that the upgrade had been managed so as to cause loss of these items. There was no technical evidence to support this assertion. The tribunal is all too familiar with problems which follow from an ill prepared upgrade from Windows 7 to Windows 10. We do not accept that the upgrade of a laptop has automatically deleted the history of work undertaken on the laptop. We note that the respondent's Computing Officer had written that all stored data had been backed up in advance (866). The absence of Ms Chapman's notes did not assist the tribunal in any direction.

The tribunal's approach

General approach

35. The tribunal is familiar with the difficulties faced by litigants in person, dealing with a paper heavy case with significant emotional undertow, covering events spread over many years, and applying complex legal analysis. It is the duty of the tribunal, so far as practicable, to place parties on equal footing. That is difficult in any case where one party is acting in person against a large organisation, well-resourced and professionally represented. While no member of the public is to be criticised for ignorance of the law, or for inexperience of the tribunal process, the tribunal has a legitimate expectation that parties prepare their cases. Where any disability might hinder access to justice, it is the duty of the tribunal, with guidance from the ETBB, to try to help the affected party to gain access to justice.

36. In this case, as in almost every case, evidence and the claimant's submission went beyond the questions to be decided by the tribunal. Where we have made no finding about a matter of which we heard; or where we have made a finding, but not to the depth taken by the parties, that is not oversight or omission. It reflects the extent to which the point truly assisted the tribunal. While that observation applies frequently, it is of particular importance in this case, where the claimant was emotionally committed to the events, and did not recognise the disciplines which follow from being witness, party and advocate, or the distinction between evidence, cross examination and comment or submission.

37. Where we assess conflicts of oral evidence, we must in this, as in every other case, take particular care. The claimant has conducted this case almost throughout in person. The respondent has been well resourced and professionally represented. At the start of this case, the claimant was unemployed and faced what may have been a prolonged period of economic hardship. That could not be said of BUL, or of any of the respondent's witnesses. There was, as might be expected, a contrast between the claimant's witness evidence and that of the respondent, which was professionally analysed and presented.

38. We noted that the respondent's witnesses were conspicuously well prepared to give evidence (it was clear that they had taken time to refresh their recollection before giving evidence), while the claimant had the support

only of Mrs Wright and Ms Chapman. We must bear all these factors in mind when we have to consider the conflicts of evidence.

39. We have considered what weight we give to the claimant's professional background. A large part of his work consists of the analysis of evidence and presentation of conclusions. With the utmost respect to the claimant's professional achievements, we must take care not to allow the claimant's working background to mislead us. Legal proceedings are unfamiliar territory to the claimant. It would be an error to impose on him a higher standard or expectation than on any other litigant in person.

The claimant's presentation

40. Our overarching conclusion is that we cannot accept the claimant's uncorroborated evidence as reliable. That is not a decision based on what the claimant called "character". It is also not based on what lawyers call "credibility" which we see as an artificial concept to be approached with caution. We base it on many concerns about the claimant's presentation and language in this case, which operate cumulatively. We do not set them out to criticise the claimant gratuitously, but to explain our finding on reliability. They are not set out in order of priority, or exhaustively. Some of these points are amplified in our fact find.

41. The claimant's evidence showed a repeated misunderstanding of workplace norms. For example, he said that he did not wish to see Occupational Health because he had confidence in the doctors who were treating him; but it is not the function of Occupational Health to treat, its function is to advise an employer about the impact of a medical condition in the workplace. The claimant seemed not to understand the boundaries between HR and operational management, or the necessity for management to maintain working relationships with Trade Union representatives. The claimant did not seem to appreciate the boundaries around the role of an individual manager. When Dr Dovey and Professor Hellewell said that they would not personally deal with IT issues, that was not a statement that IT issues would not be dealt with; it was a recognition of the boundaries around their roles, and of the expertise of other people. The claimant by contrast appeared to have an expectation that every senior person would deal personally with every issue which he spoke about.

42. The claimant's misunderstanding of boundaries seemed to us widespread. It may have been enhanced by problems in the parties' 2008 agreement, which we deal with below, namely that it blurred boundaries significantly.

43. We noted the frequency with which the claimant criticised the respondent on what we call a "damned if you do, damned if you don't" basis. The claimant for example criticised the respondent for asking him to provide his own IT spec, rather than just providing what it thought he needed. We are very confident that if, without being consulted, he had been given the IT which somebody else thought he needed, the claimant would have complained that he should have been asked to provide his own spec. He certainly criticised the respondent for making generalised assumptions about the needs of visually impaired people.

44. The claimant showed a curious lack of insight. In a striking answer, Ms Drysdale stated that she regarded the claimant as articulate, assertive, robust, intelligent, sophisticated. He was a person who recognised his rights and expressed them. All of that seemed consistent with what we read of the claimant's emails written at the time, and what we saw (allowing for the strangeness and artificiality of the legal process) in this tribunal. The claimant did not seem to have insight into the fact that if that was how he presented, he did not present as a person who was depressed, disempowered, or conflict adverse. He showed no insight into the obligations placed on Ms Drysdale by his allegations of discrimination (discussed below) or into the inconsistency between making serious allegations of discriminatory behaviour, and then saying that he did not want them taken further.

45. A specific example of the claimant's lack of insight was his poor sense of workplace strategy. He did not understand the effect of his frequent failure to follow through issues which he had raised. We set out below our findings on two striking instances: the events around Ms Wolfe's investigation and report; and Mr Thomas' management of the grievance process. There were however many points in evidence in which respondent's witnesses said that they had not heard back from the claimant about an unresolved issue; and we have set out above how the closing submissions in this case were left.

46. The tribunal has experience of cases in which there is strength of feeling on both sides, and among many participants. It is the task of the tribunal to acknowledge strength of feeling, but not to allow it to divert the tribunal from its task.

47. In a closing submission which was at times emotive, the claimant spoke of what he felt to be "strong negative feeling"; he regarded himself as portrayed as problematic, difficult or aggressive; the respondent had shown contempt towards himself and towards the tribunal; and that there was at the respondent "intense dislike" of him. That is language which pitches the case high, and we find that those assertions were not well founded. The claimant went on, in submission, to argue that personal animosity underlay much of the treatment of which he complained. When, in submission, he said that he wished to defend his "character" the Judge intervened to assure him that our task is to make decisions about cases, not about people.

48. We accept that during the tribunal process the claimant saw documents which hurt him. When interviewed by Ms Wolfe, a number of the claimant's colleagues were critical of the claimant (eg in particular 1193-1199). A common theme of the evidence of Ms Drysdale, Dr Dovey and Professor Hellewell was that the claimant was inconsistent and contradictory, which each witness found difficult to manage. We do not take any of those observations as attacks on the claimant's character, but as a potentially relevant portion of the evidence in which the respondent explained to the tribunal its approach to the management issues raised by the claimant.

49. We have not always found the claimant's case easy to follow, and our experience has at times accorded with that described by witnesses. The claimant has been ready to make generalised complaints, but more difficult to pin down to a specific. We agree with Mr Holloway's closing submission,

when he identified that the same complaint might escalate with the passage of time. We agree with Mr Holloway that it was puzzling that the claimant, despite the opportunity to raise complaints or issues, did not raise important issues until late in events. We understood that it was not until cross examination on the last day of the hearing that the claimant asserted that he had not had internet at home until 2020. That was surprising in the life of an academic researcher for whom working at home had been an adjustment for many years.

Law and procedure

50. We do not expect any member of the public to have a lawyer's understanding of the law, and we do not criticise any litigant in person for ignorance or inexperience of the law. We do expect of a litigant in person a reasonable degree of preparation and understanding of their own case; and some understanding of the limitations of their knowledge. We understand the practical point, that everything in the claimant's case is to do with disability; but that is not the basis of a claim of disability discrimination. Our general point is that the claimant's understanding of the legal framework of his case, and of the practice and procedure of this tribunal, fell short of what would have enabled him to do justice to himself, and was compounded by his unawareness of the gaps in his legal knowledge, and his confidence that his understanding was correct.

51. The bundle contained a schedule of loss (81), broken down into 32 headings, many of which were unsustainable in law. Items 21 to 27 for example were seven headings of non-pecuniary loss, stated at £50,000.00 each.

52. Another example was that early in discussion about case management, the claimant's response to a question about Judge Hawksworth's order was to say that the point had not been mentioned at the hearing before her. The hearing before Judge Hawksworth was on 25 January 2021. Her order was sent on 25 March. It was troubling to be told, several months later, that the claimant did not appreciate its significance, and may not even have had it read.

53. Judge Hawksworth's order identified one claim of race discrimination at paragraph 16 (69). It was repeatedly necessary to divert the claimant from raising a host of race-related issues, which, no matter how important in principle, and to the claimant personally, formed no part of this case.

54. The claimant had not prepared significant portions of his case, and seemed unaware of, and untroubled by, the gaps in his evidence. This was a failure of analysis, and is not a point about his inability physically to read the bundles. The most striking instance was the absence of evidence about depression, which we deal with separately below.

55. The claimant brought to the hearing an unrealistic understanding of the process of giving evidence and cross examination. We have commented that the respondent's witnesses were well prepared. We do not have an expectation that every witness brings to a hearing a detailed recollection of events stretching back years. That is particularly so where every day events did not seem important at the time to the witness. In questioning

about past detail, the claimant repeatedly failed to distinguish between the witness's knowledge or understanding of the event at the time in question (which was our concern) rather than now, given hindsight, passage of time, disclosure, and re-reading. The claimant could not for example have a realistic expectation that Mr Thomas would, in late 2021, remember the details of the claimant bumping into storage boxes in 2013, or of management of the pay round in 2015 (neither of these were issues before the tribunal).

56. Likewise, the claimant could have had no realistic expectation that events in his personal life, including events in his childhood, were known to the respondent's witnesses at the time of these events, or that they could be relevant at this hearing.

57. The claimant returned during this hearing to a number of points which plainly gripped him. That is not unusual among litigants in person. Many of them were not questions which were before the tribunal. The tribunal was not concerned with the claimant's falling out with either his former solicitor, or with Dr Gaines. The claimant's disagreement about what had been said at the meeting with Ms Bailey in November 2017 was background; and if the claimant wanted us to infer that it was evidence of a wish to get rid of him, he had to reconcile it with the respondent's refusal of his express resignation two months later. The claimant was understandably upset about what had been said about him to Ms Wolfe, but, as set out below, this was not only not part of this case, the respondent had, we accept, commissioned Ms Wolfe to investigate for good reason, and had afforded the claimant the opportunity (which he rejected) to speak to Ms Wolfe in the same procedure.

58. The claimant asked detailed questions about specific emails and specific wording. This was a workplace where there was an ocean of email material. Our experience is that email is not always a reflective medium, and in particular that users often value speed at the expense of nuance. Detailed analysis of what is said in a particular email did not often assist us in the context of this case.

The legal framework

59. A claim of disability discrimination may be brought by a person who meets the test set out at EqA s.6, to be read with Schedule 1 and the statutory Guidance. It provides that the claimant has a disability if "he has a physical or mental impairment and the impairment has a substantial and long term adverse effect on ability to carry out normal day to day activities." It was not disputed that the claimant's blindness was a disability, and in this case the issue before the Tribunal was whether he also met the definition in s.6 as a result of depression.

60. The claim primarily arose under s.20, which sets out the duty to make reasonable adjustments, and provides as follows:

> "(3)… Where a provision, criterion or practice puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with the persons who are not disabled [the first requirement is] takes such steps as it is reasonable to have to take to avoid the disadvantage.

> (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid."

61. Schedule 8 paragraph 20 provides that a party is

> "not subject to a duty to make reasonable adjustments if he does not know and could not reasonably be expected to know that an interested disabled person has a disability and is likely to be placed at the disadvantage.."

62. We were helped in this case by the guidance in Ishola v TfL 2020 EWCA Civ 112 at paragraphs 37 and 38. We understand that if a complaint is about an individual management decision about an individual employee, it is not about a PCP. A PCP requires some element of what each word means:

> "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.
>
> In context, and having regard to the function and purpose of the PCP in the Equality Act 2010, all three words carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. It seems to me that "practice" here connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or "practice" to have been applied to anyone else in fact. Something may be a practice or done "in practice" if it carries with it an indication that it will or would be done again in future if a hypothetical similar case arises. Like Kerr J, I consider that although a one-off decision or act can be a practice, it is not necessarily one."

63. The discrimination claims were also brought as claims of direct discrimination under s.13, which provides that unlawful discrimination occurs if "because of the protected characteristic A treats B less favourably than A treats or would treat others." In considering claims of direct discrimination it is important to have regard to the identity and/or characteristics of the comparator, in light of s.23 which provides that "on the comparison of cases for the purposes of s.13.. there must be no material differences between the circumstances relating to each case."

64. The claims also proceeded under s.15, which provides that discrimination occurs where "A treats B unfavourably because of something arising in consequence of B's disability and they cannot show that the treatment is a proportionate means of achieving a legitimate aim."

65. In such cases, it is necessary to understand that proof of unfavourable treatment requires two steps of causation to be shown: that disability

caused "something" and that the "something" caused unfavourable treatment; and at the justification stage to answer separately the four questions: what was the aim, was it a legitimate aim, were the means a means of achieving that aim, and were they proportionate means. The burden of proving justification rests on the respondent.

66. The claimant also brought claims under s.19, which provides that indirect discrimination occurs where the respondent applies a PCP (on which we repeat the above) which is discriminatory in relation to a relevant protected characteristic, of which there is a fuller definition at s.19(2).

67. The claims were also brought as claims of harassment and victimisation under ss.26 and 27. S.26 arises if the respondent 'engages in unwanted conduct related to a relevant protected characteristic' which has the purpose or effect of violating dignity or creating 'an intimidating, hostile, degrading, humiliating or offensive environment.' We do not, in this case, go further into how an assessment is to be made if that has occurred. S.27 arises where a claimant is treated unfavourably because of having done a protected act; the latter two words have a very wide definition indeed.

68. The claimant brought a claim of unfair dismissal. The primary complaint was express dismissal. That arises under ERA s.95(1)(a), where 'the contract [of employment] is terminated by the employer, with or without notice.' The claim was also expressed as one of constructive dismissal. That is a claim which arises where employment terminates in circumstances set out in s.95(1)(c) of the Employment Rights Act 1996, which provides that dismissal occurs 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."

69. Where the conduct in question is discriminatory, or constitutes an act or acts of discrimination, the claim may also proceed under EqA s.39(1)(c) as a claim of discrimination by dismissal.

70. It is important to approach a constructive dismissal claim objectively. The question is whether it has been proved to the Tribunal on evidence that the employer either contravened an express term of the contract of employment, or that it conducted itself without proper cause in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence; and that the claimant accepted that the conduct had ended the relationship, and resigned promptly as a result.

71. This was also a claim brought under the protected disclosure provisions, also known as whistle blowing, of the ERA. The claimant must demonstrate that he has made a protected disclosure within the meaning of s.43B. Where he claims automatically unfair constructive dismissal as a consequence, he must prove that the actions of the respondent which led to resignation were done because he had made a protected disclosure. A claim may then be brought on the basis then that the claimant has suffered detriment, in which case it is for the respondent to prove "the ground on which any act or deliberate failure to act was done." (s.48(2)).

Findings of fact

72. In many cases, the clearest approach to fact find is to set out a straightforward chronology. We do not think that will be the clearest approach in this case, and we therefore take a thematic approach. We appreciate that this leads us to both repetition and departure from orderly chronology. We set out our findings as we go along. In doing so, we follow the helpful approach of both Mr Holloway and the claimant in their closing submissions. Both in opening and in closing Mr Holloway invited us to take what he called a "granular" approach. We have not done so. It seems to us that there would be a real risk of the tribunal being sucked into the attritional style of workplace correspondence, and drowning in unhelpful detail. We have opened each section of the fact find with a summary.

Reasonable adjustment

73. In this section we set out and explain our disagreement with a point which the claimant made a number of times, which was that BUL was duty-bound to be 'proactive' in providing reasonable adjustments.

74. We preface this broad issue with discussion of what it actually involved. There seemed to us a fundamental flaw in the claimant's approach. Dr Dovey, in evidence, had described the claimant as inconsistent and contradictory. In this judgment we have used the phrase "damned if you do." We mean that where an employer must exercise discretion or make a choice, he may in the end have to chose between decision A and decision B. In cross examination, a claimant may challenge the choice of A, by questioning why B was rejected. When that happens, the tribunal is often aware that if the employer had chosen B, the claimant would have challenged the failure to chose A. From the tribunal's perspective, the point is frequently that provided that each of A and B is a legitimate choice, which a reasonable employer in the circumstances might make, either may properly be adopted.

75. We meet many claimants who want 'to have their cake and eat it.' By that phrase we mean the claimant who, following the above example, has asked for A, but when A is given, then wants to have B as well, even if B is inconsistent with A.

76. The claimant was in his forties when he joined the respondent. He had a record of high academic achievement at Oxford and at least one other university before joining BUL. To adopt Ms Drysdale's words, he was highly intelligent and educated, and a fluent communicator. He was well able to analyse his needs for adjustment, accustomed to express himself on paper, and not reticent to complain if necessary. He had lived with blindness since childhood and completed education from primary school to post-doctoral level when blind. The respondent is a substantial public service employer, with a range of policies on diversity. It had understanding and advice on reasonable adjustment and appears to have made reasonable adjustments for at least two other visually impaired employees of whom we heard: indeed, part of the claimant's case was that BUL had made reasonable adjustments for two other people.

77. The claimant wished to have as much responsibility as possible for the management of his disability and its adjustments. In part this stood to

reason: he was the person best placed to analyse and express his disability needs. We also infer this from the 2008 documentation, the 2009 funding agreement, and the fact that the respondent played no part in the claimant's ATW arrangements until the second half of 2018 at the earliest. We do not criticise the claimant for any of this: he had every right to be managed respectfully as an individual.

78. All that is difficult to square with the claimant's repeated complaint to the tribunal that the respondent should have been "proactive" in making reasonable adjustments, and in managing his disability and other health issues. He repeatedly asked witnesses what they had thought or observed about his demeanour, health and wellbeing. Repeatedly he criticised witnesses who answered that they had failed to notice anything untoward. We do not expect a medical lay person to be able to answer that line of questioning beyond a broad, 'He seemed well, he seemed unwell' reply. If a medically unqualified person had expressed an opinion about the claimant's health, based on nothing more than casual observation, it seems to us likely that the claimant would have criticised him / her for doing so.

79. As Mr Holloway said in reply to a question from the judge, BUL's ability to make adjustments, and the obligations on it to do so, depended on its having knowledge of any substantial disadvantage; and that knowledge could only be given to it by the claimant.

80. We accept that there are circumstances in which the tribunal must decide not only what the respondent knew as a matter of fact, but what, after reasonable enquiry on what it perceived or was told, it ought to have known. This is not such a case. The claimant had lived with blindness for about 35 years when he joined the respondent; the respondent appointed him and at all material times managed him on the understanding that it was required to make reasonable adjustments.

81. The respondent was entitled to respect the claimant's wish for responsibility in managing his own disability and health, and to rely on the claimant's ability to vocalise any discontent. It was entitled therefore to proceed on the basis that if no discontent, complaint or grievance were expressed by the claimant, that was because no such issue arose. We do not find that if a colleague uses the casual language of asking, 'How are you' or 'Are you alright' that that has any bearing on the duty to make reasonable adjustment.

82. If, however, it is the claimant's overarching case that there was a general failure of the respondent to make regular enquiries about the state of adjustment, in the absence of any suggestion from the claimant of any problem, we do not accept that proposition. We add the perhaps obvious comment that everyone's position would have been much clearer if the parties' agreement in 2008/2009 for regular reviews of their arrangements had been carried into effect before 2018.

Setting the scene

Academic

83. The claimant was born in 1963. He is black. He told us that he became completely blind by the age of 8. He spoke briefly during this hearing of a troubled, disadvantaged childhood. He went to Oxford University, apparently as a mature student. Dr Dowker has written that he was an outstanding student, and Professor Chater described him as "quite obviously brilliant". He obtained a First Class Honours Degree, following which, in Professor Chater's words, he undertook "an outstanding programme of PhD research .. the fastest PhD I have ever encountered as a supervisor or examiner." He held an academic post or posts before taking up employment at BUL on 1 January 2006 as Lecturer in Psychology. He was promoted to Senior Lecturer in 2009 (99) and remained BUL's employee until 10 May 2019. We referenced above statements from former students. He was described to the tribunal on BUL's behalf as a good academic, whom BUL wished to retain.

Events of 2006-2009

84. In this section, we summarise how we understand matters were left between the two sides following disputes more than ten years ago; and why we think that the understandings of 2008 and 2009 carried the seed of future disputes. We understand there to have been conflict between the claimant, BUL and colleagues during his first two years of employment. We understand that the claimant presented an employment tribunal claim at around that time. We understand also that there was a proposal or an attempt to mediate the claimant's differences with colleagues. The bundle contained notes of meetings on 6 June 2008 and 11 June 2008 (89-94). Both meeting notes of June 2008 in the bundle were unsigned by any of those present, including the claimant.

85. The first meeting recorded (89):

> "It was proposed and agreed that a meeting should take place in which an appropriate workload and associated support costs are agreed and any planned exceptional items are considered, with an appropriate adjustment intervention. If there was agreement reached regarding activities which would require additional support and reasonable adjustments, then all parties would be bound by the agreed package."

86. After discussion of how this would work, we noted (90):

> "The expectation is that formulating an agreed workload and support package up-front will prevent any recurrence of the issues that have previously been encountered and avoid any subsequent problems/disagreements."

87. The notes then record discussion around a 50% workload. The note of the second meeting, nine days later, prefaces a detailed discussion with the following:

> "It was agreed that the purpose of the meeting would be to agree Dr Wright's workload for the next academic year (2008/09) and that, once confirmed, it would then discuss and agree up-front, informed by Dr Wright, what would constitute appropriate and reasonable support.
>
> It was considered appropriate to review Dr Wright's current workload/activities in order to work towards a manageable and appropriate load for the coming year."

88. On 8 December 2009, the claimant and Professor Darby-Dowman, then Pro Vice Chancellor, signed a document which was called 'Agreement … in respect of the University's provision of disability support'. It was in clear plain English. It set out the terms of an agreement for BUL to provide the claimant, as budget holder, with an allowance of £15,000 per year for support needs. The agreement covered the year 2009-10, and was for two years, after which it was to be reviewed. It provided a mechanism for accounting for outgoings from the allowance (111-112).

89. At about the same time, it was also agreed that the claimant had a separate, personal line of reporting and management, on any issue relating to disability. This was originally to Professor Darby-Dowman, and subsequently to Professor Leahy. We understood that line to have been established because of problems in the then line working relationships. We note that in May 2015 Professor Hellewell expressed a wish to adhere to the original agreements, while writing that, "We do need to update the [2008/2009] agreement, however, because I believe it is now time expired" (123). In the same email he wrote, "With respect to your 50% teaching workload, I have reiterated that the original agreement needs to be honoured and you will not be asked to do more".

90. It did not seem to us useful to hear evidence (even if it could fairly be given) about the apparent conflicts in 2006 / 2009. While we have tried to avoid the wisdom of hindsight, we read the 2008 and 2009 documents as an agreement for a truce, but not the basis of lasting peace. In particular, we note:

    - While there was agreement in principle that the understandings of June 2008 should be written in a clear agreement, it does not seem that this was ever achieved;

    - That makes a striking contrast with the December 2009 agreement, which clearly defines rights and duties;

    - There was no evidence that the agreements for formal, regular reviews of the 2008 understanding and the 2009 agreement were carried out before 2018;

    - There was therefore no review of these arrangements which might follow from any of for example change in the claimant's circumstances, change in personnel or changes in broader circumstances within BUL;

    - There was no working definition of what constituted a 50% workload, or of the benchmark against which 50% was to be calculated;

    - Creating a separate line of management for a discrete issue risked damaging line management relationships. Given the nature of the claimant's disability, this arrangement could apply to any aspect of his work at any time. It gave the claimant the right to bypass operational management. It therefore undermined daily line management. It conferred on Professor Darby-Dowman and Professor Leahy the appearance of authority, but no responsibility for

decision making or implementation. It contained no incentive for the claimant and line managers to repair their relationships. If (as appears the case) it was thought of as a short-term fix while working relationships were restored, it was entirely ripe for the regular reviews which did not happen until early 2018.

Access to Work

91. The claimant received funds from ATW. He had done so since before he joined BUL. This was the DWP scheme to meet the costs of the claimant's support needs, including support workers and specialist IT. Until late in these events, the claimant was solely responsible for applying for ATW funding, and solely responsible for accounting to ATW. We accept the respondent's evidence that (1) it operated ATW arrangements for other employees; (2) that in relation to the other employees, it worked with ATW, and counter signed ATW's paperwork; (3) that the claimant was unwilling for it to do so in relation to his ATW arrangements; and (4) that it was first asked to counter sign the claimant's ATW claims after his employment had ended.

92. The bundle contained a letter of 24 March 2009 in which ATW informed BUL that it had granted the claimant funding for a period of 34 months (95). The letter included, in bold type:

> "You will be required to sign the certification on their claim forms to confirm the days that they [support workers] have worked."

93. We accept the respondent's evidence that in fact that did not happen, and that throughout his employment, the claimant and ATW directly managed the claimant's applications, grants, accounting and all other paperwork. Ms Drysdale found in January 2019 (1014) that the claimant's HR file did not contain anything about, to or from ATW. We accept that that reflected the claimant's preferred method of dealing with ATW, which was consistent with his autonomous management of his disability. While independent counter-signing of financial claims is best practice in any workplace, we draw no inference adverse to the claimant about this system.

Travel and other health issues

94. The claimant lived in the Midlands. It was understood throughout these events that a major task of a support worker was to drive him between his home and the BUL campus. Depending on traffic conditions, this could involve several hours travelling per day. We do not underestimate the physical demand which this placed on both the claimant and the support worker. We noted that the claimant was involved in a road accident on 27 December 2015, and that he wrote (eg to Professor Blakemore, 263) that as a result he suffered from travel anxiety relating to speed or the length of journey.

95. During the period in question, the claimant had a number of physical health issues in addition to blindness. In the course of evidence, he referred to cardiac, orthopaedic and other health issues. The claimant had an expectation that the respondent knew about his broader health issues. We do not agree that that expectation was well founded or necessarily relevant.

Unless the claimant presented at work in a health emergency, the responsibility to inform the respondent about any personal health issue which might affect his welfare or performance at work rested initially with the claimant. Furthermore, he was not entitled to assume that mere observation, or casual use of language, placed the respondent under a duty to inquire about the claimant's health. We have quoted above a number of the adjectives used by Ms Drysdale to describe the claimant's presentation: we add to them only that his fluency plainly extended to an ability to identify his own rights, express them, and stand up for them. In general, that placed upon the claimant the primary responsibility to inform his employer of any health issue which might affect any aspect of his performance at work.

Resignation in January 2018

96. This section deals with events between about November 2017 and January 2018, when the claimant resigned from his post at BUL, and a number of senior BUL staff, including some of the witnesses in this case, rejected his resignation, and aimed to implement improvements which would persuade him to stay. The claimant had a meeting with Professor Blakemore on 14 November 2017, and that evening wrote her a positive, thoughtful letter as a result (263-265). The letter is notable for a number of respects. First, we note language in which it expresses the claimant's appreciation of a warm and supportive working relationship ("I met with you today to thank you for being the most significant factor in making the past 12 months of my employment at Brunel the most enjoyable I can remember in academia.") It is notably lacking in the negative emotion which we found in much subsequent documentation; it is perhaps more sad than anything else.

97. The main thrust of the letter is that for circumstances largely beyond the claimant's control, "I am 95% sure I am forced to leave academia very soon." The claimant set out a number of health related reasons, but the heart of the letter was that proposals then tabled by the government included imposition of a financial cap on the ATW payments made in respect of any one person, which the claimant regarded as simply unsustainable in his circumstances. He said that he could not expect BUL to make up the shortfall and that the only viable alternative which he saw was "job structure that… does not require me to come into Brunel … This means a research-based job." Professor Blakemore replied immediately to say that she had happened to discuss the claimant with Ms Drysdale, who would be in touch for a meeting.

98. Ms Drysdale was not immediately available, and she arranged for the claimant to meet her deputy, Ms Bailey (subsequently her successor). That meeting took place on 17 November.

99. Ms Bailey and the claimant met that morning, following which Ms Bailey wrote to the claimant. She wrote that she had consulted Professor Leahy before replying and wrote as follows (276):

> "Like me [Professor Leahy] was troubled to hear that you feel you have no alternative to resign from Brunel and would be very sorry to see you leave. Ideally we would like to resolve the issues you raised with me about previously agreed reasonable adjustments slipping but we appreciate you feel that this alone wouldn't enable you to continue in academia due to the situation with ATW

> funding. With this in mind, and as reluctant as we would be to see you leave, [Professor Leahy] has confirmed that I can make an increased and final offer as follows:"

100. The letter then sets out terms of severance, which the claimant did not agree.

101. We find that the claimant's letter to Professor Blakemore was unequivocal. Professor Blakemore could not be criticised for taking the opportunity of a meeting with the HR Director to discuss the position, and BUL could not be faulted for arranging a prompt meeting at senior HR level with the claimant.

102. The claimant subsequently interpreted Ms Bailey's language as an attempt by BUL, and the HR professionals, to remove him from employment. Ms Chapman's statement wrote,

> 'Dr Wright was asking for help, but they chose to read it as Dr Wright leave instead. This also happened at Christmas, when he told the university that his funding was being cut .. Ms Bailey came to the office and had a meeting with him. He said how can the university help, she said she cannot think and offered him money to leave.'

103. That evidence seems to us a travesty. We accept that Ms Bailey met the claimant on the understanding that his decision to leave was almost complete, ('95%' in the claimant's own word) and that her responsibility, if resignation could not be averted, was to offer the claimant terms of severance which would be amicable and dignified, and the best available financially. She did so. She prefaced the offer with a paragraph which made the context clear. We find that BUL's conduct at that stage was entirely reasonable, and not consistent with the claimant's allegation that there was a wish to force him out. The claimant's interpretation of Ms Bailey's letter was in context unreasonable.

104. Following further meetings, including further discussions about the implications of the ATW cap, the claimant wrote on 8 January 2018 to Professor Leahy to tender his resignation.

105. In the first paragraph of the letter the claimant expressed his personal gratitude to Professor Leahy for support, "Particularly during December after the initial response to my situation that I received from HR for which I still do not yet have the words to describe how I feel" (290). We repeat that the claimant's response to BUL's severance proposal was unreasonable.

106. The second paragraph of the letter stated:

> "However, it is with much regret that I have to inform you that I will be leaving Brunel when my current ATW support package ends after 31 March 2018. This is not through choice but is because I have been unable to have any discussion within my College since our meeting, to work out what reasonable adjustments will be put in place for the start of this term in relation to the disability support I will need in order to fulfil my loads and duties.."

107. The claimant then set out at length a number of points of history and detail. His letter included the following phrases:

> "If I did not resign now..",
>
> "With my last day at work being 31 March",
>
> "My annual leave will begin on 23 February and my last day supervising will be my last day at work which will now be 22 February 2018."

108. The claimant's email was forwarded to Ms Drysdale, whose advice on 16 January was (306, emphasis added).

> "We should definitely not take BW's email as a resignation… I thought we had a good plan that would cost more but enable us to get into a safe place with him and keep him in the department."

109. A meeting took place on 18 January attended by the claimant, Ms Chapman, Professor Hellewell and Ms Drysdale at which there was discussion on how matters might proceed. Ms Drysdale later wrote (317),

> "We all agreed that we would work to retain [the claimant] at Brunel…We agree that to leave Brunel would be the last resort…"

110. The focus of this hearing was therefore logically on events after January 2018. There was something of a cut off then between previous events and those which led to the claimant's resignation in January 2019. As a matter of evidence, we attach considerable weight to the sequence of events triggered by the claimant's resignation of 8 January 2018, and how it was managed. It is wholly incompatible with the claimant's argument that there was a desire, either corporate or on the part of senior individuals, to remove him from post. Faced with that event, Ms Drysdale and Professor Hellewell worked hard to retain the claimant. One element was an increase in BUL's annual support from £15,000 (which had been the amount since 2008) to £20,000. (In the event, the position was saved by a change in Government policy about ATW). We saw nothing in the circulated emails at the time, from among others Dr Tovey, Professor Wydell, and Professor Blakemore which evidenced any disagreement. We reject the argument that these events should be taken as an indication of a desire among BUL senior staff to get rid of the claimant as early as November 2017. We find that they demonstrate the exact opposite.

The claimant's IT

111. In this section we set out our reasons for preferring the respondent's case, which was that it provided him with the IT and IT support which he needed; that it was not until 10 and 11 January 2019 that it knew that his IT was non functional; and that it then sourced a new laptop for him. That group of findings leads a major pillar of the claimant's case to fall away.

112. We take an overview of where the claimant stood in the first fortnight of 2018. We must bear in mind that we consider the events from January 2018 onwards to test if they contain an allegation of discrimination which is made out; and to test if any action of the respondent was conduct which, without proper cause, and viewed objectively, was calculated or likely to damage or destroy the relationship of trust and confidence between the claimant and BUL.

113. By January 2018 the claimant had been in post for over 11 years. He was well regarded. He had just received the most positive indication of his own value to the respondent, when a number of senior staff had refused his resignation, and collaborated to retain him in service. He had had a period of sabbatical leave about four years previously, which was regarded as having had successful outcomes.

114. He had, for at least nine years, worked to a system which was bespoke: he had a personal line of communication with a Pro Vice Chancellor. He had substantial autonomy in managing his disability. He was budget holder for BUL funds to be used to support his work. He had had many years of ATW support. His funding arrangements operated for years with little practical involvement from the respondent.

115. The claimant's case was that during 2018 the same senior staff who had just refused his resignation set about a course of action which had the effect and intention of forcing him out of his employment. Although the claimant did not use the word conspiracy, that was the message which he conveyed. The logic of that case is that the respondent declined the open goal of the claimant's resignation letter, and then set about a prolonged underhand course of conduct to achieve the same outcome. The claimant's explanation for this turnaround was that it was only later in 2018 that senior staff realised the cost and burden of continuing to employ him. We reject that theory out of hand. There was no evidence of it; and the cost of the claimant's employment had been known since he joined BUL. The agreements of 2008 and 2009 had been in place since then. BUL's annual payments were increased in spring 2018 as part of the measures to retain the claimant. We attach weight to the language in which Ms Drysdale advised rejecting the claimant's resignation, emphases added (306):

> "I know this is difficult but I thought we had a good plan that would cost more but enable us to get to a safe place with him and keep him in the department."

116. The claimant's case required us to believe that a number of individuals, including Ms Drysdale, Dr Dovey and Professor Hellewell knowingly embarked on a prolonged course of discriminatory conduct which would inflict distress on the claimant. That is an allegation of serious unprofessional behaviour. There was no evidence of it, and we reject it. It would have been behaviour which carried no guarantee that it would achieve the objective of the claimant's departure, as opposed to other possible outcomes, such as for example sickness absence, grievance procedures, or tribunal claims, or any combination of them.

117. Throughout 2018, the claimant met Ms Drysdale, on his account, on average every two weeks. That was a significant commitment of time on the part of the senior HR professional in an organisation which employed thousands of staff. Her sheer dedication of time and availability run counter to the claimant's theory.

118. It was common ground that the notes and records of the meetings do not assist the claimant's case. The claimant's explanation was that notes of meetings, or emails recording what was said, had been deliberately distorted by the respondent. Ms Chapman's statement made the same

point, expressed emotively, but without instancing any specific omission or meeting. We have said above that a meeting note is a summary, not a transcript; and there was no evidence to support the theory that Ms Drysdale (and / or any note takers or colleagues with her) deliberately, over a year or more, falsified records so as to further a campaign against the claimant.

119. In that context, the claimant's case was that there was a prolonged, concerted, deliberate failure to provide him with the functioning IT which he needed to carry out his work. The claimant's laptop was replaced in 2009, and again in 2015. (We note Mr Holloway's submission that the respondent never, at any stage, saw evidence to make good the claimant's assertion that he replaced it again in spring 2018). We note that when he came to do so again in 2019, the spec (1274) was such that it required bespoke work in China. That shows that the claimant's argument, that the respondent should simply have bought him any laptop off the shelf, was plainly not well made.

120. When we consider the claimant's allegation, we note two overarching points. The first was that since 2009, if not before, the claimant had had responsibility for identifying his IT needs. We accept that he was the person best placed to identify his own needs, and was a stickler for his own autonomy. It may well be that his managers preferred it that way, so as to avoid potential disagreement, and preserve what we have called the truce of 2008.

121. The second point was that the claimant had significant access to senior staff, and was fearless in voicing concerns. We find that by doing so over the years the claimant led the respondent to believe that he could be relied on to speak candidly about any issue which troubled him; and that if he did not speak out, he was not troubled. The respondent's witnesses understood that if the claimant needed help with IT, he would say so; and that if he did not ask for help, it was because he did not then need it.

122. The area of dispute is whether, as he asserts, the claimant repeatedly told Ms Drysdale and others that his laptop was in such a poor state of repair that he could not work, and that it needed to be replaced. There is nothing to this clear effect in any meeting note or correspondence.

123. The respondent's case is that although IT issues were mentioned, the claimant said nothing at any meeting, or in any correspondence sent after a meeting, which alerted the respondent to the possibility that his IT issues were anything other than routine workplace grumbles; or that he needed help to resolve any of them; or that any IT issue had become a hindrance to his ability to work.

124. In their statements Ms Drysdale and Professor Hellewell give a meticulous summary (adopted in closing submission by Mr Holloway) of the material meetings, and the notes and correspondence which followed. With all due respect to the care which each brought to analysis of the evidence, we summarise the position briefly. All those who attended the meetings knew that functioning IT was the life's blood of the claimant's work.

125. It is in that setting that we note the following in the respondent's witness statements, all emphases added. Ms Drysdale (WS 143) wrote:

> 'In his emails of 11 and 11 January 2019 Barlow raised the fact that he could not lecture using the IT equipment he had. This was the first time I was made aware of this problem.'

126. Professor Hellewell (WS 25) wrote:

> 'In his resignation email Barlow alleged that he had been put in an impossible situation by not having the screen reading equipment he needed .. In my view he never communicated the urgency of the situation before his resignation email. Also, I do not think he made it clear that he would not be able to carry out his duties in advance of his resignation.'

127. Dr Dovey (WS 56) wrote:

> 'I was copied into Barlow's long email dated 11 January 2019 .. [he] alleged that he was being made to take lectures when he did not have the screen reading equipment .. I had been Barlow's line manager since September 2018 and this is the first time I was made aware of this problem.'

128. We accept that evidence. We accept that the claimant expressed everyday grumbles about IT. That is the common currency of any workplace. We do not accept that the claimant conveyed to the respondent the information that his laptop was at crisis or irreparable stage, such as to hamper his work. It follows that we do not accept that that was the position before the claimant's resignation in January 2019. At the point at which this information was received by the respondent, in the claimant's resignation emails, we accept that a new laptop was sourced, even though the claimant was by then working his notice period. For avoidance of doubt we accept the email at 1274 in full, as a summary of the requirements of the claimant's spec, and of the reasons for delay in meeting it.

129. There was one specific event which we deal with here. On 20 November 2018 the claimant received an email to tell him that his Windows 7 desktop would be replaced the following day by a Windows 10 desktop. The notification (866) said that all data stored would be or had been backed up. We understood this to be a modified desktop, which the claimant could use, and which was also used by Ms Chapman. By email on 3 December, the claimant wrote to Mr Newland, Computing Officer, to raise four concerns about the upgrade and replacement, to which Mr Newland replied on 17 December (864-5). Mr Newland answered the claimant's specific points. One (was the replacement item new or reconditioned) did not concern us.

130. The claimant's first point was late notification of the upgrade, and loss of data. The reply was that all old data on the removed pc had been saved, and were accessible for at least six months. The third point was whether the new desktop was compatible with the claimant's existing printer; Mr Newland replied that the printer had been tested as functioning with the new desktop. The final point was that the claimant's special software had not been transferred. Mr Newland apologised if this were the case, and asked for information necessary for reinstallation. He finally said that the removed desktop could not be returned to the claimant for regulatory reasons. In

relation to all three items, Mr Newland gave the claimant contact details for any further question or follow up. We understood that the claimant did not pursue any of the points.

The claimant's workload

131. In this section, we address the question of whether BUL overloaded the claimant in excess of his agreed 50% workload, leading to impossible burdens which caused his resignation. Our finding is that BUL did not overload the claimant as he has alleged. The 2008 arrangements may be criticised, but our task is defined above: only to decide, were there acts of discrimination, or actions constituting constructive dismissal.

132. It was agreed in 2008, and reiterated by several witnesses, eg Professor Hellewell in 2015, that the claimant was to work at 50%. The claimant submitted to the tribunal that this did not mean what it appeared to say on its face. He argued that a 50% workload was to be assessed subjectively, according to its impact on him. We understood this argument to be (using a simplistic analogy) that if a full time worker produces 100 units a week, the claimant's target was not to produce 50, but the number which impacted on him as producing 50. That would be less than 50, perhaps well below it, and measurable only by the claimant. We would need cogent evidence to convince us that an employer entered into such unusual terms. There was no evidence to support the claimant's case on this point, and we reject it. On the contrary, the area of disagreement over the years was about how to measure the 50%.

133. The unit of production analogy is simplistic because it is based on a model of work which can be measured mathematically by tasks or hours or outcomes. The claimant's work could not be. His workload was subject to the same contingencies as all his colleagues: the general view that public services must meet increasing demand with declining resources; and that the BUL environment might change. There might be more or fewer students on a course, and some students or courses might need more time or support than others. The claimant was also entitled to develop his career, and to accept additional, developmental responsibilities. When he did so, other duties were to be reallocated from him, so that his total workload remained at 50%.

134. We repeat our above findings about notes of meetings, adding the comment that in the everyday world of workplace grumbles, workload is a frequent topic, not least in the public sector.

135. The claimant's case requires us to find that the respondent increased his workload above 50%, to the point where the burden on him was unsustainable. He pitched his case high: he did not accept that workload increased because of external or structural factors. His case was that it happened as part of the campaign to force him out of employment. In his resignation he wrote that he understood that he was to work 100% (981).

136. While we note the detailed analysis given in submission by Mr Holloway, and in evidence by Professor Wydell and Dr Dovey among others, we do not consider that we need to replicate their levels of detail.

137. We accept that the 2008 minutes refer to a 'points system,' which was used as the basis for working out the claimant's 50% (91). We note that in 2016 BUL used a new model (WAM), and that the claimant was again allocated work on a 50% approach. In 2017 the claimant volunteered for two additional responsibilities, as Departmental and Divisional Senior Tutor. His actions were consistent with understanding that he had the opportunity to undertake additional administrative duties.

138. In his email to Professor Blakemore on 13 November 2017 the claimant wrote (after thanking her for 'the most enjoyable' year of his career) that there were four reasons why he had to leave BUL. The second, third and fourth take up a page and a half of the letter. The first half of the first reason said this (263):

> "Reasonable adjustments: (A) It became evident last year that my 50% load agreement will not offer me the protections to my support and my own blind:sighted ratios unless it is formalised; but this request was turned down resulting in my teaching loads being increased at the very time I had decided to allow my administrative load to increased. The result was I worked 7 days per week with typically 4 hours of sleep per day during this calendar year. (B) The Government policy requires …"

139. The resignation in the same letter was rejected, and following further discussions, the claimant (and Ms Chapman) met Ms Drysdale and Professors Hellewell and Wydell on 13 February 2018. The respondent's notes of this meeting were not agreed by the claimant until the following June. The draft (394-5), which we accept as an accurate summary, shows discussions about the principles to be applied in calculating the claimant's workload, and how they would work in practice. The meeting notes record serious thoughtful action points to be pursued. This appears to have been the first attempt at a formal joint review of the arrangements set in 2008. The notes indicate that it proceeded on the unchallenged basis of a 50% workload. Likewise, when in July 2018, Dr Dovey wrote to the claimant with his 2018-2019 allocation, he explained that the allocation was in fact 49% of average allocated workload, and that Dr Dovey aimed to reduce the allocation when new appointees were able to increase their workloads (1736).

140. The claimant met Ms Drysdale and Professor Hellewell on 23 November 2018 for a regular termly meeting. The notes indicate a thoughtful discussion about workload, the claimant speaking about the impact on him of family issues. The notes record in particular discussion about the 50% model, and the allocation of time between academic and administrative, and between home and campus (1690): there were also related discussions about expenses and ATW.

141. In summary, we place weight on the fact that on three key occasions, in February, July and November 2018, four senior colleagues committed to manage and maintain the claimant's 50% workload, without any evidence of criticism, complaint or objection from the claimant.

142. The claimant's resignation letter, some seven weeks later, wrote of a workload of 100% and of impossible burdens.

The sabbatical application

143. We set out in this section our finding that the claimant applied for sabbatical leave; his application was deferred, not rejected; and he did not respond to requests or suggestions that he could improve his application by clarifying it. It was then overtaken by his resignation. The bundle contained BUL's "Sabbatical and Study Leave Scheme" in a version of March 2018 (1543). It set out academic, strategic and operational criteria. Its index page begins,

> 'This policy will be reviewed periodically to ensure compliance with changes in employment law and equality and diversity legislation.'

The first paragraph of the policy says (1545), emphasis added,

> 'The duration of the sabbatical leave will be one determined by the nature of the project that a member of staff wishes to complete. <u>The maximum period applied for should not exceed six months</u> in total (including summer vacation).'

144. While the policy should be read in full, we noted complex criteria for research leave. The usual criteria included consideration of whether the applicant had taken research leave in the previous five years, and if so, what the outcomes had been; and that in the usual case, sabbatical was for no more than six months.

145. Professor Hellewell explained in evidence that research leave is a highly prized aspect of academic life. Applications are therefore considered rigorously, not by an individual (as the claimant suggested) but by the College Management Board. The procedure includes consideration of any financial implications, including any funding application to ESRC.

146. The claimant submitted an application on 28 September 2018, asking for leave for the whole calendar year starting 1 January 2019 (908). Its status as an academic proposal is a question far beyond the competence of this tribunal. The claimant was in his twelfth year at BUL, and it was (at least) his second sabbatical application: it seems to us that the claimant must have known that his request was for twice the usual period of sabbatical provided for in the first paragraph of BUL's policy.

147. The original application was sent to Professor Blakemore that day, 28 September (849). Professor Blakemore replied on 3 October, asking the claimant to discuss the application with Dr Dovey, and to check if he were allowed more than six months, "Please could you take a look at that and adjust if necessary" (849).

148. In the application, the claimant set out some reference to disagreements and requests for reasonable adjustment. He asserted that (911):

> "Access and production of material uses substantial disability resources and up to 12:1 ratio of my time to that of my sighted peers. Sabbatical will prevent me continuing to be in my present impossible position, whilst the College decides on accommodation of my disability (total blindness)."

149. On 6 November the claimant sent a reminder to Professor Hellewell and Ms Drysdale, asking for a decision. On 16 November Professor Blakemore replied by short email, commenting that while the application looked very interesting, she was in the USA at a meeting, and wrote (844):

> "I have taken advice re length of the sabbatical and have been told that it would not be reasonable to offer longer than six months, so please could you adjust."

150. There then appears to have been a delay caused by further clarification by the respondent of the claimant's previous sabbatical and its outcomes. This gave rise to a further exchange of emails on 19 and 20 November (860), from which it appeared that the BUL portal on which the claimant's previous application had been made could not source this information. (We accept that this was a technical issue, not related to access or eyesight).

151. Professor Blakemore met the claimant in late November, their meeting generated disputes about both the primary topic which they discussed, and about how they had discussed it. Professor Blakemore wrote that what she asked the claimant was to clarify his application. He should reduce the time applied for from 12 months to six; and if he requested reasonable adjustment in the sabbatical, he should say so explicitly (883):

> "simply to adjust your application (which previously did not address the issue of reasonable adjustments at all, and contained no attempt at justification of the time requested) in view of the policy statement."

152. Professor Blakemore's comment on the application form wrote that while she was "happy to support the application" she had concerns. She suggested that leave should begin after June 2019. She also wrote (913, 3rd December):

> "Dr Wright has asked for an extended period of sabbatical, because of his disability. I am not equipped to make an assessment of his particular needs in respect of research activity, and Dr Wright declined the invitation to adjust his application to justify a 12 month duration. I do not, therefore, have any firm basis on which to make a recommendation about this ...
>
> "His last period of research leave was for 12 months from September 2013 to August 2014. A final report was submitted, which indicates good outcomes."

153. The claimant did not change the application. It was another instance of his failure to pursue requests or suggestions from colleagues, even when it was in his own best interests to do so. His application came before the CMB on 20 December. Professor Hellewell accepted that most of those who attended knew the claimant personally or knew of him. It considered the claimant's request. Its minuted decision was to ask for clarification on three points before it reached its final decision. The first was that the claimant's proposal would remove him from BUL in the first term of 2019, which coincided with his busiest teaching commitment of the year; secondly, that he should explain why he asked for 12 months; and thirdly, "There were a number of statements made in the application which CMB did not recognise or understand why they were included." The first point was purely operational, unrelated to any adjustment or disability issue. The third point was guidance, perhaps not put bluntly enough, to focus on the sabbatical

application, and omit grievance material; and only the second point of the three engaged the issue of adjustments.

154. The outcome was a deferral, not a refusal, which stated (943):

> "It was agreed that CMB will be happy to consider a revised request but the above items will need to addressed. At this stage the CMB has not made a formal decision in respect of the application, but will do so on receipt of further information".

155. In the event, the claimant's effective resignation overtook any attempt to submit another application. The application did not proceed beyond the CMB's letter. In his resignation emails of 10/11 January however the claimant explained, with some cogency, why he felt that he needed more time for sabbatical, and that the process was discriminatory because (980),

> 'There was no space on the form for detailing disability or how this impacts on research or the sabbatical request. There was a strict three page limit and I needed all of this to outline my planned research. The form did not seem to accommodate the fact that writing a page on disability would mean having one-third less space than non-disabled persons to detail my research.'

156. It was common ground that the online sabbatical application form embedded word limits, so as to compel an applicant to be concise. It was not clear to us that the claimant was required to make his case for reasonable adjustment within the embedded limits; or if he tried to do so; or that he would have been refused permission, if he had asked, to add a request for adjustments in an addendum. The latter seems to us very unlikely indeed.

Other procedures

157. Two further points which arose from this issue related to the ethics issue and the research services issue, which by implication involved a third issue, expenses claims.

158. These three points contain a great deal of overlap. The common thread of these claims was that a proportion of BUL's policies and procedures were available either in print format only, or online in a system which the claimant could not access, and for which his software could not entirely assist him. As we understood it, one technical problem might be that his assistive software did not work efficiently with PDF documents.

159. One issue was accessing research services. In his closing written submissions, Mr Holloway submitted that this claim had not been made sufficiently clear or pursued sufficiently to be intelligible. We agree and to the extent that the complaint overlapped with the other two, we reach the same conclusions for the same reasons.

160. The claimant from time to time was entitled to claim expenses from the respondent. BUL introduced the new, current system of claiming called CHIME, in April 2018. Mr Holloway's first point, which was that that was a single matter with continuing consequences and therefore out of time, was not developed fully before us (perhaps because of time constraints) and we hesitate to adopt it. Adoption of a potentially discriminatory system might

not have an effect on an individual until the individual needs to use it, which might not be for some considerable time. Indeed, the individual may not know of the discriminatory effect until that happens.

161. We accept Ms Drysdale's evidence and Mr Holloway's submission. Ms Drysdale wrote (WS54) that CHIME training was provided initially, and later updated during 2018 (1771), leaving training pages available online. We accept that there may have been technical difficulties in using the system, as with any new form of IT, which were technical, and not related to disability.

162. A similar point arose in relation to the Ethics System. Professor Hellewell explained that any research in life sciences which involved work with live human subjects was assessed on an ethical basis and could not proceed without prior approval. We could find no evidence of disadvantage to the claimant beyond teething and IT related problems, which were addressed when required in May 2017 (167) and July 2018 (659).

163. To the extent that a reasonable adjustment claim is a claim of disadvantage to a group, we agree with Mr Holloway that it is relevant to note that the Ethics System was reported to be used by Dr Rhinde in March 2018 (468).

164. However, the overarching adjustment which applied in relation to all three of these points was set out at paragraph 29 of Mr Holloway's closing skeleton, which we endorse and accept:-

> "The broader point in respect of any of the system issues such as this, is that the claimant's needs were catered for by the fact that at all times of his employment, he had a full-time sighted support worker to assist him with these issues."

165. We agree, and comment that that was a particularly well made point in relation to policies or procedures which might be of great importance to the claimant, but which might be used infrequently in practice.

The Wolfe investigation

166. In this section we describe how and why Ms Drysdale instructed Ms Wolfe to conduct an investigation, and we reject the claimant's case, that it was a targeted investigation about him. Throughout 2018 Ms Drysdale was the senior HR professional employed by BUL. If we accept the claimant's case (in a question to Ms Drysdale), she had one-to-one meetings with him on average every two weeks throughout the calendar year 2018. The meetings discussed the claimant's concerns and issues, which included but were not limited to equality issues, including but not limited to reasonable adjustment issues. The notes of the meeting on 13 February record discussion of whether to appoint an independent investigator into the claimant's allegations about his own treatment, and the claimant saying that he did not want this to be done (396). At the meeting on 27 June and in a conversation the following day, the claimant raised wider issues, including allegations of different treatment of black students (531 and 534).

167. Ms Drysdale wrote to the claimant on 3 July to say where that left her (664, emphasis added):

> "I explained to you last Wednesday that certain statements you have made give me grave cause for concern and that I wanted to reflect on what you shared.
>
> The truth is that, several days on, I remain concerned about what are serious allegations of mistreatment of you – and in one case our students – by your colleagues and our academic leaders. This is not the first time you have shared such information with me and then expressed a wish that no action be taken."

168. Ms Drysdale then summarised seven types of allegation made by the claimant, including allegations that five named staff, and a number of unnamed staff members, had discriminated against the claimant; and "that colleagues of yours discriminated against black students." Ms Drysdale concluded her letter:

> "On several occasions you have alleged that the mistreatment of you amounts to discrimination on the grounds of disability and/or race and last week you also mentioned that we have also failed to accommodate your religion and beliefs.
>
> Having given this due consideration, and given the serious nature of the allegations, I feel that I do not have the choice to ignore what you have told me. I know this is not what you say you want to happen, but I feel that I must now appoint an independent investigating officer to look into this matter. It is important that we create the right environment at work for you, and for all our staff and we also have a duty of care to those whom you say have treated you badly.
>
> I hope you understand my position on this?"

169. Ms Drysdale instructed Ms Wolfe, an external consultant, to investigate and report. Ms Wolfe interviewed ten senior staff of BUL (of whom six were witnesses in this case) and reported. Ms Wolfe's report of 10 February 2019 was available to us (1124). The report appended statements taken from the interviewees. In evidence we were asked to read those of Dr Dovey and Ms Bailey. A number of the interviewees commented on the breadth and frequency of the claimant's complaints about many issues, including discrimination. Dr Dovey expressed stringent criticism of the claimant (1198). Ms Wolfe did not advise that any further action be taken.

170. Ms Wolfe reported that she had made several attempts to contact the claimant, and attempted to meet him, but that there had been no response. He did not engage at all with Ms Wolfe's procedure. He repeatedly claimed, including at this hearing, that what had been commissioned was an investigation into him personally, and he described the process as "a witch hunt."

171. We find that these events were a stark example of what we have called elsewhere the 'damned if you do, damned if you don't' problem. They also demonstrate the claimant's inadequate comprehension of workplace norms, and of the demands placed on others. The claimant appeared not to understand that his allegations put Ms Drysdale into a position which was impossible to resolve. She had heard complaints from a senior respected, experienced, academic of racial discrimination against students, and she and BUL could be severely criticised if she and it did nothing in response. She was not in any legal or moral sense bound by the claimant's request not to take things further. She was duty bound to weigh up the claimant's

wishes and interests with the wider interests involved: those of BUL, of the colleagues whom the claimant had accused of discrimination, and of any student whose experience had been impaired as a result of discrimination. We accept that she decided that the claimant's allegations were simply too serious to overlook, whatever his wishes. The claimant showed no recognition of these imperatives. While he was under no contractual duty to cooperate with Ms Wolfe, he did not realise that his failure to do so might undermine the validity of his allegations. We reject the assertion that Ms Wolfe was investigating the claimant personally, and we find his use of the word 'witch hunt' to describe her inquiry unjustified.

172. The claimant may well have been unprepared for the tough language which Dr Dovey used about him to Ms Wolfe. It is not our task to adjudicate on the questions which Ms Wolfe had to decide. We accept (as we do not think the claimant fully understood) that those against whom discrimination allegations are made have a right to reply, and may use robust language when they do. The allegations against Dr Dovey were serious. He was, at the very least, entitled to know about them, and to reply in his own words.

173. Ms Drysdale was entitled, as a matter of fairness, to give those against whom allegations had been made the opportunity to go on record in their own defence. We accept that it would have appeared to her, as an HR professional, a professional failure, and a failure of justice to the claimant's colleagues, had she done otherwise.

174. In his resignation letter, the claimant alleged, for the first time, that the investigation had led colleagues to isolate him in retaliation, to the extent that, "Not one member of psychology has spoken to me voluntarily for months" (with the exception of a new joiner, whom the claimant named). We can see no record of the claimant having raised this striking complaint during the many meetings in the relevant period, since August 2018. We add that this allegation would have been a cogent piece of information for Ms Wolfe to consider, had the claimant taken the opportunity to speak to her.

Financial support

175. We set out in this section the financial problems which the claimant faced in 2018, and while we do not under-state their burdens on the claimant, we find that they were not BUL's doing. In the first quarter of 2018, there were two positive developments on the claimant's financial support. One was that the government changed its proposed new policy, and removed the cash cap which would have limited the claimant's ATW payments. The other was that BUL increased its annual payment to him by £5,000 pa. While it could be said that an increase was overdue, BUL's decision was entirely at odds with the claimant's case that BUL wanted to be rid of him, and wholly consistent with Ms Drysdale's evidence that BUL was looking for means to retain him.

176. However, there were two other developments which were negative, or at least negative in the short term. We have not found the evidence on these points clear, and we accept that the parties themselves may not have all the information which might be available.

177. External funding was essential to every aspect of the claimant's working life. By January 2018 the claimant had nearly 20 years experience of dealing with ATW, of which the previous 12 years had been while working at BUL. He was adamant that he would not agree to direct contact between BUL and ATW (eg we note an email of 30 August 2018, specifically refusing consent, 727). The claimant's HR file was found by Ms Drysdale to contain no paperwork about ATW (1014), unlike the HR files of other colleagues supported by ATW. The claimant had been managing BUL's support payments for about the same period. There was clearly an unorthodox element about how the funding sources operated, but there had been no challenge to either operation, and we do not agree with Mr Holloway's suggestion that there may have been impropriety.

178. In that context, there appear to have been two separate strands of development. In July 2018 the claimant sent BUL what he called '3 invoices for disability support' which he called 'the final entries for 2017/18' (701). The invoices included sums for payment of his two support workers, who were his wife and Ms Chapman. We understand that at the time these were received, finance staff at BUL had been considering aspects of BUL's payments to the claimant, and in particular the implications for the support workers. We understand that there was concern about the application of IR35 tax avoidance provisions; and about whether any form of relationship had been created between BUL and the support workers; or whether it should be. On 16 August Ms Drysdale emailed Professor Hellewell in confidence that (687),

> 'We are right in the middle of sorting out this compliance headache – all his 'allowance' for costs has been paid as a staff expense – which is non-compliance for tax and NIC for both him and us.
>
> This is going to take a while to unpick and sort unfortunately, and in the meantime he is seriously out of pocket in terms of his ability to pay his support worker.'

179. We understand the first sentence to mean that it had been realised that if BUL paid sums in full to the claimant, which he paid in full to two other people in consideration of their support work, two lots of questions which might follow were, first, should the sums have been subject to deductions at some point; and secondly was any relationship created as a result between BUL and either support worker.

180. The second sentence was presciently written; in the event, the expenses were not paid until December (923). We understand the problems to have been that BUL identified a need to regularise its systems for paying the claimant (and, through him, his support worker(s)); and that that in turn led to consideration of how far, if at all, it should attempt to regularise retrospectively. In the course of that action, Ms Robinson of BUL asked the claimant for his consent to contact ATW, which was refused.

181. It seems that at about the same time, and in similar circumstances according to the claimant, ATW changed its systems (1013-4), and no longer agreed to support him by using the same procedure that had been found satisfactory in practice for nearly twenty years. There was a dispute between the claimant and ATW, as a result of which there was a period

when, according to the claimant, he did not submit claims to ATW (1013). One issue, which we were unable to resolve, was that of historic counter-signature of the claimant's ATW claims. We accept that BUL was never asked to do so until September 2019; but we are unable to make any finding as to how the claimant and ATW operated a satisfactory procedure before then.

182. The claimant, as a result, found both income streams stopped while others (ATW in one case, BUL's finance team in another) looked into problems which were historic and possibly poorly documented. We find that that was a matter of chance, and although the impact was serious in the short term, the claimant may well have been unlucky to find the unorthodoxy of both his funding support streams challenged at the same time.

183. It is not for us to comment on any organisational or managerial point which might emerge from all this. Our task is to decide if in these events any action of BUL was repudiatory conduct for the purposes of his claim of constructive dismissal; or, expressing it very broadly, in any way related to any protected characteristic, or act or disclosure. Our overall finding is that it was not: all BUL's actions were for the proper cause of ensuring compliance with the framework regulating statutory deductions, and employment relationships. As we set out below in our discussion of the list of issues, we make no finding which places any of these events within the framework of discrimination.

Resignation in January 2019

184. This section sets out our findings about the claimant's operative resignation. We find that he resigned effectively of his own accord, and that BUL was entitled to accept his resignation.

The claimant's stated reasons

185. In the course of 2018, there was a very large number of meetings involving the witnesses in this case to discuss a range of issues relating to the claimant's work. The claimant put to Ms Drysdale that he and she had had 27 meetings in the calendar year 2018 and another 7 in the first quarter of 2019; Ms Drysdale did not agree the exact number but agreed that there were "a lot of meetings". To that high number must be added the many professional interactions between the claimant and, among others, Dr Dovey and Professors Blakemore, Hellewell and Leahy.

186. On 10 January 2019 the claimant wrote direct to the Vice Chancellor, Professor Buckingham (973). The subject heading was "Forced to leave Brunel and Academia". The letter attached a long letter which the claimant had drafted to send to Ms Drysdale. The claimant used the word "impossible" at least 12 times to describe his position at work.

187. We understand that 2018 was a trying and troubling year for the claimant. He came under stresses in his personal life, financial pressures, and what he felt to be professional difficulties. We accept that the resignation letter was a sincere expression of his emotions. While it is not necessary to subject it to detailed analysis, we do not find that the following points in the

letter were well-made or founded in fact (the designation / categorisation is ours, not that of the claimant):

a. That the claimant had been reporting since the previous June that the workplace setting might become so difficult that he would have to leave BUL;
b. That expenses payments had been 'blocked' (in his word) since the previous February;
c. That BUL had interfered with the claimant's HMRC liabilities;
d. That the claimant had effectively been told to explain his sabbatical application, without that being technically possible;
e. That there was an established 'attitude .. of disbelief or distrust regarding how my disability affects me;'
f. That the commitment to a 50% workload had 'vanished;'
g. That the decision to commission Ms Wolfe's investigation had added to the claimant's 'isolation and indignity;'
h. That the claimant had suffered and would continue to suffer treatment which was unequal and unreasonable, and a 'lack of consideration and accommodation.'

188. Our findings are: there was no evidence of (a) which went beyond what we have described as workplace grumbles. Expenses issues (b) had run into compliance issues, as had ATW systems, both in August 2018, not before. None of the issues was of BUL's making, or within its capacity to resolve unilaterally. We reject (c): like any organisation, BUL was duty bound and entitled to ensure that it operated lawfully. We do not agree that (d) is a fair analysis of the CMB's reply to the sabbatical application. We do not agree that (f) happened or that the claimant had reason to believe it would happen. As to (g), we accept that the claimant did not understand the imperatives which led Ms Drysdale to instruct Ms Wolfe. There was no evidence that the claimant was ostracised in consequence. Points (e), (g) and (h) were subjective comments, of which we find that there was no objective factual evidence.

189. We find therefore that the factual matters which the claimant said were the repudiatory acts of the respondent, which led to termination of his employment, did not happen, either at all, or as he alleged; or were in part for good cause (regulatory compliance). It follows therefore that the claim for constructive dismissal fails. We include in that overarching conclusion any claim of constructive dismissal brought under ERA s.103A, or under EqA s.39.

Effective to terminate

190. When cross examined about the letter, the claimant repeatedly conflated two separate points, which we understand separately. Mr Holloway wanted to cross examine on whether the letter gave clear notice of termination of employment. The point which the claimant repeatedly answered was did the letter show that he was writing in response to pressures and stresses, but not fully voluntarily. We are dealing here with the first of those questions only.

191. We read the letter as a whole and give it its ordinary and natural meaning. It is also to be read in the context of a discussion going back to at least January 2018, generated by the respondent's rejection of the previous, unambiguous resignation, and by the subsequent reversal of government policy on ATW. We note the following phrases in particular (979-983):

> "You told me to contact you if things got too difficult and I was given no choice but to leave. This has now happened."
>
> "I must therefore take a difficult decision now in order to give [Dr Dovey] some time to find a different solution for our students."
>
> "I am finally giving in to pressure to leave unless something can be done urgently"
>
> "I suppose I will have to leave. In order to give me any opportunity to begin in a new independent career, this would have to be by the end of February. I would therefore like some details on whether I can take early retirement or whether I have to simply resign."
>
> "I was hoping to make this decision before Christmas 2018 but the delays to my sabbatical decision forced me to have to wait. But with me now within what I think is a two month notice period for leaving,.. I hope you either come up with a way of me being able to work here without constantly being treated unequally and unreasonably, or do accept the leaving date of 28 February 2019 and allow me to begin preparations for a different career somehow."

192. The claimant sent the same email to Ms Drysdale on the morning of 11 January, and she acknowledged later that day. They met on 18 January. The meeting included a lengthy without prejudice portion, of which the record was redacted (1013).

193. On 22 January Ms Drysdale replied (1034). Her letter referred four times to the claimant's "resignation", and three times to his "notice period" or "contractual notice." She accepted that the claimant had resigned, and that as his correct contractual notice was three months, notice given on 10 January would expire on 10 April, which would be his last day of service. She raised a number of the practical consequences of the claimant's resignation and departure.

194. On 28 January the claimant replied (1058). Where Ms Drysdale's email had had the subject heading "University confidential and private" the claimant's email of 28 January was headed "My Notice to Leave" and read in its entirety,

> "I agree to amend my leaving date to 10 April 2019, as per Jane's email of Tuesday 22 January 2019 (8.21am)."

195. The claimant, Ms Drysdale and Dr Dovey met on 5 February. Taking the handwritten note of the meeting as a whole, we note a structured discussion about some of the practicalities to be addressed in the remaining nine weeks of the claimant's employment. While we note the claimant expressing commitment to completing tasks: "I will do anything I can do to work until my last day" (1075), there was clearly serious disagreement about a number of issues. Towards the end of the meeting Dr Dovey is noted as

asking the claimant about "wishes for leaving" and how would the claimant like his leaving to be handled. We thought it significant that the claimant's reply was, "I have not resigned, just say that I am leaving". Dr Dovey asked the claimant if he would wish to have a leaving party and the claimant is recorded as stating that he did not know.

196. The claimant's use of the phrase "I have not resigned just say that I am leaving" seemed to us to capture the confusion in the claimant's mind between giving notice of termination (which the claimant agreed he had done) and the separate question of whether the resignation was a wholly voluntary act or was forced upon him by the respondent such as to indicate a constructive dismissal.

197. On 7 February there was further email correspondence about the claimant's annual leave entitlement, in which the claimant again wrote to Ms Drysdale about his 'notice period' and his 'leaving date of 10 April' (1082).

198. On 8 February the claimant wrote again to the Vice Chancellor (1089). He reiterated points raised in previous emails, and while he again referred to his notice email, he also referred to the possibility of withdrawing notice.

199. On 18 February, the claimant wrote to Professor Hellewell (1210). The email heading was 'Notice Withdrawal.' At the foot of the second page of the letter, the claimant wrote that he understood that a new computer would arrive within two weeks and that he understood that his workload had been resolved. He also wrote:

> "I also considered that, at last, the person who has done most to frustrate the reasonable adjustments I have asked for or was given, is [Ms Drysdale], and she is now quite rightly the subject of a formal grievance. With these movements in mind, I therefore feel I can withdraw my notice to leave Brunel, and I do so here. But my understanding is that I need to put this rescindment to you…Finally I would ask you to please consider my withdrawal of notice an urgent matter".

200. Professor Hellewell replied the same evening. He said that he could not answer all of the email, and then wrote this (1210):

> "However, the key point in your email is that you now wish to withdraw your notice to leave Brunel. That notice was served by you on 10 January in emails to the VC, Ms Drysdale and Dr Dovey.
>
> Your notice to leave Brunel is contractually binding and it is not possible for you to withdraw it unilaterally. It is clear that your resignation was something you had thought about carefully and related to a wide variety of issues. Whilst I appreciate that you may have changed your mind now, I do not think it would be in the interests of either party to agree to undo a course of action that you so clearly and emphatically had decided was correct when you sent the emails on 10 January.
>
> In light of this, the University does not consent to the withdrawal of your resignation and your leaving date remains 10 April (something you agreed with Ms Drysdale)."

201. That remained BUL's position. At a later stage, the claimant was for a short time represented by Dr Gaines. We were told that Dr Gaines is a senior member of the Psychology Department, and was then a friend of the

claimant. He is also Chair of Brunel's UCU branch. He attempted to assist the claimant, although the claimant is not a UCU member. The claimant expressed some criticism of Dr Gaines in the course of this case. Those criticisms were not matters for this tribunal, and we make no finding about them.

202. In April, when Dr Gaines was supporting the claimant and attempting to represent his interests in relation to grievances, Mr Thomas and Dr Gaines realised that the grievance process could not be completed by 10 April, and that as the claimant had grieved against Professor Hellewell's rejection of withdrawal of his notice, it made sense for the claimant's employment to be extended so that that specific grievance could be completed before the end of the claimant's employment. They therefore agreed to extend the claimant's employment to 10 May. That had the effect of extending the claimant's rights and obligations under the contract of employment, to that date. The claimant's indignation that his employment had been extended without his express consent was misplaced. BUL was entitled to rely on the word of his experienced appointed representative, and on the common sense reasoning which underpinned it.

203. We summarise: we find that the email of 10 / 11 January was effective to give notice to terminate the claimant's employment. Any ambiguity in it was wholly resolved by his email of 28 January. If the claimant's case is that by setting termination dates the respondent terminated the employment relationship, we disagree.

Management after resignation

204. One group of issues arose out of events in 2019 when the respondent was managing the claimant's resignation. We make a general finding about how matters were dealt with, and then discuss specific pleaded points.

205. This fell into a number of phases. It was understood in January 2019 that the claimant had resigned with statements of ill feeling. The position changed with the exchange of 8 and 18 February, when the respondent understood that the claimant had asked to withdraw his resignation, and the claimant understood that the request had been refused. Until early April the understanding of the parties was that the claimant's remaining duties and departure were to be managed in the period up to 10 April. The departure of a member of staff is a routine event, and the template documentation at 1265 to 1273 is an indication of the routine process. The final phase consisted of the management of the claimant's grievances, and the extension of his leaving date to 10 May. The claimant was certified sick from 25 April onwards.

Overview

206. The issues which arose were largely practical. The spring term was the peak of the claimant's teaching load. The respondent was reasonably entitled to take the claimant at his word, when he stated that he would be unable to deliver lectures in the absence of a functioning computer (which in the event did not arrive until 25 March, the reasons for delay being set out by Professor Hellewell on 14 March, 1274).

207. The claimant complained that he had not been permitted to fulfil his teaching commitments in his last term. We find that it was reasonable to require the lecture course to be provided by a fully enabled and equipped lecturer, which the claimant said he was not. It was also reasonable to ensure that any employment disputes did not affect students (there was no evidence that this in fact happened). It was also reasonable, given BUL's understanding that travel was a burden on the claimant, to seek to minimise the need for the claimant to attend campus. In that context Mr Holloway commented that the assertion made by the claimant in closing, namely that he had no internet until 2020, was not mentioned at any time during discussions of working from home.

208. The claimant had presented grievances, one of which was correctly identified by Mr Thomas as requiring resolution before termination of employment, as otherwise it would be pointless. That was the grievance against Professor Hellewell for failing to allow him to withdraw his resignation. It was reasonable to prioritise determination of that grievance, and when it was realised that that could not be achieved by 10 April, it was reasonable to extend the claimant's employment by one month (with the consent of an experienced representative) to enable that to be done.

209. We deal here with three specific events in the period after the claimant's resignation which are pleaded in the list of issues.

Reprimand by Dr Dovey

210. When he resigned, the claimant repeatedly wrote that his position was impossible. He wrote that he could not deliver the lecture course which he was due to begin later in January to professional standard because he did not have adequate functioning IT to support him. By email of 15 January, Dr Dovey wrote to the claimant to challenge this (1000). The material part of the email reads,

> " .. I am confused as to why you feel you are unable to deliver this module. You have been teaching it for over a decade, what has changed? Also I am confused why you have decided to only raise these issues now ..
>
> I do not think it is appropriate that you turn up to a lecture theatre with 250 people to tell them that you will not be delivering the lecture. I cannot see any reason to involve the students in your dispute and I ask that you refrain from involving them .."

211. The first paragraph challenged the claimant's analysis and response to the problem. The second took him at his word, and challenged his approach; in particular it flagged a legitimate professional instruction, which was to ensure that students were not drawn into a staff dispute. We accept that the claimant did not like this, but we do not below accept that either part of this email was an act of discrimination, or that it was, in the claimant's word, 'a reprimand.'

Meeting on 7 March 2019

212. We turn to the meeting on 7 March 2019. We rely on the notes (1242) on the same basis as set out above. The meeting was a discussion about the practicalities of the claimant's remaining weeks at BUL. The claimant said

that that he was unwell, and in pain, but wanted the meeting to proceed: it might have been wiser counsel to decline to do so. Emotions were raw: the claimant had by then been told that his attempt to withdraw his resignation had failed. We find that at the heart of the meeting, and any dispute, was BUL's refusal to allow the claimant to deliver lectures which he said he was not equipped to deliver to optimal standard; and the claimant's frustration that he had been taken at his word, but that delay had arisen from arrangements to procure new IT. We accept that the meeting was candid, but we find no evidence of an 'aggressive tone' and no evidence whatsoever that either process or outcome were in any respect tainted by any protected factor whatsoever.

The HR mailbox

213. The grievance correspondence (below) gave rise to one specific issue about the HR mailbox. On 14 March the claimant's grievance against Professor Hellewell was sent to Professor Leahy, Mr Thomas and to an HR Team email address.

214. On 15 March, Mr Thomas replied (1278) and asked the claimant not to use group email addresses. He wrote:

> "I must ask you not to circulate your emails widely and particularly to group email addresses, as you did in your email of 1624 hours on the 14th March. You may not have been aware that the email address… encompasses a number of staff in HR, including some relatively junior staff, who should not normally be sighted on sensitive issues that relate to senior members of the University. May I therefore ask you to direct any future emails or correspondence directly to me (and of course Dr Gaines) and I will subsequently cascade them in an appropriate manner as required. I hope that you would agree that this approach is in everyone's best interest."

215. The claimant asked us to find that those words were a reprimand, and a detriment. We decline to do so. They were neither. The claimant had made a routine office mistake. Mr Thomas wrote a courteous request to ask the claimant not to do it again.

The grievances

216. On 11 February 2019, Professor Leahy identified the claimant's resignation as also constituting a grievance about Ms Drysdale (1089). The claimant agreed that that was the right approach.

217. While Mr Thomas was in course of discussing the practicalities of hearing the grievance with the claimant, the claimant on 14 March presented a second grievance, this time against Professor Hellewell (1275). This grievance complained of Professor Hellewell's refusal to accept withdrawal of his resignation, and used the language of disability discrimination to do so.

218. Mr Thomas was tasked with managing the grievances, as he was Ms Drysdale's line manager. He regarded the latter grievance as the priority. That was a matter of sound common sense: if the claimant's grievance were that his employment was coming to an end prematurely, it made sense

for that grievance to be heard and determined before the end of employment.

219. The claimant confirmed that Dr Gaines would be his representative, both for his grievances 'plus anything else relating to my present situation' (1276). Mr Thomas therefore liaised with Dr Gaines on the good faith understanding that Dr Gaines was an experienced representative who was fully authorised to represent the claimant's interests.

220. In an exchange on 5 April (1324-5) Dr Gaines suggested deferring the end of the claimant's employment by one month, and Mr Thomas agreed. We note that Dr Gaines presented this idea as the claimant's ('Barlow asks that his departure date should be deferred at least one month' 1325). That had the effect of continuing the parties' contractual relationship, including the period of the claimant's remuneration, by one month.

221. At paragraphs 25-52 of his witness statement, Mr Thomas set out a painstaking summary of his email exchanges with the claimant from early April onwards. Mr Thomas was keen to arrange for the grievance about withdrawal of notice to be heard on or before 9 May. He wrote to the claimant a number of times about the practicalities. On 29 April the claimant informed Mr Thomas that he had been signed off sick with stress until 9 May (1425). Mr Thomas then became involved in diversionary correspondence with solicitors representing the claimant, who submitted that the claimant had not in fact resigned; that being so, it was understandable that Mr Thomas took the view that,

> "It would be absurd for the panel to investigate a complaint that Dr Wright was not permitted to rescind a resignation that he now contended he did not make."

222. In short, correspondence between Mr Thomas, the claimant and his solicitor eventually petered out. We accept Mr Thomas' observation that the claimant failed to respond to any email after 16 May, made no contact with the investigation officer whom Mr Thomas had asked him to contact, and such correspondence as he did send did not engage with issues raised by Mr Thomas. Mr Thomas decided in December 2019 to stay the grievance procedure and told the claimant that he had done so; and the following July, he wrote to inform the claimant that he was about to retire and the grievance process would not continue any further. The claimant did not at either stage reply with any request for the procedure to continue, or an offer of a meeting. We can see nothing in Mr Thomas' management of the claimant's grievances which was in any respect related to any of the protected characteristics or factors which have been raised in this case: on the contrary, he was trying to manage a complex process without adequate contribution from the claimant.

The depression issue

223. We here set out our finding that the claimant did not meet the s.6 EqA definition of disability by virtue of depression. Judge Hawksworth had identified at paragraph 20 of her Order (70) that it remained in issue whether the claimant was disabled because of depression. Only issue 34c expressly identified depression as the disability material to the issue, pleading that, "The claimant's depression meant that meetings caused him significant

stress and health risk." Issues 22m, 39j and 44l also raised a point about attendance at meetings, without expressly referring to depression, and we have understood them also to be depression-related.

224. The claimant subsequently confirmed that he did proceed with the claim based on depression. He relied on an impact statement of 26 March 2021 (1650) which he adopted when taking the oath.

225. The impact statement consists of a number of pages of description of what the claimant called, "just a small glimpse of what Brunel knowingly did to me" (1654). It set out a history going back to 2009 of the management of the claimant's blindness and medical conditions and described how they impacted on his mental state. Some of that material was, as the tribunal explained, potentially relevant to remedy, not liability.

226. The claimant wrote that by mid-2018 he could no longer maintain his opposition to taking anti-depressants and began to do so. He wrote that he suffered from severe sleeplessness and high blood pressure, of which there was a significant family history. He wrote that throughout 2018 he had had suicidal ideation. In oral evidence and in cross examination he spoke of a prolonged mental health crisis throughout 2018, which had been so severe that he had at short notice travelled to Jamaica, in large part to be away from the stresses of the workplace.

227. The bundle contained a GP summary printout, printed on 8 February 2021 (1636-1647). It is described as 12 pages of 65, and therefore a modest selection of the claimant's medical records. The consultations history runs from 23 October 2019 to 26 January 2020. It therefore falls entirely outside the period with which this tribunal was concerned. We noted the entry for 12 December 2019 (1646) which reads as follows after the date and name of the GP (all emphases added):

> "Problem: **Depressed mood** (*First*)
>
> History: Been a busy year lost job, unwell in summer … tatt wonders if depressed or a CFS reaction.
>
> We discussed trying SSRI above started to review again in New Year. Aware can take 8 weeks to be affective not keen on counselling."

228. This is a problematical entry. We understand CFS to be Chronic Fatigue Syndrome, and SSRI to mean anti-depressants. The claimant's evidence was that the word "First" meant that this was the first time he had seen the individual GP in the practice. That indeed seems consistent with notes between 23 October and 12 December 2019. However, our experience of reading medical notes is that the word 'first' generally indicates a first consultation for the particular problem. We note that it appeared on the immediately preceding entry on 3 December 2019, and that it could be contrasted with three entries in early 2020, each of which (1644) states (font as in original), "Problem: **Patient review** (*Review*)".

229. The word 'First' is one of four indications in the note which are consistent with the claimant seeking help with a new event. The phrase "wonders if depressed or a CFS reaction" suggests uncertainty about a new symptom.

The phrase 'discussed trying SSRI' and the word 'started' are consistent with new medication.

230. The printed records include headings of "Significant past" and "Minor past" events (1636), the former covering the period 1989 to 2012, and the latter 2010 to 2020. The only reference under either heading to mental health is found in one consultation on 25 April 2019, recorded as for "stress at work." That was in the one month extended notice period, and led to a Med3 certificate.

231. There were two other items of medical evidence available to us. An Occupational Health report of 12 February 2019 (1115) stated:

> "Dr Wright informed me that he had been dealing with a stressful situation at work over the past few months and this was having an impact upon his wellbeing."

232. The report refers to other medical conditions. It goes on to state:

> "Stress issues have the potential to significantly affect his wellbeing. A common physiological response is a disrupted sleep pattern and raised blood pressure."

233. The practitioner gives no other advice, guidance or reference to a mental health history or issues.

234. The second and only other medical document before us was a Med3 sick note dated 25 April 2019 which signed the claimant off for two weeks for "work related stress," which was extended on 13 May 2019 to 31 May 2019 (1443-1444).

235. There was before the tribunal no medical evidence of the mental health crisis in 2018 described by the claimant. There was no consistent supporting non-medical evidence, of which the most obvious would be a record of absence from work. There was on the contrary evidence from the GP notes that the first presentation for depression was well after employment had ended.

236. The question for the tribunal is whether it has been shown that at the time which the tribunal considers, ie the period ending with employment on 10 May 2019, the claimant met the s.6 definition of disability, namely whether he suffered a mental impairment which had a substantial long term effect on day to day activities. The words long term are to be interpreted as lasting a year or likely to do so.

237. In our judgment, there is no evidence beyond the claimant's impact statement to this effect. The impact statement is not consistent with such medical evidence as is available, and we do not accept it in the absence of medical corroboration. We accept that the claimant experienced stress both personally and at work during 2018. We do not find (assuming that the stress experience was an impairment) that it had a substantial or long term effect on his ability to undertake any day to day activity. We do not accept that he met the definition of disability, and accordingly any claim of disability discrimination based upon depression fails and is dismissed.

238. Although it is not necessary for us to do so, we add that we heard no evidence which would have brought us to the finding that any mental impairment, or any protected matter related to it, played any part whatsoever in any of the respondent's actions which were before us. The recurrent feature of the list of issues was that the need and number of face to face meetings impacted on the claimant due to his depression. There was no evidence that this was the case, or that the claimant ever told the respondent about it. (The period of certificated sick leave from 25 April 2019 does not alter our conclusion on this point). Throughout 2018 he attended a huge number of meetings with a large number of senior colleagues without any record of this point being taken. We are confident that if he had asked for a different form of communication, that would have been agreed in principle.

Race discrimination

239. There was a single claim of race discrimination, in which the claimant compared himself with two named comparators. He complained that they had each been provided with 'appropriate' IT, and he had not.

240. The comparators were white, visually impaired, former colleagues (Ms Melham and Dr Rhinde). They were respectively a member of support staff and a lecturer, neither still employed by BUL. The respondent's evidence on the comparators was at best sketchy. Ms Melham had left BUL in September 2018 and appeared now to be in New Zealand. Ms Bailey quoted in her witness statement from a statement and an email which Ms Melham had sent in reply to enquiry about this case, in which she described the adjustments which she needed, and confirmed that they had all been available to her. She wrote that as she is not totally blind, she uses different software from that used by the claimant.

241. The totality of Ms Bailey's witness statement about Dr Rhinde was to state that he worked as a lecturer between 2008 and 2018; that he was recorded as having a disability but had declined to give any further information; and recorded his ethnicity as white. The claimant asserted that Dr Rhinde was visually impaired, not blind, and had all adjustments which he needed. There was no other evidence about the details of any of this, although it might have been available to be called from witnesses who had worked with Dr Rhinde (who we understand is now teaching at another university in England).

242. The claimant's case on race discrimination was that Ms Melham and Dr Rhinde had been provided with "appropriate IT equipment"; they are both white; he had not been provided with appropriate IT equipment; he is black; and accordingly there was a distinction in treatment which was attributable to the difference in race. In closing submission the claimant spoke about Dr Rhinde in terms which suggested a personal animosity unjustified by any evidence which we heard.

243. We identify a number of major problems in this part of the case. The first was that use of the word 'appropriate' presented it as framed subjectively. The tribunal cannot decide a claim of discrimination according to whether the claimant and comparator felt that they had or had not received

appropriate equipment; the test must be an objective assessment for the tribunal. We have, in broad terms, rejected the claimant's allegations about provision of IT, and it follows that we find that he was provided with appropriate IT, allowing for the period between 10 January and 25 March, when it was being replaced. On that basis alone the claim must fail, as we have not found that the act of less favourable treatment occurred.

244. While the evidence was that Ms Melham did consider her IT appropriate, there was no evidence that Dr Rhinde did not, or that his IT was or was not in fact appropriate. The claimant has therefore failed to make out any comparison, on which to base the claim. The claimant in fact gave no analysis to the application of s.23 EqA, which requires that there be no material differences between his circumstances and those of the comparators; or to s.136, which deals with the burden of proof.

245. We add that in any event we did not have enough information to make a meaningful comparison between the claimant and either comparator. As the claimant was the first to assert, it would be wrong to generalise about the needs of blind people or visually impaired people as if they were a single homogeneous group; each is an individual and to be treated as such. We simply cannot be confident that there were no material differences between the circumstances of the claimant and either comparator. It was not clear to us whether the distinction between the claimant's total blindness and the limited vision of the comparators constitutes a material difference, or whether the need to manage the claimant's extensive travel to work constituted a material difference.

246. When we consider the matter through the spectrum of s.136, the claimant has shown that Ms Melham considered that she had been provided with all equipment which she required, and the claimant did not. That has not been shown as between the claimant and Dr Rhinde. The claimant has made a bare assertion of a difference in treatment, and the difference in race is agreed. The burden of proof has not shifted.

247. We find in any event that there is no indication and no basis on which to find any causal relationship between any difference in treatment and the protected characteristic of race, and that being so, the claim of direct race discrimination fails.

248. The above is the totality of our findings on race discrimination. Despite the passage of time between receipt of Judge Hawksworth's case management order and the start of this hearing, the claimant on a number of occasions spoke about allegations of race discrimination involving students and the wider operation of BUL. None of those was an issue before this tribunal, and we make no finding or decision about any of them, save to observe that we understood from the respondent's witnesses that the issue of an attainment gap between different ethnic groups of students is accepted to be a matter of serious concern for the respondent.

Protected act and protected disclosure

249. The list of issues identified one protected act for the purposes of EqA s.27, which was the claimant's resignation email of 10 January 2019 (Issue 43a,

76). It was not disputed that that email comes within the framework of s.27 EqA, by making allegations of disability discrimination.

250. The claimant also relied on a protected disclosure claim, which was set out at Issue 14a (69) as that:

> "On or around August 2018 the claimant informed Ms Drysdale that the respondent on a systematic basis refused to allow equal opportunities to black students and those with disabilities and black staff and those with disabilities."

251. It was common ground that during his meetings with Ms Drysdale in 2018 the claimant spoke about equality issues. He did so in particular on or about 27 June 2018 (531, 534). Mr Holloway hinted that the claimant may have intended to refer to that meeting as the one in which he made a protected disclosure.

252. The claimant's evidence on the point was lacking in detail or analysis, and Mr Holloway declined to make any concession. We accept Ms Drysdale's note of the meeting of 14 August 2018 (681-2) as broadly clear in summary. Ms Drysdale records the following said by the claimant:

> "Work situation troubling me..
>
> Erosion of reasonable adjustments ..
>
> Not good as a blind or a black person..
>
> JD – If is discrimination of this magnitude then serious..
>
> "Modern racism" applies."

253. On 16 August Ms Drysdale sent the claimant an email (687), in which she referred to "multiple allegations regarding potential discrimination by colleagues and management at Brunel."

254. We find that on 27 June, and on or about 14 August the claimant raised allegations which encompassed the protected characteristics of race and/or disability, in relation to the experience of employees of BUL and of students; and complained of the actions of academic members of staff towards students and towards colleagues; and of non-academic members of staff in the exercise of their management functions.

255. Considering the breadth of s.27 EqA, we find that the claimant thereby did a protected act. Not without misgivings (arising out of the imprecision of the claimant's pleading and evidence) we find that the claimant conveyed information about student experience, and the experience of academic staff, which tended to show a breach of the obligations created by the Equality Act 2010, a matter in which there was plainly a public interest.

256. The claimant did not expressly pursue any of these issues in evidence, cross examination or submission. The Judge asked Professor Hellewell whether he refused to allow the claimant to withdraw his resignation because his multiple complaints (whether protected or not) made him a thorn in the flesh; and Professor Hellewell denied it. We accept that denial.

Holiday pay

257. On 7 February, the claimant was in correspondence with Ms Drysdale about holiday in light of his resignation. The claimant wrote (1082):

> "I needed to tell you about whether I will take my annual leave between now and the end of my notice period… I confirm I will go with the second option which is for me to be paid any outstanding leave…
>
> For my part I can confirm I have taken no leave this academic year and do not intend to up until my leaving date of 10 April."

258. Ms Drysdale replied two hours later:

> "Clearly I remain concerned that you have not taken any leave since the start of the academic holiday on 1 September…
>
> Given that by 10 April we will only be seven months (approx) into the year I believe we can make payment of all accrued and untaken holiday. I would ask the systems team to calculate this for us."

259. On the same afternoon, Ms Drysdale wrote again (1094):

> "Thank you for notifying me of your holiday status. I confirmed that we would pay all your outstanding holiday due – calculation to follow."

260. On 13 March Ms Lindsay from HR wrote in what appeared to be template terms used to a leaver. She confirmed the leaving date of 10 April. She wrote (1270),

> "It is assumed that you will have taken all accrued annual leave owed to you by your leaving date. However, if this is not the case your line manager must advise HR of any outstanding leave owed to you by the 10 April."

On 5 April Ms Lindsay wrote again to the claimant. She wrote that his leaving date had been postponed from 10 April to 10 May, and repeated verbatim the two sentences quoted above (1327), only changing the last word from April to May.

261. Ms Bailey's evidence was that there was no record of the claimant having taken annual leave in 2018-2019, and that she accepted that it was possible that the claimant had not taken any annual leave. She said that as the claimant had not replied to Ms Drysdale's email of 7 February "We assumed" that his annual leave was taken during the notice period.

262. In her witness statement, Ms Bailey wrote that it is "not unusual for an academic not to record the annual leave." She confirmed that the claimant was due 146.09 hours of leave on a pro rata calculation. That would equate to about 19 days, but we are not aware of any calculations. We assume, but do not know, that she excluded the five Bank Holidays. The claimant did not challenge the calculation.

263. Ms Bailey confirmed that the claimant had not responded to two standard leaving letters which requested notification of untaken holiday through Dr Dovey as line manager (1270 and 1327 above). She confirmed therefore

that as shown on the claimant's final payslip, he had not been paid for outstanding leave.

264. The claimant's calculation in the schedule of loss was not challenged by the respondent, although as this was not a remedy hearing, Mr Holloway did not have the opportunity to do so. It was not clear if the claimant had taken into account the five Bank Holidays between September 2018 and May 2019. We assume that he was paid for them in the usual way. If so, he is not, in our judgment, entitled to claim for them in the tribunal.

265. In submission, and in reply to questions from the tribunal, Mr Holloway said that it was for the tribunal to make findings of leave taken. He submitted that the claimant had given no evidence upon which the tribunal could make any such finding. He submitted that the claimant was in general so unreliable that his evidence could not be accepted; he submitted that it was simply improbable that the claimant had not taken a single day's leave from 1 September 2018 to 10 May 2019, a period which included the Christmas and the Easter closures. He submitted that the respondent was contractually entitled to take the approach which it took in the standard letters.

266. We have found this a troubling issue. We agree with Mr Holloway that the claimant could be criticised for working without recording or claiming annual leave for the whole year from September to May. We note that that period includes Christmas, New Year, Easter, and the first Monday in May. We have found the claimant's evidence to be unreliable if uncorroborated. The claimant, as often in these events, left the correspondence trail in mid air by not asking Dr Dovey to approve his leave. On the other hand, it is the respondent's responsibility to maintain leave records, and to provide forms of carrot and stick to ensure that leave is recorded and taken. We note that Ms Drysdale initially agreed the claimant's leave in principle, only to be in effect countermanded by a member of the team which she headed. We were not addressed on the effect of Working Time Regulations 1998, Regulation 14, which we understand to prohibit forfeiture of untaken leave without payment on termination of employment.

267. Apart from the five Bank Holidays, we accept the claimant's evidence on untaken leave in the final year in principle. We accept Ms Bailey's calculation of 146.09 hours.

268. We note, but in the absence of any opportunity given to Mr Holloway to challenge it, we cannot accept the financial calculation for leave up to 10 May 2019 set out in the claimant's schedule of loss. We invite the parties to agree the calculation of 146.09 hours, so as to avoid a remedy hearing.

269. Although the schedule of loss claimed for untaken annual leave from 2017-18, we add for avoidance of doubt that we could find no evidence on that issue, and we have rejected that part of the claim.

Conclusions

270. We now cross refer our findings to the list of issues (67-77).

Dismissal

271. Issues 1-2 raise limitation points which we find did not arise for our determination.

272. The claimant claims unfair dismissal. At issues 3-8 the Tribunal is asked to find whether the claimant was expressly dismissed by the respondent in accordance with ERA s.95(1)(a), or whether he was constructively dismissed in accordance with ERA s.95(1)(c).

273. The question for the tribunal is not that of who set the claimant's leaving date. The question is whose decision ended the employment relationship. Our finding is that in his emails of 10 and 11 January 2019 the claimant wrote that he had made the decision to terminate his employment, which he confirmed in subsequent emails. When the respondent told him that his employment would end on 10 April, later changed to 10 May, it did no more than respond, by confirming his contractual entitlement to notice. It did not dismiss the claimant. We find that the claimant was not expressly dismissed by the respondent in accordance with s.95(1)(a). That determines issues 3-5. The claim of unfair dismissal proceeds under s.95(1)(c) only.

274. We therefore turn to issues 6, 7 and 11, namely constructive dismissal. This is pursued as both ordinary unfair dismissal, and automatic unfair dismissal. On the former, we must find as fact what took place which led to the claimant's resignation; and if taken together and viewed objectively those events constituted conduct which, without proper cause, was calculated or likely to destroy or damage the relationship of trust and confidence. The correct question for the latter is whether the events which led to the claimant's resignation occurred because the claimant had made a protected disclosure.

275. The relevant events relied on by the claimant are set out at issues 7a-7d. Our findings about each are the following:

276. On 7a: we find that the pleaded event did not happen. The claimant's essential equipment was not 'taken away.' If this refers to desktop equipment in his office, we find that it was changed, for the proper cause of upgrading; and when it was realised that the removed item contained bespoke software, steps were available to remedy the error (864-866). When in January 2019 the claimant reported that his laptop needed to be replaced, steps were taken to replace it. We accept the emails at 1274 and 1294 as setting out proper cause for the delay in this being done.

277. On 7b: we find that the pleaded event did not happen, and refer to our separate findings on the claimant's workload.

278. On 7c: we find that after his resignation (but not because of it) the claimant was not permitted to deliver teaching for which he said that a new laptop was essential and which he could not teach without it. The proper cause for this was first that BUL took the claimant at his own word; and secondly, to deliver its responsibilities towards students.

279. On 7d: we find that the respondent was not asked to sign ATW forms until long after the claimant's resignation. It did not fail to do so; and as this took place after 10 January 2019 it cannot have been a cause of resignation.

280. Issue 11 fails because we have found that the test of constructive dismissal is not made out on evidence, and issues 8 and 9 fall away.

Protected disclosure

281. At issues 10 and 14a we ask whether it has been shown that the claimant made a protected disclosure within the ERA definition. Although it is unsatisfactory not to make a complete finding, we accept that on or about 27 June and again on or about 14 August 2018 the claimant conveyed to Ms Drysdale on behalf of the respondent information tending to show that the respondent had contravened the Equality Act. We find that each communication was a protected disclosure.

282. The claimant relies on two detriment claims under s.47B ERA. The burden of proof of the reason for the actions which may constitute detriment rests on the respondent. We accept the respondent's evidence about its reasons, and find no evidence whatsoever that any of the actions of the respondent was done because the claimant had made a protected disclosure. Issue 15a states that the first detriment was, emphasis added, "the respondent raised an investigation into the claimant". The emphasis is added, and it points up the sting of the complaint. The sole event which we find took place specifically in response to a protected disclosure was the commissioning of Ms Wolfe's investigation. We add for avoidance of doubt that first we do not consider that assessed objectively that was a detriment to the claimant; on the contrary it was a powerful indication of transparency, good faith and commitment to equality issues; and second that it was done for proper cause, set out above in our discussion of Ms Drysdale's evidence.

283. That allegation fails because it is not made out on the facts. The respondent arranged Ms Wolfe's investigation into serious allegations of breaches of the Equality Act for reasons which Ms Drysdale explained at the time. There was no investigation into the claimant personally or as an individual.

284. Issue 15b pleads that the detriment is that 'the respondent forced the claimant from his position.' If this is a restatement of the claim of constructive dismissal, it fails for reasons stated above. If it is an attempt to restate that claim as a detriment claim it is not permitted by ERA s.47B(2). In any event, it would fail on the facts: we find no evidence that there was an attempt to force the claimant to leave BUL, on any grounds whatsoever.

Race discrimination

285. Issues 16-18 form the only complaint of race discrimination. We have dealt with them above, and the claims fail for the reasons stated there.

Depression

286. Our finding above answers issue 20. The claimant was not disabled by virtue of depression. All claims which are based on depression fail. We understand these to be all issues which rely on the allegation that the respondent required the claimant to attend excessive numbers of meetings, and should have arranged alternative methods of communication. We understand this potentially to include issues 21j, 22e, 22l, 22m, 32c, 33b, 34c, 36c, 39j, and 44l; although only issue 34c makes express reference to depression. We make no decision on issues 24 / 31, which fall away (knowledge of disability of depression).

S.15 claims

287. The claimant's s.15 claim sets out at issues 21a-p sixteen (17) things arising in consequence of disability, and at issues 22a-t 20 acts of unfavourable treatment. He did not at any stage present an analysis which attempted to link any specific unfavourable treatment with any specific 'something.'

288. The claimant's understanding of s.15 was limited. It is noticeable that of the claimant's list of things arising, no fewer than 10 are defined by the starting words "The need to.." That wording indicates that truly analysed a large number of the s.15 claims should have been expressed as reasonable adjustment claims.

289. A s.15 claim arises where the disabled claimant has suffered unjustified unfavourable treatment, and the treatment has been caused, not by the disability as such, but by something else, which has itself been caused by the disability. The 'something' need not be a clinical or medical consequence of disability, and the test is a relatively loose one of factual causation (eg City of York v Grosset, 2018 EWCA Civ 1105). The task of the tribunal is to identify each step separately, and then to assess causation, proceeding objectively. It may be useful to approach this task by asking first, what was the unfavourable treatment, then to ask what in fact caused it, and finally to consider if that factual cause was something arising in consequence of disability. If so, the defence of justification arises at that point. In some cases, it will be appropriate to proceed in the other direction, asking what arose factually in consequence of disability, and did the factual answer to that question cause unfavourable treatment. Our approach is the former, and we here deal with 22a-t in the list of issues (71). We therefore do not analyse issues 21a-p any further, and we make no finding as to which, if any, of the things set out there arose in consequence of disability.

290. In short, our overall findings about issues 22a-t are:

    (1) the following did not in fact happen, either at all or as claimed, and therefore the claims fail: c, d, e, f, g, h, i, j, k (in part), l, m, n, o, q and r;

    (2) the following happened, but were not unfavourable treatment or related in any way to any consequence of disability, and therefore the claims fail: a, and k (in part);

(3) the following happened, and were unfavourable treatment, but was not related in any way to any consequence of disability and therefore fail: b, p, t (b and t are duplicates);

(4) Issue 22m appears to be the same as issue 34c, and fails because it appears to be related to depression.

291. On 22a; we agree that the claimant's resignation of 10 / 11 January 2019 was accepted as such. We do not agree that acceptance of resignation at its word constituted unfavourable treatment. We find no evidence that the decision to accept it was related in any way whatsoever to anything arising in consequence of disability.

292. On 22b and 22t: we agree that the respondent did not accept withdrawal of the claimant's resignation. We accept that that was unfavourable treatment, because the claimant was as a result prevented from continuing his employment. We find no evidence that the decision not to accept the withdrawal was related in any way whatsoever to anything arising in consequence of disability.

293. On 22c: we do not find that the respondent failed to progress the claimant's grievances. We accept the evidence of Mr Thomas, as set out above. We accept that the reason the grievances did not progress to conclusion was the claimant's failure to engage with the grievance process. There was no evidence that Mr Thomas' subsequent actions and decisions were in any respect whatsoever related to a consequence of disability.

294. On 22d: we struggle to understand this claim as formulated under s.15. Our finding is that from 2008 onwards the respondent provided the claimant with such support as was reasonable and which he requested. This included a managed, reduced workload; a funding budget; IT equipment and support; and we have dealt separately with the laptop issues. We do not find that the alleged unfavourable treatment has been shown to have taken place.

295. On 22e: the claim appears to be that discrimination would have taken place at meetings which did not happen. On that basis, we reject it: no unfavourable treatment or unlawful discrimination took place. We note also that at the time the claimant did not engage with the respondent to make practical arrangements for the meetings; we are confident that if he had done so, the respondent would have agreed to make the appropriate arrangements, as it did, seemingly without challenge, on countless occasions throughout the claimant's employment.

296. On 22f: The claim repeats 22c, and we repeat what we have found above about 22c.

297. On 22g: the claimant did not put before the CMB an express, cogent request for adjustments. The CMB did not reject the application. Due to lack of clarity, it deferred the decision and invited the claimant to clarify and thereby improve his application. He did not do so, and the application was then overtaken by his resignation.

298. On 22h: we do not accept that the CMB or Professor Blakemore criticised the claimant. On the contrary, both offered him the opportunity to clarify and improve his application for sabbatical.

299. On 22i: we find that the CMB did not reach a final conclusion to approve or refuse the sabbatical application. On the contrary, it deferred its decision, and offered the claimant the opportunity to clarify and improve his application so that it could be reconsidered.

300. On 22j: this issue appears to contain a number of sub issues. The first is about support to manage reasonable adjustments. We disagree that such support was not given or given sufficiently. The claimant had more than ten years direct individual access to a Pro Vice Chancellor; and plainly in 2018 he had access to Ms Drysdale. He raised no issue about administrative staff and their work. Secondly, the issue pleads that the respondent failed to support his ATW support: that is a surprising claim, given the robust language which the claimant used when telling Ms Drysdale that BUL should not be involved with ATW (eg 1013-1014, January 2019). We find that the respondent did not fail in its interaction with ATW at any time in any respect. Thirdly, the claim is that BUL withdrew provision of an independent point of contact. We find that it did not, and that the claimant had the opportunity of contact with Professor Leahy at all relevant times.

301. On 22k: As formulated, the issue is near incapable of fair trial due to its lack of clarity. To the extent that it repeats the essence of the claimant's resignation letter, we find that the general allegation, which was that the claimant's working life had been made impossible, has not been made out; but that the specific allegation, which was that it was impossible for him to deliver lectures in spring term 2019 because of IT failure, was identified and addressed, by making alternative arrangements for the lectures.

302. On 22l: The pleaded event did not happen, because the claimant failed to engage with either Ms Wolfe's investigation or his own grievances. There was no evidence that his reason for failing to engage related in any way to disability, or to the pleaded complaint; or that he made either of these points at the time to the respondent.

303. Issue 22m falls away with our finding on depression.

304. On 22n: We do not find that there was use of an aggressive tone on 7 March 2019, or that the difficulties in the meeting were in any way whatsoever related in any respect to disability.

305. On 22o: We have found above that the CHIMES system was accessible to the claimant with assistance.

306. On 22p: We reject this allegation because we do not find that the factual basis has been made out. We accept the respondent's evidence that it first received ATW forms to counter sign in September 2019.

307. On 22q: We have found above that the ethics approval system was accessible to the claimant with assistance; and that we have no evidence on which to make a finding on research support services.

308. On 22r: The claimant was not reprimanded. He was told politely by Mr Thomas that he had made an office mistake, and was asked not to repeat it.

309. On 22s: The claimant was not reprimanded in Dr Dovey's email of 15 January 2019 (1000). Dr Dovey questioned his inability to deliver lectures. It was a dialogue of professional colleagues, and Dr Dovey was entitled to challenge the claimant's position.

310. All claims based on issue 22 fail; issue 23 falls away in consequence.

Indirect discrimination claims

311. At issues 25-30 the claimant set out claims of indirect discrimination relating to the sabbatical application. He relied on two PCPs. Our overall finding is that neither PCP has been shown to exist, and therefore that the indirect discrimination claims fail.

312. The list of issues identified as the first PCP at paragraph 25a "operating a sabbatical process that does not permit consideration of reasonable adjustments to the sabbatical process." We found no evidence of this. On the contrary, in correspondence between September and December 2018 Professor Blakemore specifically guided the claimant to make the case for reasonable adjustment within his sabbatical application, and suggested what might be the most effective approach. The claimant's approach in his original application was deemed unclear, and he did not answer the request to clarify or improve it (which then fell away with his resignation). The claim under 25a fails because the existence of the PCP is not made out. If the sting of this issue is that there was a PCP which required the claimant to set out a request for reasonable adjustment in the limited space available on the application form, we do not accept that any such PCP has been shown to exist.

313. At paragraph 25b the PCP is "operating a sabbatical process that does not permit consideration of a sabbatical as a reasonable adjustment in itself." We do not accept that any such PCP has been shown to exist. We cannot reach the conclusion that it did purely on the basis of the handling of the one application in this case.

314. If the claimant's case is simply that in light of physical and mental strain, he should have been granted sabbatical as a reasonable adjustment itself, and outside the framework of the specific sabbatical process, that case was not put or argued, he did not apply for it, and there was no evidence supporting the existence of the PCP.

315. The claimant knew that the position of BUL was that a sabbatical should be for a maximum six months. Professor Blakemore indicated which six months in 2019 would be most convenient. We find that her reasons related to student experience, and no other. The claimant was advised to re-state his case for reasonable adjustments in the application, and to explain if he considered that a longer sabbatical was itself required as a reasonable adjustment. He did not respond, and his own interests may have suffered in consequence: that was a recurrent theme in these events.

Reasonable adjustment claims

316. At issue 32 the claimant set out seven PCPs. We have dealt separately with PCP 32g above in our discussion of workload. We find that there was no PCP of requiring anyone, or the claimant, to work full time. We add that if that had happened to the claimant as an individual, it would lack the element of system usually required to constitute a PCP (Ishola).

317. PCPs 32a-b relate to the sabbatical process. We do not find that the PCP at 32a has been shown to exist. Pleaded as a PCP, we do not find that issue 32b has been shown to exist. As it is a complaint about a specific management decision about an individual, taken either by the CMB or Professor Blakemore, it falls foul of the principle in Ishola discussed above. In either event it fails.

318. PCP 32c relates to face to face meetings. We understand that this complaint relates only to depression, and it fails for reasons already stated. If we have misunderstood, we here discuss it on the footing that it relates to blindness. We accept that the management practice of the respondent was to meet face to face with the claimant, usually in the presence of Ms Chapman, and usually with notes taken. We can find no evidence of the claimant objecting to this practice. Given the frequency of meetings in 2018, and given that the claimant presented as both fluent and feisty, the respondent did not understand that attending a meeting might place him at substantial disadvantage. We note that no substantial disadvantage is set out at issue 32c. We find that there was none. We add that we are confident that if the claimant had at any point asked not to attend face to face meetings, but for them to be replaced for example by electronic meetings (subject to the availability of internet / broadband at his home) that would have been agreed.

319. PCPs 32d, e and f repeat the issue that not all the respondent's corporate policies could be accessed by a blind person or by the claimant's reading software. We accept that that factually was the case. We accept Mr Holloway's submission that the adjustment in such cases was that the claimant had a support worker to assist him to read material. If the claimant's case implies a submission that it was the respondent's duty to have all corporate written material available at all times in a format which he could access (even, for example, procedures or policies such as the sabbatical policy, which he might access only once in a matter of years) we do not accept that that duty is correctly stated as a matter of reasonableness. We do not accept that the claimant experienced substantial disadvantage if he could not access the sabbatical procedure during the years when he was not contractually eligible to apply. We do not accept that it would have been a reasonable adjustment to render the procedure technically accessible during the years when it was not professionally open to the claimant to apply.

Auxiliary aid

320. Issue 33a relates to the claimant's laptop. We repeat our findings about IT above. We accept that there was a period between 10 January and 25

March 2019 when the respondent accepted the claimant at his word that his laptop was not usable, and arranged its replacement. We accept that there was delay, and we accept the reasons for delay as a matter of fact. We do not find that the respondent has been in breach of its duty under s.20(5): we accept that it acted reasonably in response to the contents of the resignation letter.

321. Issue 33b relates to support workers "to perform his role which were not covered by ATW funding" which the claimant asserts was not provided from 1 September 2018. There was no evidence of a change in working systems or personnel at that time; this claim is factually about funding and payment arrangements, which we have dealt with above in our findings about the financial events in the second half of 2018. We understand that systems which were essential to the claimant, and which he had operated without question for years (if not decades) suddenly changed for reasons which were out of his control. That is a difficult and stressful event for anyone. We do not accept that it has been shown that the respondent failed in its duty to provide auxiliary aid. We do not find that there was a breach or failure by the respondent: on the contrary, it worked to reconcile its duties to support the claimant with its duty to operate lawfully.

322. We need make no decision therefore on the consequent issues 34-37, which fall away.

Harassment / victimisation

323. At issue 39, the claimant set out 17 complaints of harassment, and at issue 44, he set out 17 complaints of victimisation. These groups of issues overlap with the above and with each other:

    (1) Issues 39a, b, c, g, o, p, q are respectively word for word identical with issues 44a, b, c, g, o, p, q.

    (2) Issues 39e, h, i, j, k and m are word for word identical with issues 44f, j, k, l, and n respectively.

324. In the harassment context, we must consider in relation to each of these allegations, what factual event took place, whether it was related to disability, and whether, applying the balance between the objective and subjective approaches, it had the statutory effect.

325. In the victimisation context, the claimant has relied only on his resignation of 10 January 2019, which, allowing for the breadth of definition within s.27 EqA we agree constituted a protected act.

326. The question for the Tribunal is whether it has been shown in relation to any of these matters (some of which we note pre-date the protected act and therefore fall away as a matter of logic) was done on ground that the claimant had made complaints of discrimination. The question for the Tribunal is not whether they occurred in response to the claimant's resignation. The question for the Tribunal may be put in these terms: can we find that the respondent would have managed matters from 10 January

2019 onwards any differently if the claimant's resignation letter had not referred to discrimination.

327. On 39a / 44a: We repeat our above findings on acceptance of the claimant's resignation. We find that the respondent's decision(s) and action(s) were in no respect whatsoever related to disability or to the claimant's protected act.

328. On 39b and q / 44b and q: We repeat our above findings on the respondent not accepting withdrawal of the claimant's resignation. We find that the respondent's decision(s) and action(s) were in no respect whatsoever related to disability or to the claimant's protected act.

329. On 39c / 44c: We repeat our above findings on progress of the claimant's grievances. We find that the respondent's decision(s) and action(s) were in no respect whatsoever related to disability or to the claimant's protected act.

330. On 39e, f, g, and n and 44f and g (the issues relating to the respondent's sabbatical application process, the claimant's application in September for sabbatical, Professor Blakemore's comments to the claimant, and the CMB meeting and outcome), we repeat our earlier findings. We find that the respondent's decision(s) and action(s) were in no respect whatsoever related to disability or to the claimant's protected act.

331. On the issues relating to the claimant's IT and workload, we repeat our earlier findings. We find that the respondent's decision(s) and action(s) were in no respect whatsoever related to disability or to the claimant's protected act. This applies to issues: 39d, h, m, and 44h, l, j.

332. On 39i and 44k, we repeat what we have said above (support at meetings which did not happen). The claim fails.

333. On 39j and 44l, we repeat what we have said above about face to face meetings. If the s.26 claim relates to depression, it fails for reasons already stated. That apart, we find that the respondent's decision(s) and action(s) were in no respect whatsoever related to disability or to the claimant's protected act.

334. On 39k and 44m: we have found that an aggressive tone was not used at the meeting, and the claim fails.

335. On 39l and n, we repeat our findings above about the ethics and expenses forms and procedures. We find that the respondent's decision(s) and action(s) were in no respect whatsoever related to disability or to the claimant's protected act.

336. On 39m: we repeat our above findings about the ATW process. We find that the respondent's decision(s) and action(s) were in no respect whatsoever related to disability or to the claimant's protected act.

337. On 39o and p and 44o and p: there was no reprimand on either occasion, and the claim fails.

338. Issue 46 related to holiday pay. We have set out our findings above.

Note

339. Judge Lewis adds an individual note:

> ‘On at least two occasions during this hearing I made metaphorical use of the language of vision (eg that we ‘must not lose sight of’ the hearing timetable). On both occasions, I apologised straightaway to the claimant for any offence which I had inadvertently caused. Although the claimant did not comment on either occasion, it seems to me right to record my usage in these reasons, and to repeat my apologies.’

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Employment Judge R Lewis

Date: 30/11/2021

Sent to the parties on: 16/12/2021

N Gotecha

For the Tribunal Office