EMPLOYMENT TRIBUNALS

Claimant: **Mr D Hayes**

Respondent: **Rendall & Rittner Limited**

Heard at: **East London Hearing Centre (in public, by video)**

On: **18, 19 , 20, 21 January 2022**

Before: **Employment Judge Moor**
Members: **Mrs M Legg**
Mr P Pendle

Representation
Claimant: in person
Respondent: Mr Collyer, consultant

JUDGMENT having been sent to the parties on 25 January 2022 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

1. The Claimant brings claims arising from his employment and dismissal from it as a day concierge at an apartment building in Shoreditch.

2. In order to avoid any further delays, the hearing was held remotely by video. We thank all parties and witnesses for their cooperation in this. We also thank both the Claimant and Mr Collyer for the careful and courteous way they conducted their respective cases.

Issues

3. We amended the issues at the start of the hearing so as to reflect accurately the claim form. I sent the Amended List to the parties on the first day showing the new parts underlined.

4. The issues the Employment Tribunal will be asked to decide at the final hearing are as follows. (Following its original numbering)

Protected disclosures

1. The Claimant alleges that he made the following protected disclosures:

    1.1 On 3 December 2019 he informed was Mr Ross Fanta that he was physically threatened by an agent.

    1.2 On the 4 March 2020 the Claimant raised a grievance and he handed a document at the meeting to his line manager asserting that was a breach of legal obligation health and safety concerns and the environment was being damaged.

    1.3 On the 15 April 2020 the Claimant emailed a number of directors and individuals of the Respondent specifying there is a breach of a legal obligation health and safety environment being damaged

    1.4 At times and to people identified in his witness statement, he reported dangerous elements and safety non-compliance namely:

        1.4.1 Fire alarms not working
        1.4.2 No PPE
        1.4.3 Non-compliance with COSHH
        1.4.4 That he had been verbally abused

2. Did the three protected disclosures amount to protected disclosures for the purposes of section 43C Employment Rights Act1996?

3. The Respondent asserts that it dismissed the Claimant by reason of conduct. And the alleged protected disclosures 2 and 3 were made after the Claimant was notified that he may be subject to disciplinary investigation and been invited to a case to answer meeting

Detriment/Dismissal

4. The Claimant alleges the following matters of detriment/dismissal for making a protected disclosure.

    4.1 There was a grievance hearing on the 7 and 9 April 2020 and there was no outcome.

    4.2 The Claimant was dismissed on the 14 April 2020. The Claimant must show the protected disclosure/s were the reason or principal reason for his dismissal.

    4.3 The Claimant attended an appeal against dismissal on the 13 May 2020 and he received no outcome.

Holiday pay

5. The Claimant claims 9 days of holiday pay. He states that the Respondent wrongly lifted his paid suspension and converted it into his pre-booked holiday. The Claimant maintains that he ought to have remained on paid

suspension, whilst on holiday in Mexico, and had his holiday carried over. The Claimant states that this would have been the fair thing to do but was not able to identify the contractual clause to support his complaint. The Respondent states that the Claimant's pre-booked holiday in March was taken and that therefore there was no outstanding accrued leave on termination. The parties agree the holiday year started on 1 January.

Disability discrimination

6. The Claimant states that he has a physical and mental impairment of anxiety. The Respondent admits that the Claimant was disabled by reason of this condition at the material time.

7. Whether the Respondent knew or could reasonably be expected to have known that the Claimant was disabled. The Claimant stated that the Respondent knew of his disability as it was on his health screening questionnaire on the 23 March 2019 submitted during the recruitment process.

PCPs and *disadvantages*

8. The Claimant alleges the following provisions criteria or practices ('PCPs') placed him at a substantial disadvantage compared to non-disabled persons

PCP1

9. How the disciplinary process was operated. Expecting him to comply with the disciplinary process *without proper understanding*.

PCP2

10. Requiring him to use Microsoft teams without explaining how.

PCP3

11. Requirement to attend office in Woolwich in proximity to his line managers *who caused him anxiety.*

PCP4

12. Requiring him to work in an unsupportive working environment *which was worse for him because of his anxiety* namely
    12.1 No PPE
    12.2 Insufficient training for his work
    12.3 A lack of HR support when requested

13. Did the Respondent know or ought it to have reasonably known that the Claimant was placed at the disadvantage.

Reasonable adjustments

14. The Claimant claims the following reasonable adjustments

    14.1 Holding the disciplinary hearing on a day other than the 7 April 2020, which was his birthday.

    14.2 Provide a full explanation of how Microsoft team works with an explanation of what to do with the problems and troubleshooting.

    14.3 Not requiring him to travel to Woolwich on 2 March 2020 where he was exposed to see his manager.

    14.4 Providing support for anxiety management.

    14.5 Providing a supportive management structure and guidance.

    14.6 Providing access to his 'Liveworks' account whilst on disciplinary. The Claimant alleges this was disconnected on the 31 March 2020.

Disability harassment

15. The comment in the dismissal appeal meeting on the 13 May 2020 by Mr Orlando Jay who was unsympathetic in appeal where he made reference in respect to the policy to the Claimant being a 'bit unloved'.

16. Did this comment come within the definition of harassment under section 26 of the Equality Act either by violating the Claimant's dignity or creating the proscribed environment?

17. Did it relate to disability?

Findings of Fact

5. Having heard the evidence of the Claimant, Mr J Beeston, Senior Property Manager, Mr L Side, Property Team Manager, Ms L Berry, HR Adviser, Mr Oladunjoye, Divisional Director and Mr R Facta, line manager and Property Team Manager, and having read the documents referred to us, we make the following findings of fact. Where there is a dispute on the facts we have decided what was more likely to have occurred.

6. The Respondent is a residential property management company specialising in multi-occupancy buildings. Mr Hayes started employment with it on 30 April 2019 as a day concierge.

Medical Evidence

7. The Claimant experiences anxiety and informed the Respondent about this in his application documents. He stated on those documents that he had anxiety which was managed by medication (Sertraline) and his GP. He stated that it did not affect his ability to do his job. He was not asked questions about his condition at any stage.

8. A letter produced during proceedings from a clinical psychologist on 9 October 2020 shows that the Claimant's anxiety is part of an underlying condition Emotionally Unstable Personality Disorder (EUPD). This condition means that for him everyday settings and particularly social interactions could trigger feelings of anxiety, anger and distress. He had received 3 courses of treatment in 2015 (11 sessions); 2017-2018 (18 sessions) and 17 sessions since May 2019 focussing on containment, but despite that treatment, his presentation had remained largely unchanged. The psychologist described his mental health difficulties as 'chronic, severe and persevering, lifelong in nature affecting his day to day functioning and activity.'

9. Having seen the medical records in disclosure the Respondent admitted that the Claimant was a disabled person because anxiety was confirmed 'together with other related conditions which are more clearly within Section 6'. This concession was made 'on the basis that the Claimant's anxiety is a part of those related conditions'. The Respondent denied actual or constructive knowledge of disability.

10. The Claimant does not rely on the other conditions referred to in his medical records as disabilities and did not inform the Respondent of them.

11. The Claimant prepared an Impact Statement for the proceedings describing his mental health during his employment. He does not refer to EUPD in that statement but to stress and rising feelings of anxiety during his employment. Plainly his mental health worsened during his employment.

12. At the outset he attended an introductory session at Aldgate with a video about core values and then at Woolwich offices where Ms Seal, assistant property manager, asked him to work through a serious of Standard Operating Procedure Manuals. He was told they would be available to reference. He did 9 days of shadowing at two other sites, which were part of his training. On 24 May 2019 had an initial walk around the building assigned to him: Long and Waterson (L&W) in Shoreditch. This was a newly built set of flats. He was not provided with Permit to Work training.

13. The Claimant started work at L&W on 10 June 2019 when it was still a construction site until early in July when it was handed over to the Respondent. During this time he did not feel safe as he had no PPE (hard hat, hi viz, glasses, boots) for his patrols. Mr Facta says he had appropriate PPE because it could be borrowed from the marketing suite. The Claimant got on with setting up the concierge department. We find the Claimant's expectations on PPE were probably greater than was needed and we accept Mr Facta's evidence that PPE was available to be borrowed in this period when it was required. We have taken into account that the Claimant did not raise PPE as a problem at the time in his detailed email to Ms Seal, his assistant manager.

14. The Claimant had to undertake the building handover himself when Mr Facta was unwell. The lack of a printer caused him real administrative problems for example in having a visitor log in form available and in having to have the relevant safety documents on display.

15. On 3 July 2019, a handover happened in the contractors' canteen at which the Claimant was identified to them as the keyholder and point of contact. On the same day a lift was stuck with 5 passengers in it. Mr Facta was uncontactable until Mr Meiller, the Estate Operations Manager, called him. The Claimant sent Mr Facta a text stating he was not feeling very well, fatigued, drained, unhappy, unsupported and disillusioned referring to the important event happening that day**.** Mr Facta replied in a text that 'absent any particular matters being raised' he could not comment and suggested the Claimant assess the reasons for why he was feeling the way he was and the cause.

16. On 5 July 2019 the Claimant called HR and spoke to Nico an HR Administrator. He asked to speak to an HR manager, but Nico advised him to put his concerns in writing. The Claimant said the matter was sensitive. On the same day the Claimant sent an email to HR admin stating his preference to speak to someone because his situation was 'sensitive' and complained about this. HR then tried to call the Claimant unsuccessfully. They sent him an email giving him a number on which to call back. The end result was that HR told him about their Employee Assistance Programme called Lifeworks which among other things offered confidential counselling. The Claimant did not take this up at that stage. He did not think an outsourced company would be likely to help.

17. On 5 July 2019 the Claimant then sent a text to Mr Meilleur, Estate Operations Manager, saying he needed to communicate with someone at the Respondent who *'is responsive and receptive about my situation here. I am brand new, inexperienced… burdened with things that are beyond me. I am not being managed, trained, inducted or shown anything … It is being insisted upon me that I should be INDUCTING site construction staff on stuff I know nothing about. I am appealing for help, assistance and support here please!*' Mr Meilleur replied' thank you for making me aware of the situation. I will speak to the rest of my team and see about getting more support for you at Long and Waterston.'

18. In July 2019 the Claimant was also concerned about hazardous chemical storage. His later grievance accepted he had not received adequate training about patrols in plant room areas where the developers had stored chemicals. The Claimant raised this issue and his view that they were not stored safely with Mr Facta, see for example the email on 14 September 2019.

19. On 13 September Ms Lipani visited the site and discussed the Claimant's training needs. She advised the Claimant in an email following the meeting to set aside time each week to read the training documents she had attached and fill out a spreadsheet when he had done so. The Claimant's training sheet shows that he also undertook a conflict management training course on 12 December 2019. Mr Facta remembered that had come up as a need after the probation review. The Claimant also went on two safety courses in February 2020.

20. The Claimant's ultimate grievance about lack of support was partly upheld because the Respondent found that no regular and uninterrupted 1:1s had been held with Mr Facta, albeit that they had had regular informal

discussions at the concierge desk. But we do not accept that Mr Facta failed to support the Claimant in substance as he alleges. We find Mr Facta was keen for the Claimant to bring him problems arising on the site, as did the other day concierge, so that he could find ways to manage those problems. He saw them as his eyes and ears. A good example of this is the email chain at page 82:

20.1. Mr Facta forwarded the Claimant an email to IGI in which Mr Facta explains to the letting team that they have been asking the concierge to do certain duties and he has asked them to forward him those requests on to him firstly so that he can manage them. He explains that the concierges already have a lot of duties.

20.2. The Claimant thanked Mr Facta for doing so and says *'I'm so sorry but today has not been v good, as you say, I was overwhelmed. If I could be just a fraction of the man you are, and the one who inspires me so much, I would be quite content with my lot*.' This shows to us that at least on that day Claimant felt supported by Mr Facta.

20.3. Mr Facta replies '*Don't worry about it. I have had a call with Moran and all is fine. I will be coming over on Tuesday … and we go over communications and procedures. Please do forward anything to me as discussed so I can interface.*

21. It is obvious to us that the Claimant was concerned about following the rules and was finding it difficult to control outside contractors and delivery people. Mr Facta acknowledged that those people could be unruly and difficult. At paragraph 20 of his statement the Claimant said '*I had kept going on and on and on to Ross [Facta] about the contractors not being supervised or challenged for their behaviour and contraventions of safety. In fact, this was the highest cause of stress with me which invariably caused friction between me personally and the contractors and their management.*' We find that in doing so the Claimant was not an irritant to Mr Facta who had his own disputes with the contractors and was happy to hear this information and manage it.

22. By October 2019 the Claimant says, and we accept, his anxiety had become exacerbated. We accept his evidence that he was trying to get across to Mr Facta that he was feeling overwhelmed generally. We also accept that Mr Facta perceived the Claimant's contacts as him feeling overwhelmed or stressed about a particular issue on a particular day. His approach was try to manage or solve the problem the Claimant brought him.

23. On 14 November, after a long probation review meeting, the Claimant's probationary period was extended to 29 January 2020 because of two particular issues (parcels and patrols).

24. On the same day 14 November, the Claimant telephoned Ms Seal at home. He told her he was struggling because work was exacerbating his anxiety for which he was on medication. In his email to her he was concerned about the probation extension and made complaints about his co-worker; and then stated **'**I feel very distressed, vulnerable and isolated

working in an environment in which I am not only unfamiliar with by profession but one in which I am clearly not supervised, appraised, inducted, valued, supported or trained.' We have not heard evidence about any response.

25. The Claimant recalled telephoning Mr Facta in tears on about three occasions. The example he gave was in late November when he talked about the verbal abuse and behaviour of the contractors. We accept this. However we also accept that Mr Facta did not hear that the Claimant was crying but did hear that he was distressed about work problems.

26. We accept Mr Facta's denial and find that he did not use phrases like 'pull yourself together' or 'like it or lump it or leave' even if that was the Claimant's interpretation. Mr Facta does recall discussing with the Claimant whether the industry was right for him.

27. The Claimant experienced ongoing problems in dealing with sub-contractors visiting the site to do work, in particular in relation to the return of keys. The Claimant thought they lied to him about keys. On 3 December the Claimant told Mr Facta in a handover about a threat by the contractors over a key as follows. 'Steve further implied '*someone had complained that they had a key, and when they find out who it is, they will lynch em*!"

28. In the same handover he reported about faulty fire alarms going off.

29. On 2 January 2020 by email the extension of probation was confirmed. On the same day the Claimant sent a written grievance to Ms Berry of HR in the strictest confidence. He complained about unfair treatment by Mr Facta impacting on among other things his 'wellbeing and resilience'. He complained, too, about a lack of support and training. Ms Berry responded by saying she was sorry to hear of his complaint. She asked whether he wished it to be a formal grievance and reminded him about Lifeworks which she said was 'a confidential, free service providing access to caring professional consultants and counsellors'. In the two emails containing his grievance the Claimant did not refer to any impact or difficulty with his mental health.

30. The Claimant withdrew this grievance on 14 January 2020 by which time Ms Berry had not shared it with any of his managers including Mr Facta.

31. On 27 January 2020, Hr asked Mr Facta about the completion of probation (due on 29 January). Mr Facta replied they had done a practical exercise on patrols and that the only issue was a difficulty with not signing for residents' parcels. He stated that he thought he would pass the probation but with an informal warning about parcel acceptance. Thus, only three weeks before the allegation arose that led to the disciplinary hearing and dismissal, Mr Facta was stating his intention to keep the Claimant employed.

32. On 29 January 2020 the Claimant was concerned that a contractor had lowered a car stacker when, in his opinion, he should not have done. He described himself as being in constant combat with people at the site including delivery drivers. On 12 February he challenged a contractor for their offensive behaviour towards him.

33. On around 17 February 2020 contractors complained to Mr Facta that, on 13 February 2020, someone had put a bag on a contractor's vehicle which was said to contain excrement and was soaked in urine. Mr Facta looked at the CCTV and found footage of an item landing on the van. He then found footage of the Claimant throwing an item from the area known as the podium above the van. He also found footage showing the Claimant coming out of the staff room, walking through the foyer with something in his hand before going up to the podium. We agree that the CCTV shows all of this.

34. Mr Facta found the handover report for 13 February in which the Claimant had suggested the contractors might try to waste his colleague's time by complaining someone had left waste or food on their windscreen. (This handover was written before he was aware of the allegations.)

35. Mr Facta referred the matter to Ms Berry. He thought the Claimant had done what was alleged and did not want him in the business anymore.

36. We are very clear that Mr Facta did not pass this allegation to HR or reach the view he reached because of any prior disclosures of information or complaints that the Claimant had made. They did not influence his approach to this allegation. We take into account:

    36.1. There was enough in the allegation and the CCTV to make him think that the Claimant had done something deliberate

    36.2. The handover message was odd and supported that the Claimant may have left something on the windscreen, how otherwise would he know that the contractors might complain;

    36.3. We accept and find credible Mr Facta's evidence that he did not find the Claimant's complaints and concerns irritating but he wanted to know them in order to manage it because he was not always there.

    36.4. Significantly he had only just told HR he was thinking of passing his probation, suggesting he had no intention of getting rid of the Claimant before the allegation arose.

    While it is less important, even the Claimant speculates in his statement that the contractors 'were using me to get back at Mr Facta.' And thinks it was the contractors who lied not Mr Facta.

37. The Claimant was informed of the allegations by letter and invited to an investigation on 18 February.

38. On the same day he raised a grievance against Mr Facta and about onsite health and safety standards and that he was working in an unsafe environment.

39. The next day at work the Claimant tried to call Lifeworks but the call handler could not connect him to a counsellor straight away. He contacted Ms Berry who advised him to wait and try again in 10 minutes. He accepts she dealt with his request urgently.

40. Shortly after, on that day, Ms Berry telephoned the Claimant while he was at work and suspended him. She decided to do this instead of the manager because of the Claimant's earlier grievance and evident problem with Mr Facta. This was confirmed by letter.

41. By the time of that telephone call the Claimant told Ms Berry how he felt about the allegation. He had an extreme emotional reaction and went as far as to say to Ms Berry that he had thought of taking his life. She encouraged him to speak to a counsellor via Lifeworks and/or his doctor and called him back later in the day to make sure that he was OK. While she does not recall the Claimant telling her he had thoughts of taking his own life: we find on balance it was said. It was referred to in his later email of 7 April and his response was consistent with the clinical psychologist's explanation of how the Claimant might respond to stress and consistent with her calling him back to check that he was OK on the same day.

42. Ms Berry also sent an invitation for him to go to the Woolwich office for a grievance hearing on 25 February. She explained in her letter to contact her if the arrangements were unacceptable. The Claimant asked to change the meeting to a different building to avoid bumping into his managers and because he would find it unsettling and intimidating. The investigating officer was based there and busy, so initially Ms Berry informed the Claimant the meeting would remain at Woolwich but she would make sure that Mr Facta would not be present. Subsequently the meeting was postponed to 4 March 2020 and moved to a different office.

43. Mr Beeston investigated by interviewing the Claimant on 2 March 2020. He reviewed the CCTV. He did not ask questions of 3 individuals seen at times in the CCTV because he saw that they had moved away by the time of the incident.

44. At the interview:

    44.1. The Claimant admitted he had thrown an item onto a contractors' vehicle but said it was only a tissue he had been aiming at the nearby bin lorry.

    44.2. He said he had been carrying a dry tissue around as he usually did to wipe things, that it had become wet and he wanted to throw it away.

    44.3. He denied the allegation about the contents.

    44.4. They looked at the CCTV together. The Claimant agreed whatever he had thrown it was soaking wet by the time he threw it. He said he had probably been wiping surface handles with it and it probably had become mixed with a bit of earth.

    44.5. Mr Beeston showed the Claimant the handover note which anticipated a complaint (see above).

    44.6. The Claimant confirmed there was ongoing animosity between him and the contractors.

45. Mr Beeston decided there was a case to answer.

    45.1. On the basis of what he saw in the CCTV, he thought the Claimant had deliberately thrown something he had brought from the staff room.

    45.2. It was not a dry tissue but heavier and browner that there was a splatter on the screen when it hit.

    45.3. The Claimant had waited for another member of staff to leave the area before throwing the item.

46. For those reasons he decided to recommend a disciplinary hearing.

47. We accept that Mr Beeston did not know about any disclosures of information or complaints to Mr Facta. He did not manage the building. Had been chosen to be impartial because he did not know about it. He did not have any inkling of complaints the Claimant had been raising during his employment. Although all were ultimately managed by the same manager further up the chain of command, that is not enough on its own on the facts we have heard for us to draw any inference that he knew. We accept his very clear and credible denial.

48. The first grievance hearing was held on 4 March by Ms Miravite-Tiley. The outcome was provided on 26 March 2020 some of which was partially upheld.

49. On 11 March to 27 March the Claimant took a pre-booked 9-day holiday. He went to Mexico. During that time the Respondent could not progress either the disciplinary or grievance. (On 13 March the Respondent formally lifted the suspension for the booked annual leave.)

50. A disciplinary hearing was planned to be heard by Mr Side. He did not know about the complaints or disclosures of information the Claimant had raised during his employment or his grievance. He had no management responsibility for the building. We find ultimately the reason for his decision to dismiss was the misconduct allegation.

51. On 27 March 2020, the Claimant was invited to the disciplinary hearing on 1 April meeting. This set out the allegations and warned the Claimant if proven they would be gross breaches. He was told about his right to be accompanied and provided with the minutes of the investigation meeting and told the CCTV was available. Ms Berry stated in terms '*if you have any specific needs at the hearing for example as a result of disability, please do not hesitate to contact me'* giving her phone contact and email.

52. By then the pandemic lockdown had begun and the meeting was to be held over Microsoft Teams.

53. Mr Side prepared a Microsoft Teams invitation whereby a hyperlink was sent by email on 31 March. This email did not give any instructions as to how to join. Microsoft Teams could be accessed via the internet by clicking the link. We accept the Claimant did not know what Microsoft Teams was, he did not have a camera on his desktop computer and could not connect

to the meeting. (This was week 2 of the first pandemic lockdown. Many people did not know at that stage about Teams and had not used it.)

54. Mr Side waited 20 minutes and told Ms Berry the Claimant had not attended.

55. On 31 March the Claimant was informed his Lifeworks account had been deactivated. We accept Ms Berry's evidence that this was an error. There were two cases going on internally at the time. The other involved a colleague who had posted bad reviews of Lifeworks. It was his account that the HR Director intended to close. Unfortunately they mixed up the names and closed the Claimant's account. We accept that this was not vindictive or in preparation of any dismissal.

56. On 1 April 2020 Ms Berry rescheduled the disciplinary for 3 April at 2pm and informed the Claimant about it by email. Another Teams link was sent to him. She warned him that if he did not attend without reasonable cause or explanation then a decision may be taken in his absence. The Claimant did not attend.

57. Neither side contacted the other on either day even though they each had the other's number.

58. Ms Berry took the view that, because the Claimant had not contacted her to say there was a problem, the Claimant had decided not to attend.

59. The Claimant said he did not know who to call. We do not accept this: he clearly knew how to contact Ms Berry and she had given him her telephone number in the letter. In his evidence he told us he took umbrage at the lack of explanation as to how to attend. In the appeal he told Mr Oladunjoye that he did not contact Ms Berry about not being able to attend because he did not want to upset himself and trigger self-harm thoughts. We note the Claimant emailed Ms Berry on that day, 3 April, about the grievance at 14.30 30 minutes after the scheduled time for the disciplinary hearing about the scheduling of the grievance appeal. We find he did not try to find out about how to attend the disciplinary because he was both extremely anxious and because he was annoyed that the Respondent had not given him an explanation of how to attend.

60. On 6 April Ms Berry told him that the disciplinary officer was considering all the evidence in order to reach a decision in his absence because he had not attended the hearing.

61. Ms Berry did not allow that postponement of the grievance appeal because she had been instructed that despite the pandemic it had to be business as usual.

62. On 6 April the Claimant replied to Ms Berry stating: **'**you have previously been made aware that I am suffering from anxiety and have harboured suicide ideation.' He described feeling under immense pressure. He went on to say he did not know what Microsoft Teams was and asked her how she was so confident that he could use it at home. She responded stating that she had explained the benefit of Lifeworks before he went on leave and encouraged him to contact his GP.

63. Ms Berry considered what the Claimant was expressing was anxiety about the disciplinary allegations and did not see the Claimant's statements, even with thoughts of taking one's own life, as part of a bigger picture. She did not check his pre-employment questionnaire. She also thought the Claimant was stalling for time. By this time, she was feeling herself harassed by the amount of correspondence she had received from him (much of which we have not summarised here).

64. Even though a decision had not yet been finalised, the Respondent decided not to reconvene the disciplinary hearing.

65. Ms Berry said that, on occasion, flexibility was shown by HR over disciplinary hearings. She thought she might have been influenced in her approach by the Claimant not having 2 years' qualifying service for unfair dismissal.

66. By this time, Lifeworks had been deactivated. First thing on 7 April Ms Berry sent instructions to have the account reactivated having heard about the distress the Claimant was experiencing. The evidence before us is that an invitation from Lifeworks was sent to Claimant on 9 April. We find he then did not reactivate the account. It may be he did not see the invitation given he was dealing with a lot of correspondence at the time. We note that Mr Hayes was still being treated by Dr McColl his clinical psychologist for 17 sessions from May 2019 to October 2020. Thus Lifeworks was not, as he puts it, his only source of counselling.

67. On 7 April the grievance appeal was held by telephone. There was difficulty with connection so it was put off to 3pm on 9 April. Late the night before, the Claimant requested a postponement. He stated he did not feel focussed. HR decided it would not be in any one's interest to postpone.

68. On 9 April the Claimant did not attend the grievance appeal. He explained in his evidence this was because he got home 30 minutes late for the meeting. We find that his delay was the reason there was no grievance appeal or outcome.

69. On 9 April Mr Side decided to dismiss and sent his reasoning to Ms Berry. In essence he decided the throwing of any object deliberately from the building was misconduct. He did not believe the Claimant had been aiming at the bin lorry. He thought the handover note was the Claimant trying to divert further investigation. While he could not categorically confirm the contents, he considered that the Claimant could have urinated on the item beforehand and queried why the Claimant had not just put the item in a bin. He decided all of the above was in breach of a duty of integrity professionalism and responsibility and was misconduct.

70. HR formulated a dismissal letter which was sent on 14 April 2020.

71. We accept that the CCTV does show the Claimant throwing an item from the balcony onto the car. The item is heavier than a wet tissue. It is a package of some kind which the Claimant has carried from the staff room, through the foyer, outside and up the stairs to the podium where he waits for some minutes before he throws it.

72. Both Mr Beeston and Mr Side said their decision would have been the same whatever the contents of the package. This is because this was misconduct to intentionally throw an item from the building. The concierge's duties to keep good order were the opposite of such behaviour.

73. On 15 April the Claimant wrote to several directors with complaints including about health and safety breaches.

74. The Claimant was given a right of appeal against the dismissal. He appealed and an appeal meeting was arranged with Mr Oladunjoye for 13 May 2020.

75. As part of his appeal the Claimant had referred to his grievance, so Mr Oladunjoye had seen some of the grievance material and the complaint to the directors. We do not believe he was influenced by this material in the approach he took to the disciplinary appeal. We are satisfied with the reasons he gave: after a long period of time he was still able to express succinctly his reasons for not upholding the appeal.

76. During the hearing Mr Oladunjoye also explored with the Claimant what his concerns were about his allegation that company policies had been broken. The Claimant explained '*no enquires ever made as to how I am apart from [Ms Berry]*…' Mr Oladunjoye asked what he was expecting and how that contravened company policy. The Claimant did not wish to be nailed down without looking at the policies but explained '*there's nothing stopping a manager from calling me to say "Hi Daniel how are you coping? Do you need anything?*" In response Mr Oladunjoye said that where one of his complaints was '*that company policy hasn't been followed you have to expect me to ask you what policy. So if this is just a case of you were feeling a bit unloved because no one asked about you and your welfare or are you saying that there is a policy that this shouldn't have happened.'* He went on to explain '*that's what I'm trying to draw out because that is what I need to investigate … So you're not referring to anything specifically you're just saying that no on contacted you. Is that the correct interpretation of your comments?'*

77. The Claimant was very upset by Mr Oladunjoye's use of the word 'unloved'. He thought it trivialised his problem. He thought Mr Oladunjoye was expressing that opinion of his situation. He felt humiliated and thought the comment extremely insensitive.

78. Mr Oladunjoye did not intend to upset the Claimant and has acknowledged that his wording was clumsy.

79. The Claimant also referred at this meeting to thoughts of taking his own life.

80. When asked what he wanted the outcome to be, the Claimant said he wanted to return to work, but only temporarily while he was looking for another job.

81. Mr Oladunjoye decided there was enough evidence to justify dismissal from the CCTV and what he regarded to be an implausible explanation by the Claimant. He drafted an appeal letter. The Claimant did not receive any letter. Mr Oladunjoye assumes that it was not sent out because of an administrative mix up.

82. While we do not know the reason for the appeal letter not being sent to the Claimant nor do we infer that it was because of his prior disclosures or complaints. Mr Olandunjoye had spent some hours with the Claimant. He was obviously trying to understand the Claimant's points and we accept he reached a decision on the appeal. It does not make sense to us that he would go that far for the Respondent then to decide that the appeal outcome would not be sent because of disclosures. It is more likely that this was an administrative error. The Claimant did not chase for an outcome.

83. Ms Berry's role was to deal with employment relations, i.e. when problems or questions arose in connection with employment. Yet she had been given no training on disability or disability discrimination or the obligations arising from the Equality Act. She knew that she could make referrals to Occupational Health advice where appropriate.

84. Between 1 January 2020, the beginning of the holiday year, and the Claimant's dismissal on 14 April 2020, 15 weeks elapsed.

Legal Principles

Automatic Unfair Dismissal for Protected Disclosures

85. The Claimant must show that the principal reason for dismissal is that he made protected disclosures.

86. Protected disclosures, in brief, are disclosures of information that in the reasonable belief of the Claimant tend to show one of the matters set out at section 43B of the Employment Rights Act (here that a crime or a legal obligation has not been complied with or the health and safety of an individual is likely to be endangered.)

87. The Claimant must also make the disclosure to his employer believing it to be in the public interest.

Detriments

88. There is also a right not to be subject to a detriment by any act or failure to act done on the ground that the employee has made a protected disclosure. The test for causation on detriment is that the disclosures have to materially influence the decision.

Definition of Disability

89. A person is a disabled person under the Equality Act 2010 if they have an impairment which has a substantial adverse effect on their ability to do day to day activities. It must be long term i.e. have lasted or be likely to last 12 months.

Reasonable Adjustments

Knowledge

90. The duty to make reasonable adjustments does not arise if the employer did not know the Claimant was disabled or '*could not have been reasonably expected to know'*.

91. The required knowledge is of the *facts* of the disability, not whether those particular facts meet the legal definition of a disabled person.

92. 'Constructive knowledge' is established when an employer reasonably could have been expected to know of the disability. The Equality and Human Rights Commission Code of Practice on Employment 2011 ('the Code') advises, at paragraph 6.19, that employers '*do all they can reasonably be expected to do'* to find out this information.

93. The knowledge of the disability must be at the relevant time. It may be that at the outset there was no actual or constructive knowledge, but as events occurred, there will come a time at which a Tribunal considers the employer ought reasonably to have known of disability. It is to be remembered that it is not just knowledge of the condition and its adverse impact on day to day activities but knowledge that it is long term or likely to be.

Adjustments

94. The duty to make reasonable adjustments arises under section 20 Equality Act 2010:

> *'where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.'*

95. Tribunals must take a structured approach to these questions. Contrary to popular assumption the duty to make adjustments does not arise in every case of disability.

96. First, was a provision, criterion or practice ('PCP') applied? This must be a matter applying in general rather than aimed at the Claimant in particular.

97. Second, did the PCP put the Claimant to a comparative substantial disadvantage (substantial meaning more than minor or trivial). The comparison is with a person who is not disabled?

98. Third, did the Respondent know or ought it to have reasonably known of that disadvantage?

99. Fourth, were there reasonable steps that would avoid that disadvantage? This is an objective question, the focus being on the practical result. There must be a real prospect of the adjustment avoiding the disadvantage.

100. When considering what is reasonable, we consider paragraph 7.29 of the Code, which sets out relevant factors: the size and resources of the employer; what proposed adjustments might cost; the availability of finance or other help in making the adjustment; the logistics of making the adjustment; the nature of the role; the effect of the adjustment on the workload of other staff; the other impacts of the adjustment; the extent it is practical to make. How far the adjustment would be effective is also a consideration.

101. Mr Collyer referred us to Cave v Gibson EWCA Civ 391 a case that concerned disciplinary procedures in a disability discrimination claim. The Claimant was a disabled person because of a learning disability and the questions for the tribunal were whether the suspension letter should have been read to him and whether he should have been allowed an advocate at the disciplinary hearing. The tribunal decided that neither matter put the claimant to a substantial disadvantage compared to non-disabled persons because he understood the allegations against him and could express himself orally with confidence. If this case is principle for anything it is merely a reminder that we must take the step-by-step approach above.

Harassment

102. Section 26 of the Equality Act 2010 provides:

> *'(1) A person (A) harasses another (B) if—*
>
> *(a) A engages in unwanted conduct related to [disability], and*
> *(b) the conduct has the purpose or effect of—*
> *(i) violating B's dignity, or*
> *(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B. …*
>
> *(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
> *(a) the perception of B;*
> *(b) the other circumstances of the case;*
> *(c) whether it is reasonable for the conduct to have that effect.'*

103. We ask the questions posed by the statute in turn.

104. Whether an act is 'sufficiently serious' (to quote from the Code at para 7.8) to support a harassment claim is essentially a question of fact and degree. We note the observations of Underhill P (as he then was) in Richmond Pharmacology v Dhaliwal [2009] ICR 724 (EAT) at paragraph 22 (in a harassment related to race claim):

> *… We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct [or relating to any protected characteristic], it is also important not to encourage a culture of*

hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase…

105. In Weeks v Newham College of Further Education EAT 0630/11 Langstaff P considered that '*environment*' means a state of affairs, which may be created by one incident where the effects are of longer duration (para 21). But at paragraph 17 he observed:

'*Thus, although we would entirely accept that a single act or a single passage of actions may be so significant that its effect is to create the proscribed environment, we also must recognise that it does not follow that in every case that a single act is in itself necessarily sufficient and requires such a finding.'*

Holiday Leave

106. Employees are entitled to be paid for any accrued but untaken holiday on dismissal.

107. All agree the holiday year was from 1 January.

108. Regulation 14 of the Working Time Regulations 1998 sets out the calculation for compensation.

108.1. A x B – C. Where A is the period of paid leave for the whole year. B is the proportion of the leave year that has expired before termination and C is the amount of paid leave already taken.

108.2. The Claimant was entitled to 5.6 weeks' paid holiday a year.

Application of Facts and Law to Issues

109. Issue 1 It is clear from our factual findings that the Claimant made many disclosures of information in his work. Because of our clear findings, which we come to below, on the reasons for the dismissal and detriments, we do not need to decide in relation to each one whether those disclosures amounted legally to 'protected disclosures'.

Issue 4.2 Automatic Unfair Dismissal

110. The Claimant must show that the reason or the principal reason was that he made protected disclosures.

111. We have been clear in our findings of fact that the only reason for the dismissal was misconduct. Mr Side believed the Claimant had thrown something onto the car below deliberately. He was not categoric about its contents but considered the matter to be misconduct in any event. He did not accept the explanations provided by the Claimant in the investigation hearing.

112. We have been clear that the alleged disclosures were not the reason for dismissal. Indeed, they could not have been because Mr Beeston and Mr Side did not know about them.

113. We do not accept that these managers were influenced in any way by Mr Facta. He had already stated he was thinking to pass the Claimant's probation 3 weeks earlier. If he had wanted the Claimant dismissed because of his disclosures, terminating the employment at the end of probation would have been a far easier route for him to follow.

114. It is not necessary for us to decide what happened on 13 February 2020 and what the contents of the package were that the Claimant threw. But we have asked ourselves whether the dismissal decision was so surprising, or perverse as the Claimant puts it, to raise questions as to why he was dismissed. He invites us to infer that it was because of his prior disclosures. The difficulty with that is that Mr Side did not know about the disclosures and they therefore could not have been the reason for dismissal. In any event, we do not accept that Mr Side's decision was so surprising that a different explanation is called for. There was a complaint that had to be investigated. The CCTV clearly shows the Claimant deliberately threw something onto a car below. It clearly shows him waiting in order to do that. And it clearly shows him bringing that material from inside the building. His handover note can also be read as an attempt by him to head off any complaint by the contractor. It was reasonable therefore for both Mr Beeston and Mr Side to conclude there was misconduct.

Issue 4.1 and 4.3 Detriments

115. We have found that the grievance appeal was not concluded because the Claimant did not attend the appeal hearing on 9 April. It was not because of his alleged disclosures.

116. It is accepted that the Claimant was not provided with the outcome of the appeal against dismissal. Mr Olandunjoye heard the appeal and drafted a letter. We have accepted that the reason this letter was not sent was not because of the disclosures but more likely an administrative error.

117. The complaints of unfair dismissal and detriments for 'whistleblowing' are therefore not well-founded and do not succeed.

Disability

118. It is accepted the Claimant was a disabled person at the time but the Respondent denies knowledge.

Knowledge

119. Anxiety is a wide-ranging condition. It has different impacts on individuals at different times. We find here the Claimant was a person who experienced anxiety that was managed by medication and that the difficulties he experienced at work exacerbated his anxiety such that towards the end of his employment he felt overwhelmed at times and very distressed.

120. We have to consider whether the Respondent knew about the facts of disability (a condition, that it was long term, that it had a substantial impact on day to day activities) at any stage.

121. We do not consider the pre employment questionnaire gave the Respondent actual knowledge of disability, nor constructive knowledge: there was not enough on it for a reasonable employer to ask more questions because the Claimant said he could do his job.

122. Did there come a time when the Claimant said things or behaved in a way that meant a reasonable employer would have asked more questions about his mental health?

123. We have considered the distress exhibited at times to his managers, especially Mr Facta. With the benefit of hindsight we can see that this was the Claimant's anxiety exacerbated in the context of his disability. In an ideal world, Mr Facta might have been able to see that too, but we consider it was not unreasonable for him to see these calls to him as the Claimant being distressed about particular problems at work rather in the context of an underlying mental ill health. Similarly Ms Seal and Mr Meilleur heard one off moments of upset. On other occasions the Claimant sought help but he did not link his request with mental ill health. On 2 January he described in his (subsequently withdrawn) grievance that his problems had an impact on his wellbeing but again we consider this too general for it to have been reasonable for the Respondent to pick up on it and ask more questions about it.

124. However at the point of the telephone call with Ms Berry on 19 February we do consider that a reasonable employer upon hearing the extreme emotional distress and the Claimant informing them that he had had thought of taking his own life, would have asked more questions about the Claimant's health for example by making a referral to their OH adviser. (Of course Ms Berry also did the right thing at the time by encouraging the Claimant to speak to his GP and counsellor and by calling him back. But she was provided with information about the Claimant's mental health that ought to have alerted her to ask more questions to find out if he was disabled.)

125. If that had been done the Respondent would likely have discovered the information in the clinical psychologist's letter. And that would have led them to understand that the Claimant had a long-term mental health condition, namely EUPD, part of the symptoms of which was that social interactions and stressors exacerbated his anxiety and caused emotional response. Those symptoms plainly create a substantial adverse impact on day to day activities: social interactions being part of what we do.

126. Therefore the Respondent would have found out the facts that meant the Claimant was a disabled person under the Equality Act. In our judgement therefore they had constructive knowledge that he was a disabled person from 19 February 2020. We consider the disciplinary procedures would have been delayed until finding out this information.

Practices, Criteria or Policies?

PCP1

127. Running the disciplinary procedure was a PCP because it was a practice of the employer applied to all.

128. The disciplinary procedure put the Claimant at a substantial disadvantage compared to a non-disabled person to the extent that it was going to make him more anxious and upset than the anxiety or upset that a non-disabled person would likely feel.

129. The Respondent had constructive knowledge of this disadvantage as it follows from the nature of his disability.

130. We have considered whether there was any reasonable step the Respondent could have taken to avoid this disadvantage.

131. We find it would be unreasonable to stop the disciplinary procedure: there was a disciplinary allegation that was serious and had to be dealt with.

132. Was there a way of helping to reduce anxiety? The Claimant suggestions at issues 13.4 and 13.6 are: anxiety management and/or access to his Lifeworks account.

    132.1. We find anxiety support was offered through the Lifeworks service and that was a reasonable step to take.

    132.2. The trouble was from 31 March to 9 April it was deactivated. This was an error. We note that when the Claimant informed them about his account he did not ask for it to be reactivated.

    132.3. The Respondent sought to reactivate it on 7 April once they realised the Claimant's needs were acute and they took that action very quickly. We do not consider therefore there was a failure to take a reasonable step here even though it had been deactivated for a short period. The Respondent needed reasonable time to resolve the problem.

    132.4. Overall therefore there was no failure to adjust the disciplinary procedure in general.

PCP2

133. We agree that asking employees to attend disciplinary hearings via Microsoft Teams was a practice that amounted to a PCP because it would have applied to all. It was a new practice forced upon the Respondent by the pandemic, but it was in place at the time of events.

134. Microsoft Teams did not itself put the claimant at a comparative substantial disadvantage because anyone with lack of technical knowledge and equipment would have had the same problem with it, even if they were not disabled.

135. But we consider a non disabled person would have been better able to cope with the problem better than the Claimant was able to do so. A non-disabled person would have contacted the Respondent at the time to find another way to access the disciplinary hearing. Was this the case for the Claimant?

136. He did not contact the Respondent for a mix of reasons: was extremely anxious and he took umbrage. His taking umbrage may well have been part of the emotional response caused by his EUPD. The Claimant was able to respond to an email from Ms Berry about a different matter on the same day, but this was about his grievance which we consider did not create the same anxiety as the disciplinary allegations.

137. Therefore we have concluded that there a substantial i.e. more than minor or trivial difference between the Claimant's ability to respond to the connection difficulties and a non-disabled person's. We have considered this with some care. It has not been an easy decision. It was a substantial difference because the Claimant's extreme anxiety was very much part of the reason why he did not try to find an alternative way to attend the DH on the day. A non-disabled person would not have had this additional mental obstacle.

138. We note the Claimant did contact both Ms Berry and Mr Side on the next working day to explain that he did not know about Microsoft Teams. In the letter to Ms Berry he emphasised again his acute anxiety.

139. We have found they ought to have known about his mental ill health by this stage and been aware, therefore, that he was disabled by it.

140. Did they know or ought they reasonably to have known of the particular disadvantage of not being able to call on the day itself?

    140.1. On the one hand Ms Berry received a reply from him on another matter. Arguably she might reasonably have expected to hear from him about the disciplinary hearing.

    140.2. But by 6 April the next working day he had told her his extreme distress and lack of knowledge of Teams and taking those points together we consider she reasonably ought to have known that the Claimant's increased anxiety was likely a factor in him not contacting the Respondent on the day.

141. We therefore have to ask was there a reasonable step they could have taken to avoid the disadvantage of the Claimant being less able to contact them on the day of the hearing.

142. If the non-disabled employee had called upon the day and informed the Respondent of his connection difficulties they are likely to have rearranged by phone.

143. One adjustment to avoid the problem of the Claimant not being able as quickly to let the Respondent know of his connection difficulties would have been to reschedule the hearing before Mr Side by phone once the Respondent was aware. This would have been a simple, inexpensive and timely way to give the Claimant an opportunity to be heard.

144. We have checked whether there were other adjustments the Respondent did make to solve the problem/avoid the disadvantage: did the opportunity to go to the appeal hearing do so?

144.1. The appeal gave the Claimant a right to be heard and a chance to reverse the decision. The Claimant was able to make all of his points at the appeal hearing and Mr O considered them and reached a decision to uphold Mr Side's decision.

144.2. However we consider the appeal was insufficient to avoid the disadvantage of not being able to rearrange the disciplinary. First because the Claimant was not, as a matter of fact, given the outcome to the appeal. He did not know how his points had come across. And second because the appeal came after the initial decision to dismiss. The Claimant lost an important chance, before the decision was made to make his points.

144.3. We therefore find that the Respondent failed to make the reasonable adjustment of rescheduling the disciplinary for a third time by phone.

145. In relation to the other suggested adjustments: issue 13.2 was not a reasonable step because it was not effective: the Claimant did not have a web camera.

146. (When we come to the remedy decision we will have to decide what loss is attributable to the failure to hold the disciplinary hearing. We note that the Claimant said in his evidence he would have made the same arguments at the Disciplinary Hearing as he did during the investigation save probably more emotionally. We will have to consider whether, on hearing those arguments, whether there is a chance Mr Side would have made a different decision. We note his reasoning had already taken into account the points the Claimant made at the investigation and that they were rejected in the light of the CCTV. We will have to consider whether hearing the Claimant personally would have made any difference. We will also consider whether the Claimant had any injured feelings by the failure to reorganise the disciplinary hearing. We will discount those hurt feelings he experienced because of the complaints that have not succeeded.)

PCP3

147. This arose on 2 March therefore after constructive knowledge of disability is established. We agree asking him to go to a grievance meeting where managers might present is a practice and that it put him to a substantial disadvantage compared to non-disabled people because of his greater anxiety. The Respondent originally organised for the manager grieved against not to be present but in the end this meeting did not take place and was rescheduled in a different location. In our judgment, therefore, reasonable steps were taken to avoid the disadvantage complained of. (In other words the adjustment at Issue 13.3 was made.)

PCP 4

148. We do not need to consider this PCP because constructive knowledge of disability arose at the time of suspension, not before. Therefore we do not need to consider the step proposed at Issue 13.5.

149. That leaves the proposed adjustment at Issue 13.1 about the grievance appeal. This did not arise from any of the PCPs but we note the Claimant's reason for not attending was that he was late which did not have anything to do with his disability.

Harassment

150. The Claimant complains that Mr Oladunjoye's comment trivialised his grievance.

151. We accept that the Claimant was genuinely upset and offended by Mr Oladunjoye's comment.

152. We also acknowledge that Mr Oladunjoye had no intention to cause upset.

153. Objectively we consider that Mr Oladunjoye was trying to understand the Claimant's grievance: was it he was asking that a policy had been broken or was it that his manager had not contacted him to see how he was? He summarised this last point as feeling a bit unloved. He used colloquial not offensive language. He has accepted his language was clumsy

154. First, we consider whether the comment violated dignity. We take into account the Claimant's genuine perception; the lack of intention to offend; and the fact that objectively it was obvious to us Mr Oladunjoye was trying to understand the nature of the Claimant's complaint rather than diminish it. Applying Dhaliwal we do not consider that this statement violated dignity. The statement was transitory, it did not intend to cause offence, and if considered objectively in its context, it was said in an effort to understand the nature of the complaint rather than diminish it. This falls into the category of an 'unfortunate phrase' and legal liability should not bite.

155. Second, we have considered whether the statement created the proscribed environment. We do not consider that this statement alone created anything like a state of affairs or environment. It was a one-off, clumsy remark.

156. For those reasons the harassment claim does not succeed.

Holiday

157. The holiday year started on 1 January. 15 weeks elapsed before termination. The Claimant was statutorily entitled to 5.6 weeks' holiday.

158. The Claimant took 9 days pre-booked holiday for which he was paid. It seems to us the Respondent did not actually have to lift the suspension for this to still be treated as paid holiday. They did so merely to make sure that the Claimant understood he was not required to attend disciplinary hearings during that time. The Claimant effectively asks us to require the Respondent to pay for this leave twice. This would be unfair.

159. The accrued but untaken holiday calculation is as follows:

    5.6 x 15/52 = 1.61 weeks had accrued i.e. 8 days.

160. The Claimant had taken 9 days' paid leave, not including any paid bank holidays. He was not therefore entitled to any compensation for accrued but untaken holiday on termination.

Remarks of the Industrial Jury

161. This employer should educate its HR team on its liabilities towards disabled employees, in particular on when knowledge about disabilities might arise and on when the obligation to make adjustments might arise. So that they are aware that there are occasions when a disabled employee might need to be treated differently and more favourably than usual practice to comply with the law.

162. Ms Berry was an excellent witness. She is plainly a conscientious HR adviser. The difficulty is that through lack of training she did not pick up the obvious signs the Claimant gave as to his mental ill health. If she had some knowledge of mental ill, disability and the obligations an employer now has, alarm bells would likely have rung on 19 February and she would have been able to take action. The responsibility for this is the Respondent's not hers.

163. We realise we have the benefit of hindsight. We have sought to ensure we are applying the standard of what is reasonable in considering knowledge and adjustments. We acknowledge, especially with mental ill health, that it is not always easy to detect disability. A good rule of thumb might be that where mental ill health is mentioned on a pre-employment questionnaire, questions are asked at that early stage to ensure an employee can be supported even if they are not disabled.

Employment Judge Moor
Dated: 7 February 2022