EMPLOYMENT TRIBUNALS

Claimant: Mr A Liaquat

Respondent: Tesco Stores Limited

Heard at: Watford **On:** 8, 9 ,10 & 11 February 2022
14 & 17 February 2022 [panel]

Before: Employment Judge Maxwell
Mr D Sagar
Mr C Surrey

Appearances
For the claimant: in person
For the respondent: Mr Uduje, Counsel

JUDGMENT

1. The Claimant's unfair dismissal claim is not well-founded and is dismissed.

2. The Claimant's reasonable adjustments claim is not well-founded and is dismissed.

3. The Claimant's harassment claim is not well-founded and is dismissed.

4. The Claimant's victimisation claim is not well-founded and is dismissed.

5. The Claimant's indirect discrimination claim is dismissed on withdrawal.

REASONS

Preliminary

Listing Error

1. Due to an administrative error and notwithstanding notice of hearing being sent to the parties, the Claimant's claim was not properly listed. This had the most unfortunate consequence that the parties attended at the Tribunal hearing centre in Watford on 7 February 2022, only to be told that a mistake had been made and no judge or members were available to hear the case. The situation was explained to the parties and they were sent away, in the hope that a Tribunal

would begin to hear the case the next day, but with attendance by CVP, as most of the day would be spent reading.

2. The Claimant, who now lives in Manchester, had travelled down for the hearing and made accommodation arrangements. Following the events on day-1, he went home.

3. The hearing before this Tribunal began on 8 February 2022, with the parties attending by CVP, the judge and members in person. Various preliminary matters were dealt with. There was a discussion about hearing format. Whilst the Claimant preferred to attend in person, he did not want to travel back to Watford. The Tribunal was concerned about whether CVP was appropriate, given the Claimant's ocular hypertension and the fact that his PCPs concerned extended screen usage. The Claimant said he now had special glasses, which helped him with viewing screens. In the event he preferred (in the sense of it being the least worst option, as opposed to ideal) CVP, with breaks. A 10 minute break after every hour of sitting was agreed and adopted during the hearing.

Timetable

4. The Tribunal indicated that it would follow the timetable agreed with the parties by EJ McNeill for days 1 to 5. A reserved decision would avoid the need for day 6 and a separate remedy hearing could be listed as appropriate.

Claims

5. The Claimant contacted ACAS on 30 January, a certificate was sent on 1 March and his claim form presented on 27 March 2020. Some of his original claims having been dismissed on withdrawal, the matters which continued to the final hearing were:

    5.1 Unfair dismissal;

    5.2 Indirect disability discrimination;

    5.3 Failure to make reasonable adjustments;

    5.4 Harassment related to disability;

    5.5 Victimisation.

Background

6. The Claimant was employed from 10 May 2006 to 4 November 2019, most recently as a Store Manager. The Respondent says the Claimant was dismissed for some other substantial reason ("SOSR") namely:

    6.1 a fundamental and irreparable breakdown of trust and confidence, on 4 November 2019.

7. The basis of the breakdown in relations is said to be a repeated pattern in which the Claimant would raise a grievance about workplace matters and then raise a further grievance about those who dealt with his grievance or other formal

workplace procedures. This is said to have made it difficult or impossible to resolve the Claimant's concerns and / or conclude the proceedings in that regard. After two years of such behaviour, during which time there had been temporary store moves, offers of mediation and other measures intended to repair relations, the Respondent decided there was an irreparable breakdown in relations.

Amendment Application

8. By an email of 28 January 2022, the Claimant applied to amend his claim, in particular to add:

   8.1 A new claim under EqA section 15 to the effect that his repeated complaints (which is the matter the Respondent says led to a fundamental breakdown in the employment relationship and is relied upon as SOSR) was something arising from his disabilities, of ocular hypertension, stress and anxiety;

   8.2 New steps with respect to his reasonable adjustments claim;

   8.3 Various minor corrections or variations that do not bear upon the substantive claims.

Law

9. In **Selkent Bus Co Ltd t/a Stagecoach v Moore [1996] UKEAT/151/96** the EAT provided helpful guidance on the consideration of applications to amend, per Mummery J:

> **(5) What are the relevant circumstances? It is impossible and undesirable to attempt to list them exhaustively, but the following are certainly relevant:**
>
> **(a) The nature of the amendment**
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> **Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the additions of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded to, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The Tribunal have to decide whether the amendment sought is one of the minor matters or is a substantial alteration pleading a new cause of action.**
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> **(b) The applicability of time limits**
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> **If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the Tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions eg, in the case of unfair dismissal, S.67 of the 1978 Act.**
>
> **(c) The timing and manner of the application**

> **An application should not be refused solely because there has been a delay in making it. There are no time limits laid down in the Rules for the making of amendments. The amendments may be made at any time - before, at, even after the hearing of the case. Delay in making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made: for example, the discovery of new facts or new information appearing from documents disclosed on discovery. Whenever taking any factors into account, the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment. Questions of delay, as a result of adjournments, and additional costs, particularly if they are unlikely to be recovered by the successful party, are relevant in reaching a decision.**

10. Whilst the **Selkent** factors will often be highly relevant to whether an amendment application is granted or not, this will not always be so. The determination of permission to amend is not a tick-box exercise; see **Abercrombie v Aga Rangemaster Ltd [2014] ICR 209 CA** . Notably, even when an amendment would involve adding an out of time claim, this will not necessarily be decisive agent allowing the same; see **Transport and General Workers Union v Safeway Stores Ltd (2007) UKEAT/0092/07**. Ultimately, the interests of justice require a balancing exercise.

11. The body of case law which has developed in connection with amendment applications was recently considered by the EAT in **Vaughan v Modality Partnership [2021] IRLR 97**, per HHJ Tayler:

> **20. In Abercrombie Underhill LJ went on to state this important consideration, at para [48]:**
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> **'Consistently with that way of putting it, the approach of both the Employment Appeal Tribunal and this court in considering applications to amend which arguably raise new causes of action has been to focus not on questions of formal classification but on the extent to which the new pleading is likely to involve substantially different areas of enquiry than the old: the greater the difference between the factual and legal issues raised by the new claim and by the old, the less likely it is that it will be permitted.'**
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> **21. Underhill LJ focused on the practical consequences of allowing an amendment. Such a practical approach should underlie the entire balancing exercise. Representatives would be well advised to start by considering, possibly putting the Selkent factors to one side for a moment, what will be the real practical consequences of allowing or refusing the amendment. If the application to amend is refused how severe will the consequences be, in terms of the prospects of success of the claim or defence; if permitted what will be the practical problems in responding. This requires a focus on reality rather than assumptions. It requires representatives to take instructions, where possible, about matters such as whether witnesses remember the events and/or have records relevant to the matters raised in the proposed amendment. Representatives have a duty to advance arguments about prejudice on the basis instructions rather than supposition. They should not allege prejudice that does not really exist. It will often be appropriate to consent to an amendment that causes no real prejudice. This will save time and**

> **money and allow the parties and tribunal to get on with the job of determining the claim.**
>
> **22. Refusal of an amendment will self-evidently always cause some perceived prejudice to the person applying to amend. They will have been refused permission to do something that they wanted to do, presumably for what they thought was a good reason. Submissions in favour of an application to amend should not rely only on the fact that a refusal will mean that the applying party does not get what they want; the real question is will they be prevented from getting what they need. This requires an explanation of why the amendment is of practical importance because, for example, it is necessary to advance an important part of a claim or defence. This is not a risk-free exercise as it potentially exposes a weakness in a claim or defence that might be exploited if the application is refused. That is why it is always much better to get pleadings right in the first place, rather than having to seek a discretionary amendment later.**

12. The granting of permission to amend requires the exercise of a judicial discretion and a party may not otherwise seek to add to their claim; see **Chandhok v Tirkey [2015] ICR 527 EAT**, per Langstaff P:

> **16 […] The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely on their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a respondent is required to respond. A respondent is not required to answer a witness statement, nor a document, but the claims made— meaning, under the Employment Tribunals Rules of Procedure 2013 (SI 2013/1237), the claim as set out in the ET1.**
>
> **17 I readily accept that tribunals should provide straightforward, accessible and readily understandable fora in which disputes can be resolved speedily, effectively and with a minimum of complication. They were not at the outset designed to be populated by lawyers, and the fact that law now features so prominently before employment tribunals does not mean that those origins should be dismissed as of little value. Care must be taken to avoid such undue formalism as prevents a tribunal getting to grips with those issues which really divide the parties. However, all that said, the starting point is that the parties must set out the essence of their respective cases on paper in respectively the ET1 and the answer to it. If it were not so, then there would be no obvious principle by which reference to any further document (witness statement, or the like) could be restricted. Such restriction is needed to keep litigation within sensible bounds, and to ensure that a degree of informality does not become unbridled licence. The ET1 and ET3 have an important function in ensuring that a claim is brought, and responded to, within stringent time limits. If a "claim" or a "case" is to be understood as being far wider than that which is set out in the ET1 or ET3, it would be open to a litigant after the expiry of any relevant time limit to assert that the case now put had all along been made, because it was "their case", and in order to argue that the time limit had no application to that case could point to other documents or statements, not contained within the claim form. Such an approach defeats the purpose of permitting or denying amendments; it allows issues to be based on shifting sands; it**

ultimately denies that which clear-headed justice most needs, which is focus. It is an enemy of identifying, and in the light of the identification resolving, the central issues in dispute.

Nature of Amendment

13. The EqA section 15 complaint is entirely new. The Claimant's claim does not currently include any claim of discrimination arising. Whilst there are existing complaints about his dismissal (unfair dismissal and victimisation), this amended claim is based upon new facts, namely that his behaviour (that which the Respondent relies upon for a breakdown in employment relations) arose from his disabilities. This is a wholly novel proposition. Furthermore, this is an issue that would require medical evidence as opposed to the recollection of the Claimant and his managers with respect to the events complained of.

14. The amendment with respect to reasonable adjustments also seeks to introduce new facts. Whilst there is an existing and extensive claim under EqA section 20, the Claimant now seeks to contend for new steps. We pause to note that to the extent there is an overlap between the additional text the Claimant has included and the matters already pleaded (i.e. where he is being repetitive) he does not need permission to amend. There are, however, a number of wholly novel specific steps contended for, which have not featured in the litigation previously. These are not matters which can be answered merely by having the Respondent's existing witnesses comment (although they may be able to do so in some respects) they also engage factual questions on which the Respondent might have sought expert evidence with respect to their likely efficacy and whether these specific measures had any prospect of reducing the disadvantage contended for

Manner and Timing

15. The Claimant's claim concerns events between 2017 and 2019. He was dismissed on 4 November 2019. He contacted ACAS on 30 January 2020 and a certificate was sent on 1 March 2020. The chronology of the proceedings, insofar as relevant is:

    15.1 27 March 2020, claim presented;

    15.2 4 October 2020, case management order requiring the Claimant to provide further information about his claims;

    15.3 15 January 2021, Claimant provided further and better particulars;

    15.4 12 March 2021, case management hearing before EJ McNeill QC, at which the claims were clarified, the issues recorded and this final merits hearing was listed;

    15.5 15 April 2021, the Respondent provided amended grounds of response, addressing the claim as then understood;

    15.6 30 April 2021, the Claimant applied to amend his claim (the Respondent opposed this);

15.7 4 June 2021, EJ McNeill QC gave permission to amend, the only prejudice to the Respondent being that it may need to further amend the grounds of response, for which permission was given;

15.8 25 June 2021, the Respondent provided further amended grounds of response;

15.9 October 2021 the parties agreed a bundle of documents;

15.10 28 January 2022, the Claimant applied to amend his claim;

15.11 31January 2022, the parties exchanged witness statements.

16. As can be seen, following extensive case management and prior amendment, the Claimant's application to further amend was made just a small number of working days before the hearing. Although it was prior to the exchange of witness statements, unsurprisingly, those prepared by the Respondent addressed the claim insofar as it was understood following the orders made by EJ McNeill QC on 12 March and 4 June 2021.

17. The Claimant says he made the application at this stage because he had only just become aware of this form of discrimination (i.e. EqA section 15). Asked how it is he only became so aware recently, he recounted being ordered to provide further particulars under other headings. He said the Respondent's solicitor and EJ McNeill QC had not identified this head of claim to him. His representation appeared to imply criticism of those others for not signposting him to EqA section 15. Whilst it was not their duty to advise the Claimant as to which claims he should bring, as Mr Uduje fairly pointed out, the Claimant's factual narrative did not suggest such a claim.

18. There is a tension between the existing claim and that proposed. The Claimant's current position is that he was justified in complaining as he did because the Respondent did not deal with his earlier complaints properly. The Respondent says, in effect, that the Claimant pursued unnecessary and repetitive complaints, which behaviour was eventually destructive of the employment relationship. The proposed amendment includes the fact of the claimant engaging in such behaviour being a symptom of his illness. This is new and different. The inference from the timing of this application is that by reason of some late research and thinking about his case, the Claimant has come up with a new argument. This new claim does not emerge from the Respondent's witness statements or agreed bundle.

Limitation

19. The matters about which the Claimant complains would be many years late, if presented as free-standing complaints. This is not, however, in itself determinative and he may have an argument with respect to a continuing act.

Prejudice

20. The Respondent's characterisation of this application as an "ambush" is understandable, given the timing.

21. If the amendment were granted the Respondent would face considerable prejudice. Its response has been prepared on the basis of the existing claims and it is not in a position to consider and contest the new claims in the way it would have been if they had been presented sooner.

22. Both the section 15 claim and additional steps for the section 20 claim, engage questions of causation that might be addressed by way of medical and / or other expert evidence. Whether the Claimant's behaviour was caused by his health problems is, primarily, a question that would need to be answered by reference to medical evidence. Such evidence is not before the Tribunal. The Respondent cannot respond to these new claims simply by taking instructions from its existing witnesses of fact. The Respondent would need time to consider and investigate these new matters. This would inevitably mean postponing the merits hearing. In addition to any costs consequences, given the pressure on listing, the matter would be unlikely to be relisted much before mid-2023. Given the Claimant's claims relate to events, which occurred between 2017 and 2019, further delay will inevitably make it more difficult for the Respondent's witnesses to recall events.

23. The Claimant will suffer little prejudice if the amendment is refused. He already has an array of claims that capture the events about which he wishes to complain, including a large number of steps for his reasonable adjustments claim. The complaints he now wishes to add would not seem likely to improve his overall prospects significantly. Even if the Claimant were able to show that his behaviour was caused, in whole or in part by health problems amounting to a disability, that does not mean it was discriminatory to dismiss him. Such a dismissal might still be justified as proportionate means of achieving a legitimate aim. If the Claimant's behaviour caused an irretrievable breakdown in relations, knowing the behaviour was caused (whether in whole or part) by mental health problems does not make it repairable.

24. The Claimant would in any event be likely to struggle to prove the section 15 claim even if it were permitted, as there is no medical evidence to show that tendency to complain in the way he did was a symptom of or otherwise a behaviour which arose from his disability.

25. The Claimant already has a large number of steps for his reasonable adjustments step. He has not explained why the additional measures are necessary.

<u>Interests of Justice</u>

26. This amendment application was made at almost the last possible moment. It would introduce substantial new areas of factual enquiry and, importantly, this would call for expert evidence, which is not available and cannot be obtained without an adjournment. Putting this already old case off further is not in the interests of either party. The Respondent would be severely prejudiced if the amendment were granted and the case not adjourned, since it would have to defend claims without the opportunity to prepare to do so properly. The Claimant loses little if the amendment is refused. The interests of justice call for permission to be refused.

27. Where the Claimant has merely corrected typos or made a minor variation to the wording that does not affect the substantive claims, he may amend to that extent.

Reconsideration - Amendment

28. As soon as the Tribunal announced its decision on the amendment application, the Claimant applied for a reconsideration. He said he respected the decision insofar as this concerned discrimination arising but wished the Tribunal to reconsider its ruling for reasonable adjustments. In support of the reconsideration, the Claimant said he had been advised that he only had to give a "general idea" about what could happen, he could later elaborate and had intended to put the steps in his witness statement.

29. Per **Chandok**, the purpose of a claim form is not merely to get the ball rolling and for the Claimant then to be able to add to his claim as he wishes thereafter. If the Claimant was truly unable to say what steps should be taken, then he could merely have argued there was a PCP, a disadvantage and then left matters for the Tribunal. He did not, however, do that. As with almost all reasonable adjustment cases, the Claimant pleaded a large number of specific steps which he relied upon for his claims. This is important and consistent with the overriding objective, as it allows the Respondent to know the claim it must meet and prepare to resist this. In this way the parties are on an equal footing.

30. Knowing the case to be met allows the Respondent to take instructions on important matters such as whether there was information before it contemporaneously which would have alerted it to the need to take the steps contended for, along with the extent to which this would have been a step it was practical to take. The Respondent would also be in a position to seek expert evidence with respect to the question of whether there was any prospect of the steps contended for avoiding or reducing the disadvantage to the Claimant.

31. What the Claimant should not do, is have new steps he intended to argue for and keep those to himself until this last possible moment (in circumstances where the case has already been extensively case managed over a long period of time) and then reveal them when the Respondent had already settled its case, finalised its witness statements and would have no time to prepare. Once again, such an approach is consistent with the Respondent's characterisation of "ambush" and is not a fair way to proceed.

32. The Claimant has not shown it is in the interests of justice for the Tribunal to reconsider the amendment ruling with respect to his reasonable adjustments claim.

33. The Claimant already has an extensive reasonable adjustments claim and can rely on the steps he has contended for in his amended further and better particulars, which are set out in section 1.3. To the extent there is an overlap between the steps referred to in his amendment application and those already in his F&BPs as amended by permission of EJ McNeill QC, he does not need any further permission to rely upon those matters.

Reconsideration - Generally

34. The Claimant was reminded of his duty to assist the Tribunal to achieve the overriding objective. He must cooperate with the Respondent and Tribunal. This includes dealing with the case in a proportionate way and avoiding delay. Applying for an immediate reconsideration where he disagrees with the Tribunal's ruling, in effect seeking to argue the point twice, does not achieve these objectives. He should not seek to revisit every ruling by the Tribunal which is adverse to him. Doing so will make it more difficult to conclude matters within the time allocated.

Documents

35. The Respondent has, very late in the day, disclosed 10 pages of additional documents which it seeks to add to the hearing bundle. The Claimant objected to this. The Tribunal heard argument and reserved its decision until Wednesday morning.

36. As a precautionary measure, the Tribunal asked the Claimant to read these 10 pages carefully during Tuesday afternoon, as the parties would not be required whilst the Tribunal was itself reading into the case. In this way, if the Tribunal decided to admit the documents, he would be familiar with the content of these pages. Somewhat reluctantly, the Claimant said he would read them.

37. On the Tribunal reading these documents it was immediately apparent they were emails passing between the Claimant and his managers, during the period about which he complains in these proceedings. He would have seen these at the time they were sent and had been given ample time (Tuesday afternoon) to remind himself of their content.

38. The documents are potentially relevant to the issues which arise on the Claimant's claim. Unlike the Claimant's amendment application, to the extent we refused this, the documents do not change the nature of the claim or response.

39. Unless there is a good reason to proceed otherwise, the Tribunal should have the best evidence before it. What is recorded in an email written at the time about a meeting or conversation, is often a better guide than the recollection of a witness given many years later.

40. When asked what prejudice there was in admitting these documents, the Claimant said he needed to take legal advice on them. We note, however, the Claimant told us that he only had 6 hours of legal advice in total, at an early stage in these proceedings. It follows, therefore, that he cannot have taken legal advice on many or most of the other 1,800 plus pages in the bundle. No good reason for taking legal advice on these particular 10 pages has been put forward.

41. We have decided it is in the interests of justice to admit these documents and will add them at the appropriate points in the bundle.

42. We do, however, think it was most unhelpful that the Respondent has produced these documents at the last moment. We are surprised they were not found and disclosed to the Claimant very much sooner than they were. Their late

emergence has induced a sense of suspicion on the part of the Claimant. It also led to a contested application which took up precious Tribunal time. Nonetheless, we do not find that he will be prejudiced by the Tribunal admitting these documents and we will allow them in.

Issues

43. The issues in this case were discussed with EJ McNeill QC, agreed by the parties and set out in her case management order of 12 March 2021. The steps contended for by the Claimant with respect to his reasonable adjustments claim were not, however, listed within the order itself, rather at sub-paragraph (xvii) the judge referred to the steps in the Claimant's further information. EJ McNeill subsequently gave the Claimant permission to amend to rely upon a revised version of his further information. For the purpose of his reasonable adjustments claim, the steps contended for are, therefore, as set out in the Claimant's revised further information document, namely:

    43.1 making a referral to occupational health;

    43.2 changes to the way that he worked to reduce or manage the amount of time that he spent using a computer/mobile device screen;

    43.3 alterations to his pattern of work to reduce/manage the frequency of the occasions upon which he was required to work shifts which required him to travel to and from work in low light;

    43.4 offering the Claimant a stress risk assessment;

    43.5 referring him for counselling when he informed them he was suffering from stress/anxiety;

    43.6 following periods of absence relating to his disability, providing a "support plan";

    43.7 a "workplace adjustment passport";

    43.8 extending the time for his appeal against Ms Young's grievance findings;

    43.9 expediting the resolution of the grievances insofar as these related to unpaid wages;

    43.10 supporting his relationship with the business;

    43.11 supporting his store during sickness during 2017-2018;

    43.12 moving him to a different store/role

    43.13 mediation.

Facts

44. The Claimant started working for the Respondent on 10 May 2006. He was hardworking and a good performer. In this way, he progressed, including

becoming deputy store manager and then in 2015, store manager in the Tesco Express format.

45. On 23 June 2015 the Claimant was suspended from work in connection with an allegation of allowing non-Tesco workers to work in his store. This matter took some considerable time to conclude. Eventually, at a meeting on 23 March 2016, the investigator, Mr Bromwich advised the Claimant he had decided there was no case to answer, on the basis that although the Claimant had been present in the store at the same time as the illegal workers, he was unaware of this.

46. Whilst the investigation was ongoing, the Claimant raised several grievances, beginning on 1 July 2015. This first grievance was heard under the Respondent's procedures at Stage 1. Then on 9 September 2015, the Claimant raised another grievance, alleging that the manager who dealt with his first grievance was biased. Separately, on 8 August 2015, the Claimant raised a grievance about pay and contractual matters. On 3 January 2016, the Claimant raised yet another grievance. The main thrust of this complaint was that his earlier grievances had not been answered or adequately addressed and so he repeated and / or expanded on those matters.

47. Following the lifting of his suspension in early 2016, the Claimant went back to work as a store manager, based at the Respondent's Edmonton branch.

48. Unfortunately, later in 2016, there was then an incident of store card theft at the Claimant's store. Whilst no allegations were raised against the Claimant in this regard, he came to understand that his deputy had been spoken to by Ranjeet Singh, the operations support manager ("OSM") who asked whether the Claimant had taken the scratch cards and also made the deputy aware of the Claimant's earlier period of suspension. The Claimant felt that he was under suspicion from above and had been undermined from below, by the enquiry made of his subordinate. He was also concerned about what he saw as a breach of confidence with respect to events in 2015. The Claimant's confidence in the Respondent and its managers was substantially further damaged by this turn of events and the position was never recovered. He was, thereafter, scared and suspicious. His health also suffered.

49. By an email of 27 October 2016, the Claimant told Ms Dawkins he had eye surgery the year before and was suffering with ocular hypertension. He said his vision was sometimes blurred and he suffered with headaches, although he did not know whether this was because of his eyes or the stress. The Claimant went to see his GP about this and was signed off work by his GP for "stress + eye symptoms" with effect from 4 November 2016. There was a GP consultation on 9 November 2016, at which point the Claimant is recorded as suffering with stress as a result of what had happened at work. 50 mg of sertraline (an anti depressant) were prescribed. He saw his GP again on 11 November 2016, after having suffered a panic attack.

50. On 20 December 2016, the Claimant was signed off work by his GP with stress related problems. He continued to see his GP in January 2017, when his dosage of sertraline was increased to 100mg. He is recorded as suffering with stress and anxiety at this time.

51. The Claimant came back on 31 January 2017. He had a return to work meeting with his line manager, Ms Dawkins, at which he was asked about any adjustments he needed. The Claimant wished to reduce from 7.5 to 5 hours a day, although was unhappy with any reduction in his pay. Ms Dawkins suggested he have screen breaks when using a computer. The Claimant did not then say he had any difficulty with working early or late shifts.

52. On 8 February 2017, the Claimant emailed Ms Dawkins about staffing issues in his store. He also said "I am not able to do early mornings and late evenings due to my illness as it can effect my condition further". She replied pointing out that he had not raised this at his return to work meeting and saying they could discuss it at the upcoming absence review meeting.

53. On 14 February 2017, the Claimant along with his representative, met with Ms Dawkins and Ms Etwareea (People Partner for this store) for an absence review meeting. The Claimant began by challenging the fact of the meeting taking place, suggesting it was in breach of policy. Ms Dawkins said it was to review his support plan and understand any further needs. The Claimant explained he had eye surgery in 2015, his eye pressure had gone up and he was on "life time medication", which he had to take in the morning or evening, unless he had an operation. He was under the care of Moorfields Eye Hospital. The Claimant went on to say that he was off sick because of the scratch cards and what was said by or to his deputy. Ms Dawkins said when they had visited the Claimant in December, she had been surprised to be told about his stress as he had not made her aware of this before; she felt they had addressed his concerns (i.e. about scratch cards and confidentiality) informally. The Claimant said that Ms Dawkins had not looked at all the evidence he had against his deputy. Ms Dawkins disagreed and said they had looked at it but she did not want to go over old ground as she had asked another area manager to investigate.

54. Ms Dawkins moved the conversation back to the Claimant's support plan. She asked how he was getting on with the computer. He said he wanted a screen shield. Ms Dawkins asked the Claimant about a request he had made to work 5 hours a day. The Claimant responded by saying he was being treated differently from others, which was a reference to his pay being reduced. Ms Dawkins asked the Claimant about his recent request not to work late or early. The Claimant then said "I feel I wasn't asked certain questions around side effects". This was an attempt to blame Ms Dawkins for failing to ask the right questions. We pause to note the Claimant is a highly intelligent and articulate man, who was best placed to understand and explain any symptoms or side effects. The Claimant said he was suffering most of the side effects listed in an information sheet he provided, in particular mentioning headaches and back pain. Asked how long he might need to not work earlies or lates, the Claimant said he would need to speak to his doctor. Asked how long it would take him to find out, the Claimant said he would update Ms Dawkins the following week. Whilst an adjustment to early and late working could be accommodated temporarily, it was not feasible as a permanent adjustment, given it was necessary for the store manager in the express format to understand the operation of their shop at all times of day and have contact with the staff, including those who only worked late or early.

55. The Claimant was asked to give permission for an occupational health referral, which he did. The process involved was explained to him.

56. Ms Dawkins asked if there was anything else she needed to know about the Claimant's eyes. He responded by referring back to the symptom list, before going on to say he was taking antidepressants and had panic attacks. The Claimant said "I still don't think I am mentally in the right place to be accountable for a store". Ms Dawkins asked the Claimant a question about the requirements of his role. The Claimant then said the situation with the senior manager (scratch cards and confidentiality) needed to be resolved and repeated he could not take responsibility for a store. He said he could not be involved in decision-making, did not feel updated with the last three months and this had affected his confidence. Ms Dawkins suggested the Claimant might spend time in another store going through his job role pack. This was a bridging programme, intended to get the Claimant back up to speed with his job role and boost his confidence, by working in other stores alongside experienced managers. He said he thought that would help. The Claimant also wanted to take some holiday, which it was agreed he could do, with the bridging programme starting thereafter. The bridging programme was agreed as 2 weeks, with a review at the end to see whether more was required. Ms Dawkins summarised what they had agreed and asked how the Claimant would let her know what the doctor said. The Claimant said he would do this at the end of his holiday. Ms Dawkins said they could reconvene (by which she meant speak) about how long he needed not to work lates or earlies when he came back from holiday. Asked if there was anything else, the Claimant requested an adjournment. On returning the Claimant said "I will discuss with my doctor about side effect and how long I will need support for so I am in a better position to inform you." Asked if he was happy with the support discussed the Claimant said "yes if it happens". Ms Dawkins told him "it will"

57. The final part of the meeting involved the Claimant expressing his concern that he was not welcome in the Respondent and Ms Dawkins seeking to reassure him that was not the case:

> **[C] I just wanted to mention, I don't feel welcome in the company anymore.**
>
> **[Dawkins] We will discuss that as I know that's how you feel. I have tried to reassure you but you still feel this way. I'm not sure how we move forward, you won't get mistreated or special treatment from me. We had a good relationship before you went off. We dealt with the situation informally but we will now do formally. I just need to know if you are happy to work here.**
>
> **[Rep] I think it would be good to spend a bit more time with Ahmed outside shop.**
>
> **[Dawkins] I think you need to tell me what needs to happen. Do you have a problem with me.**
>
> **No. It's just the way things happen. The evidence I mentioned to you, if you had trusted me more it would of been different. He [deputy] had Ranjeet on his side. I feel I was looked at due to my past. [deputy] mentioned Bex and [name] didn't know you, get revenge from company**

58. The Claimant never came back to Ms Dawkins (or any subsequent manager) with information from his treating doctors about any steps necessary at work to

accommodate his health difficulties. The occupational health referral was not progressed. The screen shield was provided. Ms Etwareea being unable to obtain this quickly through the Respondent, she instead purchased it using her personal Amazon account and reclaimed expenses.

59. On 17 February 2017, the Claimant and Ms Dawkins spoke on the phone. She wished to raise with him concern about an overspend and also a staffing cover when the Claimant wished to take holiday. Ms Dawkins discussed the store responsibilities and asked the Claimant what support he needed. When he failed to give her a clear answer she made the remark that he was "playing games". Shortly thereafter, he sent a her a text message saying he felt that her accusing him of "playing games" was "extremely inappropriate". Later that day the Claimant sent Ms Dawkins an email entitled "serious concern" in which he referred to her making an "inappropriate comment" before going on to make various points about staffing and other matters.

60. On 27 March 2017, the Claimant saw his GP and was noted as suffering with low mood, anxiety and tingling or numbness in his hands. At this time the Claimant's medication was changed to citalopram (another anti-depressant).

61. On 30 March 2017, the Claimant raised a formal grievance. He began this by complaining about his suspension in 2015. He then went on to make various complaints about his time at Edmonton, including:

    61.1 Breach of confidentiality regarding his suspension;

    61.2 He was seen as a threat, being intent on revenge;

    61.3 He was suspected of scratch card theft, this was not investigated and his evidence that might have caught the thief was not looked at;

    61.4 He was accused of playing games;

    61.5 He had been underpaid for 20 months (i.e. since being appointed a store manager).

62. The Claimant's grievance also included a clear indication that he no longer trusted the Respondent's managers:

> **I feel there is a hidden agenda that is being followed against me and I do not feel safe in the company anymore. The work related stress and harassment has created an undignified, oppressive and hostile working environment for me and it has substantially affected my abilities and capabilities to undertake my respective day to day activities.**
>
> **I am sure there are policies in place to deal with any kind of situation, but in my experience most of those policies are never applied to the senior management of the company. They are only applied on the lower level management or staff. Mostly only those policies are followed that suit a few individuals' personal preferences in any given situation.**
>
> **I do not have much hope that any of my concerns would be addressed appropriately, but I thought it was my responsibility to bring them to your attention.**

63. The Claimant's grievance did not include that he should have been referred to occupational health for an assessment.

64. In April 2017, the Claimant attended various stores and worked with other managers, as part of his bridging programme. During this time he referred to some difficulties with his eyes and travel issues, such as the number of buses he had to get to reach a particular store. Arrangements for him to attend a training academy were also made, although he was not allowed in after arriving late.

65. By an email of 29 April 2017, the Claimant raised as a formal grievance, the content of a written complaint he had sent to Ms Etwareea on 30 March 2017. This included the proposition that a discussion about his pay before being appointed as a store manager resulted in a contractual entitlement to a higher salary than he had been paid.

66. The Claimant met with Ms Fanning for a stage 1 grievance meeting on 9 May 2017. There was a lengthy discussion of his grievance points. Ms Fanning conducted interviews with Ms Dawkins, Ms Etwareea and Mr Singh. Ms Fanning met the Claimant again on 30 May and further discussed his grievances. Ms Fanning made enquiries of the Respondent's payroll department. She obtained various relevant documents. Ms Dawkins was interviewed again on 7 June 2017. This amounted to a thorough investigation.

67. Ms Fanning's stage 1 grievance decision was set out in a detailed report provided to the Claimant. The findings included:

> **1. The confidentiality regarding your suspension by Ranjeet Singh, Operations Support Manager**
>
> **Finding Upheld After interviewing Ranjeet Singh, Operations Support Manager has described that he informed [..] Deputy Manager that you had been out of the business for some time. He describes that [deputy] was moving to the new store and that he wanted to be honest with [deputy] as [deputy] had asked why you had been away from the business. Ranjeet did not disclose any detail and did not tell [deputy] to be malicious.**
>
> **Bex Dawkins, Area Manager has addressed this with Ranjeet, Ranjeet acknowledged that on reflection although this was not intentional he realises the impact that this has had and would like to meet with you to offer you a personal apology. I am happy to support Bex with a facilitated meeting with you and Ranjeet**

68. A complaint that the Claimant had not received an offer letter or terms and conditions was also upheld.

69. Some complaints were upheld in part:

    69.1 Suspected of scratch card theft;

    69.2 Accused of playing games;

    69.3 Underpaid;

70. Some complaints were not upheld:

70.1 Seen as a threat;

70.2 He was harassed by Ms Dawkins, Ms Etwareea and Mr Singh.

71. A detailed rationale was provided for each finding made, demonstrating a thorough and balanced approach by Ms Fanning. She ended her report thus:

> **Recommendations**
>
> **For a facilitated meeting to take place with my support with Bex, Ranjeet and Stacey.**
>
> **Conclusion**
>
> **Although there are learning's regarding the confidentiality regarding your suspension, the delay in your offer letter or terms and conditions and existing pay queries I do not feel that these are of malicious intent. This will be documented where appropriate and I will ensure that you receive an apology at your facilitated meeting.**
>
> **I do not find any evidence to substantiate your allegations of harassment by Bex, Ranjeet and Stacey. I can see that with regards to providing policies and asking about your hours that you are treated the same as every manager on the group.**
>
> **With regards to the written assurance from Bex and Vanessa Rogers, Group People Manager that you will not be mistreated I am unable to provide this as it is their role to follow the code of conduct and treat all colleagues fairly.**

72. Ms Fanning met with the Claimant on 20 June 2017 to discuss her findings and recommendations. Asked about mediation, the Claimant said "I want mediation meeting with a notetaker". Ms Fanning had said she wanted to do the mediation next week. The Claimant, however, said this should take place after his appeal. There would appear to be some tension between the Claimant saying he wished for mediation, which requires a willingness to draw a line under past events, and pursuing an appeal, which suggests the Claimant still wished to actively contest matters and obtain an adjudicated outcome. Furthermore, the need for a notetaker suggests a wish to be able to bring up and refer back to whatever might be said during this meeting.

73. By an email of 29 June 2017, the Claimant appealed against Ms Fanning's decision on his grievance, saying "I do not agree with the outcome".

74. By an email of 4 October 2017, the Claimant complained about a senior manager, SL, who had been asked to consider his appeal. He said that she had involved Ms Dawkins in the process (he did not say how or in what way) and this "breached the implied term of 'mutual trust and confidence'". He accused SL of bias. He complained about delay and a lack of seriousness. The Claimant said he now wanted to add further complaints to his grievance. He also called for someone else to be appointed to hear his grievance.

75. On 6 October 2017, Ms Rogers wrote to the Claimant saying she was unclear as to why he felt SL had involved Ms Dawkins. The Claimant replied "I have

informed you of my concerns in detail and I am unsure why you are still unclear", which was not terribly helpful. Ms Rogers tried again, with a further email to the Claimant later that day.

76. The Claimant replied on 12 October 2017, with a detailed chronology of attempts by SL to arrange a stage 2 meeting with him, which had been unsuccessful. Within this sequence of events was the proposition that because one of the emails SL sent to the Claimant had been cc'd to Ms Dawkins (who was his line manager) this suggested she was taking instructions from her. The Claimant complained that a mediation should not take place until after his appeal and that he was being pressurised into having a mediation. He also said:

> **I believe this is part of the same hidden agenda that is being followed against me for the last 2 years. I am disappointed that you overlooked such a serious breach when looking at the correspondence.**

77. On 26 October 2017, Ms Rogers stated that SL was best placed to hear his grievance and sought to reassure him, that she was not taking instructions from Ms Dawkins:

> **I acknowledge that you feel that [SL] has breached your confidentiality by cc'ing Bex into an email, but this was to inform Bex that you would be attending and therefore not in your store, Bex is already aware of your grievance and in [SL]'s email she has not disclosed any detail of your concerns.**

78. By an email of 28 October 2017, Ms Lacey sent the Claimant a date for his grievance appeal.

79. By an email of 31 October 2017, the Claimant wrote to Ms Dawkins to allege that a new employee, KA, had been sent to his store to spy on him.

> **I believe he has been spying on me. I am not sure if it was a deliberate attempt by someone or just a coincidence. I believe it is part of the same hidden agenda that is being followed against me for the last 2-3 years.**
>
> **I am very disturbed and disappointed and I am not feeling well at all. I am very worried and I do not feel safe. Due to stress and anxiety, my eyes are hurting and I am having some serious issues related to ocular hypertension. I am very stressed and I am also feeling numbness in my hands, arms and legs that is similar to what I suffered before I had a panic attack the last time. I don't think that I will be able to attend work in the morning. If I am better I might attend work on Wednesday.**

80. By an email of 2 November 2017, the Claimant accused Ms Rogers of a cover-up and refused to attend the appeal with Ms Lacey:

> **I am very disappointed and amazed on how smartly such a serious breach is being covered, if the senior management of the company is going to support such wrong practices then, I think i am raising my concerns at the wrong level. I might have to raise my concerns at the right level to get them resolved. I believe that just to protect such wrongdoings my grievances are outstanding for too many months and I still don't have any hope. I feel that the people department of the company is making fun of me by not giving me the platform to explain my concerns. Can you please**

> **forward me the company's policy that Sue Lacey used to Cc Bex Dawkins in her emails.**
>
> **I am not going to attend any meeting that will be arranged with Sue Lacey. I am asking you once again to appoint someone senior, who is completely independent and understands the seriousness of the situation.**

81. The Claimant, who had travelled to Pakistan, wrote to Ms Dawkins on 26 November 2017:

> **As you are aware that I was not well when I went on my holidays and travelled back home. Since coming here my eye condition has further deteriorated due to local weather conditions (Smog) and political uncertainty (Tear gas). Now my doctor has advised me against traveling as air travel can further deteriorate my eye condition. My mental condition is still not well and I am under extreme stress due to the incidents at work. I am still on antidepressants, which is not helping my eye condition. I will not be able to return to the UK on 02/12/17 according to my return ticket. I will keep you posted regarding my condition and new return date after consulting my doctor. Kindly process me as sick leave from today.**

82. On 10 December 2017, the Claimant emailed a handwritten letter from the Lahore Eye Centre, saying he had suffered complications related to ocular hypertension and been advised to avoid travel and rest for at least 45 days.

83. By an email of 25 January 2018, Ms Etwareea sent an email entitled “details needed for OH referral” in which she sought information about the Claimant. This was most likely prompted by the Claimant’s absence from work and recent reports of health problems. Once again however, this was not progressed.

84. On 29 January 2018, the Claimant sent an email to Natasha Adams, the Respondent’s Chief People Officer. Given her senior position within the Respondent’s structure, Ms Adams would not routinely deal with individual employee concerns. The Claimant made various complaints about his treatment and the response to his grievances. He said he had lost trust and confidence in the company’s grievance procedure, lost faith and trust in the “London team”. He believed he was being spied on, there was “a hidden agenda to somehow constructively dismiss me from the company”. He did not raise the need for an OH referral.

85. Damian Waller, a Colleague Relations Partner, responded to the Claimant on 31 January 2018 saying that an impartial manager not connected with the London Convenience Team would be appointed to hear his grievance. He also asked the Claimant to provide more detail about why he felt “unsafe”. Rather than replying to Mr Waller, the Claimant immediately wrote back to Ms Adams, complaining about Mr Waller not understanding why he felt unsafe and saying his concerns were “not being taken seriously”. The email also included that stress and anxiety were making his ocular hypertension worse. He did not raise any connected concern about travelling early or late in the day. The Respondent decided that Mr Waller would again reply, in the hope that the Claimant would begin to correspond with him rather than Ms Adams. On 1 February 2018, Mr Waller asked the Claimant for a reply to his 31 January 2018 email.

86. On 3 February 2018, Mr Waller invited the Claimant to a stage 2 grievance meeting, to be chaired by Ms Armstrong, a people partner from the large store format. He also suggested some stores the Claimant might work at temporarily (i.e. rather than Edmonton) whilst his grievance was heard. Ms Armstrong also sent an invitation direct.

87. The Claimant responded on 4 February 2018, saying he was not comfortable meeting anyone from London and preferred Mr Bromwich, or someone else from outside of London. They spoke on the phone. It was decided the Claimant would work temporarily at Russell Square. After that change, the Claimant complained the travel costs were too expensive and he asked to go to Forest Road instead. Again, Mr Waller agreed. Mr Waller also arranged for Charlene Henry, a colleague relations manager from Birmingham, to hear the stage 2 appeal.

88. The grievance appeal was adjourned because the Claimants' representative was not available.

89. On 11 February 2018, the Claimant again wrote to Ms Adams, raising further complaints and saying :

> **[…] I don't understand how some powerful people in the company think that they are untouchable and they can do anything if any concerns are raised against them, I believe this is the failure of the whole of personnel department of the company that has tolerated this type of behaviour and created the environment where some powerful people are encouraged to even abuse their subordinates,**
>
> **I request that you intervene and stop this abuse as 1 don't think 1 can take it anymore. […]**

90. On 13 February 2018, Jamie Popely, a people partner, attended Forest Road. This was in response to a complaint that the Claimant was not working his correct hours and was spending long periods in the canteen. The Claimant repeatedly refused to answer questions about this matter and was suspended for refusing to follow a reasonable management request.

91. On 21 February 2018, the Claimant sent another lengthy complaint to Ms Adams. This included his account of the events leading to his suspension. The Claimant also said:

> **I am amazed at the cunningness of the people involved in this whole conspiracy against me. They tried everything to somehow shut me up and when they terribly failed at that, now, they have come up with a brand new plan to get rid of me asap, before I get the opportunity and the right platform to explain my concerns and how I am being abused by some shameless people in the company for quite some time now.**
>
> **[…]**
>
> **I have spent the majority of the last few days on bed, but I will not give up my fight for justice no matter how much more I am abused. The more they abuse me the stronger my resolve gets for justice.**

> **I wouldn't disturb you if I had any confidence in the London team. I don't know if you will respond to my emails, but if this matter ends up in court I will be able to establish that I kept you updated.**

92. Notwithstanding the lack of any reply from Ms Adams, the Claimant decided to continue to send her emails, for use in any subsequent litigation. Mr Waller responded to this latest email on 1 March 2018.

93. On 9 March 2018, the Claimant again emailed Ms Adams. He rehearsed his earlier complaints and also made allegations against Mr Waller:

> **I feel since my initial email to you on 29/01/18, Damian has failed on several occasions to protect my financial, physical and psychological wellbeing. As my case was forwarded to him straight away I think it was his responsibility to protect me financially, physically and psychologically. He failed to stop Bex and Stacey to mess up my wages after I raised concerns against them. I feel it was Damian's responsibility to protect me from that or at least get my missing wages paid to me without any further delay. Unfortunately, even after 1 whole month I have no update regarding my missing wages and when will I get my money. Damian has also failed to arrange any meeting to discuss my missing wages even though I have requested him several times.**
>
> **[…]**
>
> **I have been rewarded with suspension for speaking up and raising my concerns. I don't know what awaits me. What I do know from my past experience is that if you raise, a concern against any senior manager in the company then, most of the personnel department gathers behind that person and every effort is made to pressurise or scare off the person raising concerns. Facts are manipulated, and they are ready to do anything and everything to protect each other. Company policies are openly disregarded by some people who have bigger ego than the company itself. I am sorry if I sound a bit harsh, but I couldn't express my feelings any better after all I have gone through.**

94. Whilst the Claimant referred at times to having no faith in the London Team on other occasions he made very broad complaints about the Respondent's senior management generally.

95. On 20 March 2018 , the Claimant met with Ms Henry for his stage 2 grievance appeal, accompanied by Mr Akram. A lengthy discussion took place, starting at 11.20 and finishing at 2.55pm. The Claimant complained during this that Ms Henry was not sufficiently prepared. He also alleged she was not being open or honest and questioned whether she was sufficiently senior to hear his appeal. Ms Henry was of a different opinion.

96. On 23 March 2018, the Respondent was informed by ACAS that the Claimant had contacted it to advise of a proposed employment tribunal claim.

97. Shelly Dickinson wrote to the Claimant on 27 March 2018, reiterating that Ms Henry was an experienced senior manager and she would be sending him an invitation to a reconvened meeting. He was also told that if he failed to attend or participate the matter would be treated as closed.

98. Having asked to be shown the policy which allowed Ms Henry to hear his stage 2 grievance and this being done, the Claimant still persisted in his objection. The Claimant again asked for Mr Bromwich to hear his appeal.

99. By an email of 19 April 2018 to Ms Adams, the Claimant said he wished to raise all of the concerns in his emails to her as an "official grievance". He also said he did not want any further contact from any of the people mentioned in his emails.

100. In light of the Claimant's continued objections, on 20 April 2018, Ms Dickinson wrote to say that his stage 2 appeal would now be heard by a different manager. On 24 April 2018, Alison Taylor Halstead was appointed to address this.

101. Separately the Claimant had not agreed to attend an investigation meeting in connection with his alleged refusal to follow a reasonable management request. He objected to the person appointed to carry that out because he was insisting this must be someone from outside of London. On 22 May 2018, in an email about this to Mr Waller, the Claimant wrote:

> **I believe that you are taking direct instructions from the people who I have raised grievances against to protect them and pressurise me to make changes or to withdraw my grievances. You are also afraid to provide me with a fair platform so your own incompetence doesn't come to light. I believe you are part of the same conspiracy and hidden agenda that is being followed against me for a few years now.**
>
> **I was never able to stop the senior management from abusing me in the past and I will not be able to do so in the future. I have mentioned in several of my emails that I have serious concerns against the whole of London team and I have reasons for that. During my first suspension I was abused by whole of London team including larger format and I am afraid it will happen again. I don't feel safe to attend any meeting with anyone from the London team and I will not attend any such meeting.**

102. As can be seen, the Claimant was making very serious allegations against Mr Waller. The basis for this appeared to be Mr Waller not appointing an investigator the Claimant approved of. In an email of 26 May 2018 from Mr Waller to Ms Dickinson, he summarised the attempts made to arrange an investigation meeting and dates offered.

103. On 11 June 2018, the Claimant was called to an investigation meeting to take place on 13 June 2018 with Chris Evripidou.

104. On 12 June 2018, the Claimant wrote an email to Ms Adams, which he said was raised as a "formal grievance". He rehearsed his account of events going back to 2015 and complained that he was being threatened with the investigation meeting taking place in his absence. Whilst he denied refusing to attend, his comments appeared to make his attendance conditional upon being satisfied by the choice of investigator.

105. An email in reply on 13 June 2018 from Pete Hodgson, Head of Colleague and Workplace Relations, described the background of the investigator and reiterated he was an appropriate person. The Claimant further disputed this on 14 June and Mr Hodson replied on 15 June 2018. Mr Hodgson said that whilst he was satisfied Mr Evripidou, an alternative person from outside of London

would be appointed instead. Stephen Nineham, a store manager, was given this role.

106. As can be seen, the Respondent agreed to change personnel involved in the Claimant's grievance and disciplinary matters not because they were satisfied he had any good grounds for objection but rather because he refused to participate otherwise.

107. On 19 June 2918, the Claimant attended a stage 2 grievance appeal meeting before Ms Taylor Halstead. Rather than seeking to pick up where Ms Henry left off, Ms Taylor Halstead started afresh. They started at 11.12am and finished at 2.05pm. Subsequent to this meeting, Ms Taylor Halstead made further enquiries.

108. The Claimant attended a disciplinary investigation meeting on 21 June 2018 with Mr Nineham. He set out his conclusion in an email of the same date. Mr Nineham's decided there was no case to answer. Whilst he found that claimant had declined to leave the shop floor to speak with Mr Popley, he believed the correct way of proceeding would have been to conduct a formal investigation (i.e. into whether the Claimant was working his correct hours). He did not believe that the Claimant's actions justified suspension.

109. On 2 August 2018, Ms Taylor Halstead met with the Claimant to advise him of her decision on his stage 2 grievance appeal. She had prepared a detailed report, which she read to him at the meeting.

110. Ms Taylor Halstead upheld two of the grievances:

    110.1 The confidentiality regarding your suspension by Ranjeet Singh, Operations Support Manager

    110.2 You were not given an offer letter or Terms and Conditions.

111. Ms Taylor Halstead did not uphold:

    111.1 You were seen as a threat and it was thought that you would take revenge due to your (previous) suspension;

    111.2 You were suspected of scratch card theft;

    111.3 You were accused of playing games, which you felt was undignified, degrading and offensive;

    111.4 You have been underpaid for 20 months;

    111.5 You were harassed by Stacey Etwareea, Bex Dawkins and Ranjeet Singh.

112. Ms Taylor Halstead also included:

> **You have asked for written apologies from Bex, Stacey and Ranjeet. From your outcome letter from Sarah Fannning, all 3 colleagues were prepared to have a facilitated meeting with yourself as a means of bringing this grievance to mutual resolution. I believe that mediation would be the most appropriate method of resolving these issues between yourself and these**

> **colleagues, as this promotes 2 way conversation and face to face interaction. Please advise if this is an option you would like to explore.**

113. At the end of the meeting, Ms Taylor Halstead said:

> **Apology from Ranjeet, (Stacey) (Becks) is needed and will be given to you. I will go away deal with the next steps and get back to you regarding outstanding issues**

114. In terms of any apology, it is clear from Ms Taylor Halstead's report and that of Ms Fanning which preceded it, that Ms Dawkins, Ms Etwareea and Mr Singh were willing to have a facilitated meeting with the Claimant and this was anticipated as the forum for apologising. This does, of course, anticipate a process by which each of the parties would come to understand the other's point of view, before drawing a line and moving forward.

115. Notably, by this time the Claimant's grievances had not included the need to refer him to occupational health or reasonable adjustments for a disability.

116. On 31 August 2018, the Claimant wrote to Ms Taylor-Halstead, complaining about her decision. He said the report did not provide the same outcome as was read to him on the day, which appears to have reflected his understanding that he would receive a written apology. We pause to note that does not appear to have been offered and in any event is not something the Respondent could force its employees to give. The Claimant then went on to complain that Ms Taylor-Halstead had reviewed the whole decision and not just his specific points, reaching conclusions that were less favourable to him. He said the report was full of factual errors and he didn't know if they were "innocent mistakes or deliberate blunders". The Claimant concluded:

> **I think your only intention was to dilute and water-down the outcome given by Sarah fanning and somehow protect Bex, Stacey and Ranjeet. I don't think you had the authority to do that. I feel that you have failed to act in an impartial and independent way.**
>
> **I have serious reservations about your impartiality and capability. I cannot trust you any further and I will raise my concerns at the right level. I am also scared that I will be attacked again after I raise my concerns. I just feel hopeless and betrayed.**

117. On 6 September 2018, the Claimant failed to attend a stage 1 grievance hearing before Ms Taylor- Halstead, in connection with his various new grievances, as set out in emails to Ms Adams. On 12 September 2018, Ms Taylor- Halstead sent a rearranged meeting invitation, to consider his stage 1 grievance.

118. On 20 September 2018, the Claimant said that his wife had gone into labour on 6 September. He then set out various further complaints about the way Ms Taylor- Halstead had dealt with his stage 2 appeal and concluded:

> **I have already mentioned it before and I would like to reiterate that I don't trust you anymore and I will not attend any meeting that is scheduled with you after what you have done with the previous grievance. I am on holidays and paternity leave from today and I would like that someone**

> **experienced, impartial and completely independent hears my grievances on my return.**
>
> **I expect a response to my email and if I don't get a response then I will have to raise a formal grievance to geta response and answers to my questions on my return. If you are not able to respond then, please let me know the person I need to contact for further response.**

119. Ms Taylor- Halstead responded the same day saying the grievance appeal was now closed and denying his allegations. She also advised that if he did not attend the rearranged stage 1 grievance then a decision would be made in his absence.

120. On 21 September 2018, the Claimant failed to attend the rearranged grievance meeting. Ms Taylor Halstead proceeded without him.

121. On 23 September 2018, the claimant sent a further grievance email to Ms Adams, setting out additional complaints about recent events over several pages.

122. Ms Adams replied herself on 24 September 2018:

> **Thank you for sending through the attached, I am sorry that you continue to have concerns.**
>
> **It is really important that we help support you to resolve these concerns, I have asked my colleagues to look Into the best way to do that, they will be in touch as soon as possible.**
>
> **I will ensure I stay close to how things are going.**

123. On 28 September 2018, Claire Grimwade, Lead Colleague Relations Partner, emailed the Claimant in connection with several points he had raised. The Claimant immediately sent an email to Ms Adams complaining about Ms Grimwade responding to his grievance, as he said she was one of the people who had delayed the response to his grievance and was mentioned in it. He went on to rehearse his view of matters and also said:

> **I had to raise a formal grievance against Shelly Dickinson when she failed to provide me with a fair investigation. Pete Hodgson used false information to prove Iris point. Claire Grimwade delayed hearing my grievances for several months. I have active grievances against Damian Waller and Alison Taylor. I had to complain about Charlene Henry's unprofessionalism to her boss. They are all from the same department and from my experience they will only try to protect each other and have no interest in my concerns.**

124. By a letter of 3 October 2018, Ms Taylor-Halstead provided her decision on the Claimant's stage 1 grievance, per the matters raised with Ms Adams. She did not uphold any of his complaints. Attached to this letter was her detailed investigation report and findings. In conclusion, Ms Taylor- Halstead said:

> **Having taken a considerable amount of time truly understanding the nature of the complaints here, I do not uphold any point. Ahmed is a colleague, who appears to have lost all faith and trust in Tesco, and**

> **whoever tries to support him to reach a resolution, Ahmed is never happy with the outcome, more turning this into a further grievance. My conclusion would be mediation to repair the relationship between Tesco and Ahmed Liaquat.**

125. We pause to note that Ms Taylor-Halstead had ample grounds for reaching this conclusion.

126. Given the Claimant's repeated statements about a loss of trust, by a letter of 5 October 2018, he was called to a formal meeting on 12 November 2018 to discuss this. The letter advised that action could be taken, including dismissal and he was entitled to be represented.

127. On 9 November 2018, the Claimant emailed Ms Adams. The title was "Urgent: (Grievance) Response only from Natasha Adams or Emma Taylor". This included:

> **I believe a group of company employees that I have raised several grievances and concerns against have turned personal and now they want to harm or abuse me somehow.**
>
> **I am shocked that even after your assurance how they are still active in the background. I think this is another attempt by that group to pressurise me so I take back or make changes to my grievances so they can pursue with their malicious agenda against me.**
>
> **I don't feel safe as I think that group is too powerful as they are not even respecting your assurances, I don't think that I can attend any meeting unless it is arranged by you or the appropriate person that you will appoint to support.**

128. In the course of a conversation between the Claimant and Ms Dickinson on 11 November 2018, it was clarified that the formal meeting would be to discuss his relationship with Tesco. The Claimant summarised this in his email of the same date:

> **You confirmed that a meeting will be arranged as per Natasha's commitment with a senior manager to discuss my concerns and how we can move forward.**
>
> **[…]**
>
> **I also informed you that I think Tesco has not taken a single step to repair the working relationship or rebuild trust. […]**
>
> **I don't think a disciplinary meeting is the right platform to discuss my working relationship with Tesco, but I am still going to attend the meeting scheduled for tomorrow after - your reassurance. […]**
>
> **[…]**
>
> **I informed you that I want to resolve all the outstanding issues so I can move on. You also confirmed that you are committed to resolving the issues. I think the phone call has once again given us the opportunity to work towards a resolution and repair the broken working relationship and trust.**

129. The meeting on 12 November 2018 took place between the Claimant and Mr Hudson. They discussed various of the Claimant's concerns. This did not proceed thereafter as a disciplinary matter.

130. Arrangements were also made for the Claimant to return to work at Flamstead End. This location was provided because of his concerns about the "London Team". Whilst there was no vacancy for a store manager and the Claimant would be working only as a customer assistant, he was still paid as a store manager.

131. Notwithstanding the Claimant's grievances in emails to Ms Adams had been dealt with by Ms Taylor-Halstead, in the hope of achieving resolution and rebuilding the relationship, the Respondent arranged a new stage 1 meeting on 29 November 2018, with Hayley Young as the grievance manager.

132. The Claimant attended on 29 November before Ms Young and represented by Mr Akram. She began by telling him that she was from South Wales and completely impartial. They discussed the Claimant's concerns at great length, starting at 9.57am and running through until 5.42pm. Despite the time spent, this proved insufficient to cover all of the matters the Claimant wished to ventilate. The meeting finished with arrangements being made for this to be reconvened.

133. The parties met again on 11 December 2018 for day-2 of the grievance hearing. The Claimant began by complaining about the meeting being brought forward. He went on to say that he no longer trusted his representative as Mr Akram had told him he would not be representing him again and was only present because the company had ordered it. There was then some debate about whether or not the Claimant had been forced to attend. Ms Young explained that she just wanted to move the meeting forward. The meeting was then adjourned for the Claimant to obtain a new representative.

134. Ms Young proposed a meeting on 3 January 2019. The Claimant contacted her to advise that he was not well, having difficulty with his eyes. This resulted in a period of absence

135. Day-3 of the grievance was 27 February 2019. Despite what had been said previously, the Claimant was still represented by Mr Akram. This meeting was, however, curtailed as Mr Akram had to leave early.

136. As a result of Mr Akram's unavailability and also the Claimant suffering a bereavement, day-4 of the grievance did not take place until 4 April 2019. This was a very long day, starting at 9am and not concluding until 7.30pm. Despite the many hours devoted to the task, the grievance matters had still not all been discussed. Ms Young wanted an opportunity to reflect on how best to conclude matters. This was unacceptable to the Claimant and Mr Akram who demanded to know immediately how she was intending to proceed.

137. Separately from meeting with the Claimant, Ms Young made many other enquiries into the matters being complained about.

138. By a letter of 9 April 2019, sent by email, Ms Young wrote saying that having met on 4 occasions and still not having covered the entire grievance, she had thought about how best to ensure this was done. She asked that he provide his

grievance points in the form of a table, with headings: details of the complaint; who is involved; dates of the complaint; evidence to support the complaint. A pro forma table was included in the body of the letter. She asked for this by 17 April 2019.

139. Not having heard from the Claimant, Ms Young chased on17 April 2019.

140. On 18 April 2019, the Claimant wrote to Ms Adams:

> **I am being threatened once again that I will receive an outcome to my grievances without hearing my grievances. I hope that you will help me, I just want that someone hears all my grievances and resolves them as per the company policy.**

141. On 18 April 2019 the Claimant wrote to Ms Young, complaining at length about the way she had been handling his grievance.

142. On 23 April 2019, Ms Young summarised the history of the grievance proceedings she had conducted and again asked the Claimant to provide his grievance points in writing.

143. Given the length and complexity of the Claimant's grievances, the step of requiring him to put these into a written form such as that requested was obviously sensible.

144. The Claimant replied to Ms Young on 25 April 2019, objecting to putting his grievances in writing:

> **Firstly, I have almost 7-8 major grievances in total and most of them are inter-related. Then there are several sub-points in all the grievances, and the whole situation is very complex as it spans over several incidents over several months, and I am not in a position to explain them in writing as I have to give cross references at different points, and explain the points with the pieces of evidence I have. I also have to make sure that you fully understand my grievances and I answer any of the questions that you might have. For example, I had 1 main grievance regarding my pay query that was about 1£ specific incident, but while explaining that 1 grievance I ended up raising 10 different pay queries as sub-points with several different pieces of evidence. This is just 1 example of how complex the whole situation is. If I try to write, It is also possible that either you get confused or I am not able to explain properly. In this case, you wouldn't understand what I meant and I wouldn't be there to explain, and that could reflect in your outcome then, I would feel unfortunate and it will not help resolve my grievances.**
>
> **Secondly, I don't think that two and a half day worth of meetings might have been enough to explain almost 7-8 major grievances. I would like to explain this with an example. If 5 different people raise 5 different grievances then, they will have 5 different meetings that could last for 5 whole days. In this situation, 5 grievances could take 5 whole days worth of meetings. I think that I could have planned it a bit better, but I have never faced such a situation before where I had so many grievances to explain so I had no experience, but I also think that two and a half day worth of meetings might not have been enough to explain that many grievances in detail. I will try to come better prepared next time.**

> **Thirdly, I was promised by Natasha Adams and then by Shelly Dickinson that all my grievances would be heard (not just part of them) and I would be given a fair hearing. In our 1st meeting, you informed me that you were there to hear all my grievances. At no stage, in any of the subsequent meetings, you mentioned that you wouldn't be able to hear the remaining grievances.**
>
> **Fourthly, according to the company policy that I attached with my last email, once the grievance is received, the meeting has to be arranged so the grievances could be fully understood and the points that are going to be investigated could be agreed. Nowhere in the policy, it describes that only part of the grievances would be heard through meetings and the remaining part needs to be sent over in writing. Furthermore, In the 1st meeting, you informed me that you will agree on the points/questions that you are going to investigate/answer. In the 2nd unscheduled meeting, I requested you that while we were there we could agree the points/questions that we have discussed in the 1st meeting, but you informed me that you would like to do that at the end when all grievances have been heard or all points/questions have been raised.**
>
> **I have to provide you with my preferred outcome at the end as it will only make sense once all my grievance points have been heard.**

145. Ms Young's email of the same day included:

> **Despite us having now met 4 times across the past 5months, we have still not reached a place where you have shared all of your grievance points with me, and at our last meeting you described you did not know how long this would take as there was still a lot to cover. On the basis of the current timeline I do not feel it would be reasonable or in your best interests for this process to take a further 5months before I am able to investigate your concerns. Instead, to allow me to fully investigate all of your points in detail and within a reasonable timeframe I have requested you to send me your final grievance points in writing. This will not hinder the process in any way and neither will it mean weight is not added to the concerns you have. Instead this will allow me to fully investigate your concerns over the coming weeks and enable me to support you with a resolution to this sooner than if I were to continue meeting with you.**
>
> **There are no restrictions to how many points you can raise and any points I require clarification on or further detail on, I will contact you io discuss this. I believe the 8 days I have given you to do this is a reasonable amount of time.**

146. On 29 April 2019, the Claimant wrote to Ms Adams and Ms Dickinson saying they should fulfil their promise and give him a fair hearing, as Ms Young had stopped hearing his grievances.

147. On 1 May 2019, Ms Young wrote to the Claimant with a list of the 49 points she had captured from their meetings. We pause to note that an employee refusing to provide their grievance points in writing and the employer having to draft this for them is a most unusual step. The length of time taken to hear the grievance and difficulty in obtaining clarity as to what it comprised, is also exceptional. Only at this point, as a result of Ms Young's drafting and comprehensive approach,

did the Claimant's grievance include a complaint about a failure to refer him to occupational health.

148. On 3 May 2019, Ms Young wrote to the Claimant, explaining that the purpose of asking an employee to set out their grievance in writing was to ensure clarity about what needed to be investigated and that if he felt there were any points missing he could add them. In a separate email of the same date Ms Young set out in tabular form the documentary evidence she had received from him.

149. A proposed meeting in May was postponed to accommodate the Claimant and his representative.

150. On 9 May 2019, Ms Young reminded the Claimant he could add to the list of grievances if matters had been missed.

151. In a letter of 14 May 2019, Ms Young responded to various questions the Claimant had asked in correspondence with her about pay issues.

152. On 22 May 2019, the Claimant wrote to Ms Young about the inadequacy of her efforts to draft his grievance:

> **Thank you for acknowledging that according to the company policy, we have to agree on what parts of my grievance need to be investigated. I feel you are not co-operating in preparing the comprehensive list from my emails and the meeting notes.**
>
> **The grievance points list is incomplete and I don't agree with it. There are some points that I didn't raise and some points that are different to what I raised. I feel I am being rushed and ! am being pressurised to agree on the incomplete list. I have raised my grievances formally in writing by emails and during the meetings that we have had. I will be raising the remaining points in our next meeting. I feel that the list that you have provided was prepared during the meetings that we have had. If you would have gone through all the emails and the meeting notes then, there wouldn't be repetitions or several points missing. The list cannot be prepared on personal choices as it will make the whole process ineffective and doubtful. I have requested several times during our meetings that i would like an answer to every single question/point that I have raised in my emails and grievance meetings including the questions that I raised during an investigation meeting with Stephen Nineham. The company policy on page 4 under the heading of point 6 describes;**

153. On 29 May 2019, Ms Young again asked the Claimant to add to the list of grievances anything which was missing. On 30 May 2019 she proposed dates for them to meet again. She also invited him to amend her list of the grievance points and said that if he chose not to she would use that already prepared.

154. In June, Ms Young conducted interviews with various relevant witnesses: Ms Dawkins; Ms Etwareea; Mr Waller; and Ms Taylor- Halstead.

155. Also in June 2019, the Claimant suffered a bereavement which led to him being unwell. There were also subsequent family health issues.

156. On 1 July 2019, Ms Young offered the Claimant an occupational health referral. This was something that could be quickly remedied, He replied that he would not be able to benefit from this because he was in Pakistan. He did not, however, pursue this on returning to the UK.

157. There was much correspondence during this time.

158. On 13 September 2019, the Claimant provided his desired outcome:

> **Kindly resolve all of my pay queries**
>
> **Kindly fulfil the promise of a fresh start**
>
> **Transfer to a store near Romford or close proximity of Romford. It was also requested in June 2018 to Alison but never heard back**
>
> **Resolve and answer all of my grievance points and please provide me with the requested policies**
>
> **Provide the written apologies from Bex Dawkins, Stacey Etwareea and Ranjeet Singh that were promised. Additional apologies from Jamie Popley, Alison Taylor, Mark Hudson and Damian Waller are also provided**
>
> **Action must be taken against Jamie, Alison, Mark, Ranjeet and Stacey for their part in the abuse according to the company policy**
>
> **Alison stage 2 outcome is amended back to the original outcome that was upheld/part held**
>
> **Confirmation provided by either Shelly Dickinson or Natasha Adams that my past would not follow me like before and my data and details would be protected and will be kept confidential**
>
> **Confirmation provided by either Shelly Dickinson or Natasha Adams that I would not be falsely accused or abused any further by anyone in the company**
>
> **Confirmation provided by either Shelly Dickinson or Natasha Adams that my past wouldn't affect my future growth within the company and I would be supported and provided with equal opportunities to grow**
>
> **Financial support (Protection pay, Cushion pay. Pay-rise or one-off compensation) to help me get back to financial stability**
>
> **I have a couple of more points that I would like to discuss in the meeting**

159. Also on 13 September 2019, the Claimant provided an amended list of grievances, to which he had added considerably, albeit not in chronological order or with numbered points.

160. The Claimant and Mr Akram met with Ms Young for day-5 of the grievance hearing on 17 September 2019.

161. On 25 September 2019, the Claimant wrote to Ms Young about a move away from London. She replied on 30 September 2019 explaining the process of

applying for internal vacancies. She also pointed out that if he left his current role without securing a new position that would amount to a resignation.

162. By an email of 30 September 2019 from the Claimant to Ms Dickinson, he complained about various matters, including Ms Young's response to his wish to move out of London.

163. On 1 October 2019, the Claimant wrote to Ms Adams, insisting on a reply from her only, complaining about Ms Young and another manager.

164. Ms Young wrote to the Claimant with her completed investigation report on 7 October 2019. Having reformatted the Claimant's amended list, this now ran to 76 points (although some of those actually contained sub-points or separate bullets). She fully upheld 6 points, partially upheld 8 points, and did not uphold the remainder. The covering letter reminded the Claimant he had 14 working days in which to appeal. The detailed report included Ms Young's finding and reasoning in relation to the various grievance points, along with a timeline of events and list of documentary evidence. Having summarised her findings she concluded:

> **Throughout my role as a grievance manager, it has become evident to me that the relationship between Ahmed and Tesco needs to be considered in more detail and I recommend a formal meeting to take place to do this. From the evidence I have seen, including throughout my interactions with Ahmed in our meetings and email correspondence, I believe there may be a fundamental break down in the working relationship between Ahmed and Tesco which needs to be looked into further by another manager. This will be passed to the business as a recommendation to be considered from my findings.**

165. By a letter of 17 October 2019, the Claimant was required to attend a meeting to consider whether there had been an irrevocable breakdown in the working relationship:

> **The purpose of the meeting is to discuss the ongoing working relationship between yourself and Tesco, based on the recommendations of the grievance outcome report supplied by Hayley Young on the 7 th October 2019.**
>
> **At the meeting, my remit is to consider whether there has been a fundamental and irrecoverable breakdown of trust and confidence, meaning the working relationship between you and Tosco can no longer continue.**
>
> **Outlined below are some examples from the grievance outcome report that I have identified as significant matters which should be considered during the formal meeting:**
>
> **The scale of the grievances raised**
>
> **Many of the concerns included in your grievances relate to incidents that took place as far back as July 2017 and had arguably been previously addressed. However, it has been clear that you have not been satisfied with the conclusion of these grievances despite numerous investigations. The current grievance appears to have taken a considerable and**

disproportionate amount of time to resolve, and removing mitigating situations, seems to have been delayed by yourself (potentially with intent), causing questions to be raised about how committed you are to actually resolving these concerns and continuing to perform your role at Tesco to the best of your ability.

- The pattern of grievances

There appears to be a pattern where you continue to raise fresh grievances about the managers who have addressed your existing grievances or met with you to conduct formal meetings, Examples include, grievances raised against Alison Taylor Halstead, Damien Waller and Charlene Henry who have all met with you to hear your various grievances over the course of many months.

Further, you have raised concerns about meeting with managers who were appointed to resolve formal processes relating to your employment, namely Wendy Armstrong, Sue Lacey, Kiran Sudan and Chris Evipidou, without knowing or ever meeting these individuals, simply because of their links with the London team but seemingly without any evidence of alleged impartiality or bias. This raises concerns about your intention to properly resolve the underlying issues and continue in your employment with Tesco and its management.

Repeated and continuous complaints and grievances

There is a concern that you do not have the intention to move on from your grievances. A view which is built from past history which suggests when you are not satisfied with an outcome, your response is to further raise grievances or complaints to the executive board.

A recent example of this behaviour is your reference to wanting to raise a grievance about Hayley Young when you have been dissatisfied with a seemingly reasonable request made of you during the most recent grievance process, and your assertion that she is biased before she has even been allowed the opportunity to investigate and respond to your concerns. This appears to demonstrate a reluctance to establish important working relationships with new managers, purportedly because of issues raised with previous managers but seemingly without evidence or substance to the claims being made, and primarily suggested because of where they work or who they work with.

Disproportionate and unreasonable behaviour

There is a pattern of requests from yourself to have everything that is asked of you, or an approach you may disagree with, documented within a policy. As a Store Manager it is not unreasonable to believe that you would have a heightened awareness that this is not how the business operates and is often a disproportionate response and. in fact, can be a barrier to resolving workplace issues.

Furthermore, your continuous contact with Natasha Adams (our Chief People Officer and a member of the Executive Committee) suggests you have a belief that no other senior manager - below board level - within the business is suitable or able to hear your concerns. This makes a future working potentially very relationship difficult, especially in your role as a Store Manager.

> **There is evidence of substantial and potentially disproportionate contact with Natasha via email, phone and text messages, despite senior managers already managing and seeking to resolve the issues you have raised. The concern being that behaviour cannot continue as it's not sustainable. Within this is referenced the comments you have made, including having fully lost faith and trust in the London team, not wanting any contact with the London team and not foreseeing that this will change.**
>
> **During the meeting, I will be referencing the grievance investigation completed by Hayley Young and the evidence gathered as part of this investigation, of which I believe you already have a copy. Please let me know prior to the meeting if this is not the case.**
>
> **Please be aware, the concerns are sufficiently serious that I will be considering whether or not your employment will continue and a potential outcome of this meeting could be your dismissal from the business. You are entitled to be represented at the hearing. This can be either a Tesco colleague or an authorised Trade Union representative.**

166. On 24 October 2019, the Claimant appealed Ms Young's grievance outcome:

> **The reasons I want to appeal the decision are:**
>
> **• evidence was not obtained from relevant people**
>
> **• insufficient investigation was conducted**
>
> **• In sufficient account was taken of evidence I put forward**
>
> **• Hayley says that I was not bullied, Harassed or victimized but I disagree**

167. The Claimant's appeal was not accepted, as it was submitted after more than 14 days. The Respondent operates 7 days a week and approached working days in that way.

168. On 25 October 2019, the Claimant attended the meeting to consider whether there had been an irrecoverable breakdown, accompanied by Mr Akram. Carla Matthews was the decision-maker.

169. Early in the hearing, Ms Matthews asked the Claimant for his thoughts on the large number of grievances he had raised since 2017 and outcomes. He said he had only raised one grievance in January 2018. This was not correct, the Claimant had raised other grievances. The Claimant proceeded to speak of his complaint about Mr Popley and said this was where it all started, this was the root cause of all his issues. This was not correct, the Claimant's history of raising grievances and being dissatisfied with the outcome began before his suspension by Mr Popley. Asked by Ms Matthews whether it was fair to say the number of grievances he had raised was high, the Claimant said no. This was an unrealistic response, the Claimant had been with the Respondent for many years and was a store manager, he would be in a position to know that the number of grievances he was raising was not commonplace.

170. It was drawn to the Claimant's attention that he had said numerous times he did not trust the Respondent and his reply was: "No, it's about London team. I need

to decide if it would be the same anywhere else". The Claimant raised but did not pursue a point that English was not his first language. We pause to note the Claimant is highly articulate, both orally and in writing, which would have been apparent to Ms Matthews. The Claimant was asked about raising grievances against those who tried to help resolve his grievances, his response was to say that he had "only" raised a grievance against Ms Taylor-Halstead and with respect to other managers involved in addressing his complaints he had merely raised "concerns". Ms Matthews asked whether the Claimant was happy with Ms Young's grievance outcome, he said he had appealed "some points". His appeal points were, of course, very broad and he had not narrowed down his appeal, say, to a small number of individual findings. The Claimant said he was happy to "move on" and Ms Matthews observed that was inconsistent with him appealing against Ms Young's decision. He then also appeared to make moving on conditional upon what Matthews decided to do "If take no action today, I will move on."

171. Having initially told her this all started in 2018, the Claimant took Ms Matthews back to events in 2016 and 2017. There was a discussion about the Claimant not getting the apologies he wanted. Ms Matthews said colleagues cannot be forced to apologise and the Claimant challenged this saying the Respondent's policy included "ensure apologies". The Claimant complained that mediation never happened. Ms Matthews suggested that someone at his level would have been able to send an email and take this forward himself. The Claimant wanted a transfer to Manchester and Ms Matthews queried why things would be different there. She specifically invited the Claimant to comment on what would happen if Mr Popley moved to Manchester, or another PP saw something they thought was wrong and the prospect of more grievances being raised in those circumstances. Neither the Claimant nor Mr Akram addressed this point directly. Mr Akram asked what guarantees Tesco could provide about this (i.e. issues arising in Manchester) and Ms Matthews said she thought that supported the point she was making. The Claimant then said all he was asking for was the payment of £1,000 in wages owed since February 2018. Quite plainly, this was not all the Claimant had been asking for and he did not then say he would leave all the other concerns behind if this were paid. The Claimant also went on to say that points in his grievance had been overlooked. Asked about the trend of him complaining about independent people who come in to help, the Claimant said it was all about his suspension.

172. The Claimant was also asked about the vast number of messages he had sent to Ms Adams, rather than raising complaints through his management line. The Claimant then said he didn't know various managers and would not want to send confidential information to them. He did not, of course, know Ms Adams other than as a result of raising complaints and grievances to her. Ms Matthews thought this betrayed a lack of trust in anyone other than at the very top level of the Respondent. The Claimant said that if his behaviour with respect to raising grievances had been raised as a problem he would have stopped. This assertion was, however, somewhat undercut by him pursuing an appeal against Ms Young's decision, at a point when he had been told he was at risk of dismissal because of this pattern of behaviour.

173. Ms Matthews said she would need some time to reflect as there was a lot to consider. She suggested meeting again in a week or so. The Claimant said this

was “not good” and he wanted it “sorted”. Expecting an instant or quick decision in these circumstances was unrealistic.

174. On 31 October 2019, the Claimant was advised that his appeal against Ms Young’s decision would not be considered because he had not presented that within the 14 days permitted. Later that day he wrote to Ms Brown. He complained about events going back to 2018, including the hearing conducted by Ms Matthews and the fact he had been told his appeal against Ms Young’s decision was raised too late. Ms Matthews was not made aware of this complaint.

175. The formal hearing reconvened on 4 November 2019, with the same attendees. Ms Matthews had looked into the matter further. There was a discussion about the Claimant’s earlier grievances and she reminded him that on the last occasion he had said repeatedly this all happened after his suspension by Mr Popley. She also pointed out that he had begun to email Ms Adams before that point. Ms Matthews asked whether this showed a breakdown in trust before the suspension, which the Claimant denied. The Claimant went on to set out and argue that he had been mistreated in various ways going back to 2015. Ms Matthews said she believed there were many things that Tesco could learn from this (i.e. her view was not that everything had been done as it ought) but the number of grievances was high, especially from a store manager, and there was a pattern of complaints made against those who tried to help, which suggested the Claimant was unwilling to move on. There were also unacceptable behaviours and this included contacting Ms Adams repeatedly rather than going through the management line. The Claimant said he would mediate. When asked who with, he replied “who ever you say”. After asking if there was anything further, the hearing was adjourned for Ms Matthews to make a decision.

176. Ms Matthews returned and informed the Claimant of her decision to dismiss. She read out the content of a rationale document and we find this did contain the reasons for dismissal, which amounted to her being satisfied there was an irrevocable breakdown. By a letter of 6 November 2019, Ms Matthews wrote to confirm dismissal:

> **1. There have been numerous attempts to repair the relationship, Including multiple grievance hearings, offers of mediation, temporarily moving stores for a substantial length of time, receiving the pay of a Store Manager whilst performing the role of a Customer assistant for a period of time and have supported you to change hearing managers on numerous occasions, it is my belief that there has been a fundamental and irrecoverable breakdown and trust In confidence, meaning that I categorically believe that our working relationship can no longer continue or be repaired.**
>
> **2. I do agree that the scale of the grievances that you have raised have taken a considerable and disproportionate amount of time to resolve - often being delayed by yourself, and I do not believe that you are committed to resolve your concerns and continue to perform in your role within the business. I believe that this is a pattern which has been ongoing since 2017 and will therefore continue. History shows that**

you continue to raise grievances or concerns against people who have been appointed to hear them or have previously heard them.

3. **I believe that you have no real intention of moving on from your grievances, even though Hayley Young has completed a substantial and incredibly thorough grievance outcome hearing. You have Indicated to me that you wish to move on, however, I do not feel that you are particularly remorseful or apologetic for your behaviour or that you will truly ever be able to move on from the breakdown in relationship. I feel that you have also taken no responsibility for your actions and consider it fully Tesco's responsibility to resolve the breakdown In relationship. Whilst I appreciate that everybody has the right to raise grievances and concerns, and 1am sorry for the way In which you were suspended, 1do however, still believe that as a WL2 Store Manager, who has a heightened awareness of how the business operates, you have created barriers to resolving workplace issues.**

4. **You have continuously raised concerns to Natasha Adams, our Chief People Officer, and I do believe that it is your belief that no other Senior Manager is suitable to hear your concerns, which would make any future relationships with Tesco unworkable, especially as a Store Manager.**

177. By an email of 8 November 2019, the Claimant appealed his dismissal:

The reasons I want to appeal the decision are:

- The outcome was too harsh.

- The outcome was inconsistent with the action taken in previous, similar cases .

- The investigation was not complete.

- I feel my version of the events was not adequately considered

178. The Claimant attended an appeal hearing on 4 December 2019. He had a trade union representative at this stage, Phil Waite. Nick Ferrier was the decision-maker. At the hearing Mr Waite confirmed that two of the grounds were withdrawn, namely the investigation was not complete and inconsistency with previous similar cases. No previous case of a similar nature was identified. One of the main areas Mr Ferrier explored with the Claimant was whether, with the benefit of hindsight, he could see that he should have done things differently. Mr Ferrier asked a number of questions related to this point. The Claimant's responses did not appear to include any recognition that he had dealt with matters inappropriately or a suggestion that he would proceed differently in the future. The Claimant asked for an adjournment, following which he immediately told Mr Ferrier that he had been very stressed at the time and what he should have done was contact his union for advice. Although he had been a member for many years, the Claimant had not thought to take advice from the union previously. In connection with his grievance appeal, the Claimant said he only raised this because his desired outcomes had not been taken into account. This latter proposition would not appear consistent with his grounds of appeal against the grievance he had actually sought to raise. Mr Ferrier asked the Claimant what effort he had made to build relations with managers in the area where he

was now working. The Claimant said because he was only working as a customer assistant, he had not sought to build any relations beyond the store. Mr Ferrier asked the Claimant about mediation. The Claimant said he was a "professional" and did not "hold grudges". He did of course hold on to a set of firm convictions with respect to his various grievances and complaints. Asked who mediation should be with, the Claimant said anyone involved in his case. The Claimant said it would be difficult to build relationships until he got his own store. Asked if there was anything else he wanted to say, the Claimant said he felt he should not contact Ms Adams "as often".

179. Mr Ferrier decided not to uphold the appeal and set out his decision in a letter of 12 December 2019. We find this captures his reasons. To the extent the Claimant appeared to have a new perspective by the time of the appeal hearing, Mr Ferrier was not persuaded this was genuine. The summary provided to the Claimant included:

> **I would first like to acknowledge the impact the process has had on you. As described throughout the process we have made mistakes and we apologise. We have taken learnings from the previous two years and have taken appropriate action to address the concerns you have raised. I do agree that we have reached a point now where it is right for the business to review its relationship with you as an employee.**
>
> **It is my conclusion that the decision reached by Carla Matthews was fair and reasonable. Though you did describe a new perspective in our meeting I did not feel that it was genuine. I felt you failed to show any remorse for the part you have played in the breakdown in the relationship. Though you removed two points of your appeal I felt that decision was reached due to coaching by your union representative and did not demonstrate a change to your mind-set. It is my belief that you are unwilling to let go of the past, I do believe you have a desire to move on but will create further challenges as your history demonstrates.**
>
> **Over the past two years a considerable amount of time and energy has been dedicated to trying to find a solution which will improve the working relationship. The impact has been considerable on all colleagues involved include yourself. In our meeting I felt you demonstrated a lack of credibility in giving evidence on how we could move forward, reflecting on the impact the previous two years has had on yourself and colleagues I do not feel confident that we can prevent further emotional and financial strain if we continue your employment.**
>
> **We work in a fast paced, ever changing business, even if we find you a new area for you to work in there is no guarantee that you will not encounter colleagues that were part of this process. If this was to happen I would have serious concerns the same difficulties will rise again. The reassurances you gave during the meeting were contradictory to behaviours you have continually demonstrated.**
>
> **It is always the company's goal to resolve issues, over the course of two years we have put considerable time and effort into resolving your concerns. Throughout that time, it was the belief of Carla and myself that you have failed to fully engage with the process and as such I believe a resolution could not be found.**

> **On reflection Carla has decided that there is a fundamental breakdown in the relationship between yourself and Tesco. Having heard the appeal I have concluded that her rational was reasonable and well considered.**

Law

Unfair Dismissal

180. Pursuant to section 98(1)(a) of the **Employment Rights Act 1996** ("ERA"), it is for R to show that the reason for C's dismissal was potentially fair and fell within section 98(1)(b).

181. A breakdown in working relationships is capable of amounting to some other substantial reason ("SOSR") within ERA section 98(1)(b); see **Perkins v St George's Healthcare NHS Trust [2005] IRLR 934 CA**, per Wall LJ:

> **59. That said, I agree with Mr Langstaff that personality, of itself, cannot be a ground for dismissal within ERA 1996 s.98. For there to be a potentially fair reason for dismissal, an employee's personality must, it seems to me, manifest itself in such a way as to bring the actions of the employee, one way or another, within the section. Whether, on the facts of a particular case, the manifestations of an individual's personality result in conduct which can fairly give rise to the employee's dismissal; or whether they give rise to SOSR of a kind such as to justify the dismissal of an employee holding the position which the employee held, the employer has to establish the facts which justify the reason or principal reason for the dismissal. Provided the employer can do so, s.98(4) then kicks in. So much is, I think, obvious.**
>
> **60. I did not understand Mr Langstaff to argue that in a given case a breakdown in confidence between an employer and one of its senior executives; (a) for which the latter was responsible; and (b) which actually or potentially damaged the operations of the employer's organisation (or which rendered it impossible for the senior executives to work together as a team) was outwith s.98 as SOSR and therefore could not result in an employer fairly dismissing the employee whom the employer deemed responsible for that state of affairs. Indeed, I think Mr Langstaff was minded to accept that the facts found by the tribunal could have amounted to SOSR. In my judgment, that concession was both correct, and realistic. Standing outside the case for a moment, it seems to me that it must be possible for an employer fairly to dismiss an employee in the circumstances set out in the earlier part of this paragraph, provided always the terms of s.98(4) are satisfied.**

182. See also **Ezsias v North Glamorgan NHS Trust [2011] IRLR 550 EAT**, where the employee was fairly dismissed following a breakdown in working relationships and notwithstanding the Trust's failure to follow a contractual disciplinary procedure:

> **53.It is apparent from that passage that the tribunal was alive to the refined but important distinction between dismissing Mr Ezsias for his conduct in causing the breakdown of relationships, and dismissing him for the fact that those relationships had broken down. In these circumstances, the only fair reading of the tribunal's finding at paragraph 542 about the reason for Mr Ezsias' dismissal is that although as a matter**

> **of history it was Mr Ezsias' conduct which had in the main been responsible for the breakdown of the relationships, it was the fact of the breakdown which was the reason for his dismissal (his responsibility for that being incidental).**
>
> **[…]**
>
> **58. We understand that concern, but the fact is that the Whitley Council terms only apply when it is the employee's conduct or competence which is the real reason for why the action was taken against him. Although as a matter of history Mr Ezsias' conduct was blamed for the breakdown, the tribunal's finding in the present case was that his contribution to that breakdown was not the reason for his dismissal. We do not suppose that those who were responsible for negotiating the Whitley Council terms had this in mind, but the fact is that the Whitley Council terms do not apply to cases where, even though the employee's conduct caused the breakdown of their relationship, the employee's role in the events which led up to that breakdown was not the reason why action was taken against him. We have no reason to think that employment tribunals will not be on the lookout, in cases of this kind, to see whether an employer is using the rubric of 'some other substantial reason' as a pretext to conceal the real reason for the employee's dismissal.**

183. If the reason for dismissal falls within section 98(1)(b), neither party has the burden of proving fairness or unfairness within section 98(4) of ERA.

184. ERA section 98(4) provides:

> **In any case where the employer has fulfilled the requirements of subsection (1) the determination of the question whether the dismissal is fair or unfair having regard to the reason shown by the employer -**
>
> > **(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as sufficient reason for dismissing the employee, and**
> >
> > **(b) shall be determined in accordance with equity and the substantial merits of the case.**

185. The function of the ET is to review the reasonableness of the employer's decision and not to substitute its own view. The question is whether the decision to dismiss fell within the band of reasonable responses, which is to say that a reasonable employer may have considered it sufficient to justify dismissal; see **Iceland Frozen Foods v Jones [1983] IRLR 439 EAT**.

186. Where the reason for dismissal is conduct the ET will take into account the guidance of the EAT in **BHS v Burchell [1978] IRLR 379**, in particular whether:

186.1 the employer had a genuine belief that the employee was guilty of the misconduct;

186.2 such belief was based on reasonable grounds;

186.3 such belief was reached after a reasonable investigation.

187. After an appeal the relevant question is whether the process as a whole was fair, see **Taylor v OCS Group Limited [2006] IRLR 613 CA**, per Smith LJ:

> **46. […] In our view, it would be quite inappropriate for an ET to attempt such categorisation. What matters is not whether the internal appeal was technically a rehearing or a review but whether the disciplinary process as a whole was fair.**
>
> **47. […] The use of the words 'rehearing' and 'review', albeit only intended by way of illustration, does create a risk that ETs will fall into the trap of deciding whether the dismissal procedure was fair or unfair by reference to their view of whether an appeal hearing was a rehearing or a mere review. This error is avoided if ETs realise that their task is to apply the statutory test. In doing that, they should consider the fairness of the whole of the disciplinary process. If they find that an early stage of the process was defective and unfair in some way, they will want to examine any subsequent proceeding with particular care. But their purpose in so doing will not be to determine whether it amounted to a rehearing or a review but to determine whether, due to the fairness or unfairness of the procedures adopted, the thoroughness or lack of it of the process and the open-mindedness (or not) of the decision-maker, the overall process was fair, notwithstanding any deficiencies at the early stage.**

Disability Discrimination

188. In the employment field and so far as material, section 39 of **the Equality Act 2010** ("EqA") provides:

> **(2) An employer (A) must not discriminate against an employee of A's (B) -**
>
> **(a) as to B's terms of employment;**
>
> **(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;**
>
> **(c) by dismissing B;**
>
> **(d) by subjecting B to any other detriment.**

189. As to the meaning of any other detriment, the employee must establish that by reason of the act or acts complained of a reasonable worker might take the view that they had thereby been disadvantaged in the circumstances in which they had thereafter to work. An unjustified sense of grievance cannot amount to a detriment for these purposes; see **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 HL**.

Burden of Proof

190. The burden of proof is addressed in EqA section 136, which so far as material provides:

> **(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.**

> **(3) But subsection (2) does not apply if A shows that A did not contravene the provision occurred.**

191. When considering whether the claimant has satisfied the initial burden of proving facts from which a Tribunal might find discrimination, the Tribunal must consider the entirety of the evidence, whether adduced by the claimant or respondent; see **Laing v Manchester City Council [2006] IRLR 748 EAT**.

192. Furthermore, a simple difference in treatment as between the claimant and his comparators and a difference in protected characteristic will not suffice to shift the burden; see **Madarassy v Nomura [2007] IRLR 246 CA**.

193. The burden of proof provisions will add little in a case where the ET can make clear findings of a fact as to why an act or omission was done or not; see **Martin v Devonshires Solicitors [2011] IRLR 352 EAT**, per Underhill P:

> **39. This submission betrays a misconception which has become all too common about the role of the burden of proof provisions in discrimination cases. Those provisions are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination generally, that is, facts about the respondent's motivation (in the sense defined above) because of the notorious difficulty of knowing what goes on inside someone else's head "the devil himself knoweth not the mind of man" (per Brian CJ, YB 17 Ed IV f.1, pl. 2). But they have no bearing where the tribunal is in a position to make positive findings on the evidence one way or the other, and still less where there is no real dispute about the respondent's motivation and what is in issue is its correct characterisation in law […]**

Reasonable Adjustments

194. EqA sections 20 and 21 provide, so far as material:

> **20 Duty to make adjustments**
>
> **[…]**
>
> **(3) The first requirement is a requirement, 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.**

195. Pursuant to EqA schedule 8, paragraph 20(1)(b), a person is not subject to the duty to make reasonable adjustments if they neither knew nor could have been reasonably expected to have known of the claimant's disability and that they were likely to be placed at a disadvantage by the relevant provision, criterion or practice ("PCP"):

> **20 Lack of knowledge of disability, etc.**
>
> **(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—**
>
> **[…]**

> **(b) [in any case referred to in Part 2 of this Schedule]1 , that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.**

196. The Equality and Human Rights Commission ("EHRC") EqA Code of Practice identifies factors which may be relevant to the reasonableness of a proposed step:

> **6.28 The following are some of the factors which might be taken into account when deciding what is a reasonable step for an employer to have to take:**
>
> **• whether taking any particular steps would be effective in preventing the substantial disadvantage;**
>
> **• the practicability of the step;**
>
> **• the financial and other costs of making the adjustment and the extent of any disruption caused;**
>
> **• the extent of the employer's financial or other resources;**
>
> **• the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and**
>
> **• the type and size of the employer.**

197. Pursuant to the decision in **Secretary of State for Work and Pensions v Wilson [2009] UKEAT/0289/09** the Employment Tribunal must have regard to:

197.1 the extent to which it would be practicable for the employer to take the steps proposed;

197.2 the feasibility of the steps proposed.

198. When considering the reasonableness of an adjustment the practical effect, objectively assessed is key; see **Royal Bank of Scotland v Ashton [2011] ICR 632 EAT**, per Langstaff J:

> **24 Thus, so far as reasonable adjustment is concerned, the focus of the tribunal is, and both advocates before us agree, an objective one. The focus is upon the practical result of the measures which can be taken. It is not - and it is an error - for the focus to be upon the process of reasoning by which a possible adjustment was considered. As the cases indicate, and as a careful reading of the statute would show, it is irrelevant to consider the employer's thought processes or other processes leading to the making or failure to make a reasonable adjustment. It is an adjustment which objectively is reasonable, not one for the making of which, or the failure to make which, the employer had (or did not have) good reasons.**

199. A claimant does not, however, need to go so far as to show a 'good' or 'real' prospect, it is sufficient if there is 'a' prospect the disadvantage will be removed or reduced; **See Leeds Teaching Hospital NHS Trust v Foster [2011] UKEAT/0552/10/JOJ**, per Keith J:

> **[17] In fact, there was no need for the tribunal to go as far as to find that there would have been a good or real prospect of Mr Foster being redeployed if he had been on the redeployment register between January and June 2008. It would have been sufficient for the tribunal to find that there would have been just a prospect of that. That is the effect of what the Employment Appeal Tribunal (Judge McMullen QC presiding) held in Cumbria Probation Board v Collingwood (UKEAT/0079/08/JOJ) at 50. That is not inconsistent with what the Employment Appeal Tribunal (Judge Peter Clark presiding) had previously said in Romec Ltd v Rudham (UKEAT/0069/07/DA) at 39. The Employment Appeal Tribunal was saying that if there was a real prospect of an adjustment removing the disabled employee's disadvantage, that would be sufficient to make the adjustment a reasonable one, but the Employment Appeal Tribunal was not saying that a prospect less than a real prospect would not be sufficient to make the adjustment a reasonable one. When those propositions were put to Mr Boyd, he did not disagree with them.**

200. The EAT in **Tarbuck v Sainsbury Supermarkets Ltd [2006] IRLR 664**, addressed whether consulting with an employee might itself be a reasonable adjustment; per Elias P:

> **71. […] The only question is, objectively, whether the employer has complied with his obligations or not. That seems to us to be entirely in accordance with the decision of the House of Lords in Archibald v Fife Council [2004] ICR 954 . If he does what is required of him, then the fact that he failed to consult about it or did not know that the obligation existed is irrelevant. It may be an entirely fortuitous and unconsidered compliance: but that is enough. Conversely, if he fails to do what is reasonably required, it avails him nothing that he has consulted the employee. […]**
>
> **72. Accordingly whilst, as we have emphasised, it will always be good practice for the employer to consult and it will potentially jeopardise the employer's legal position if he does not do so— because the employer cannot use the lack of knowledge that would have resulted from consultation as a shield to defend a complaint that he has not made reasonable adjustments— there is no separate and distinct duty of this kind.**

Harassment

201. Insofar as material, EqA section 26 provides:

> **(1) A person (A) harasses another (B) if—**
>
> > **(a) A engages in unwanted conduct related to a relevant protected characteristic, 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.**
>
> **(2) A also harasses B if—**

> **(a) A engages in unwanted conduct of a sexual nature, and**
>
> **(b) the conduct has the purpose or effect referred to in subsection (1)(b).**
>
> **(3) A also harasses B if—**
>
> **(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,**
>
> **(b) the conduct has the purpose or effect referred to in subsection (1)(b), and**
>
> **(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.**
>
> **(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.**

202. Whilst the unwanted conduct need not be done 'on the grounds of' or 'because of", in the sense of being causally linked to, a protected characteristic in order to amount to harassment, the need for that conduct be 'related to' the protected characteristic does require a "connection or association" with that; see **Regina (Equal Opportunities Commission) v Secretary of State for Trade and Industry [2007] ICR 1234 QBD**. Notwithstanding it was decided under the prior legislation including the formulation "on the grounds of", the observations made by by the EAT in **Nazir v Asim [2010] ICR 1225** may still be of some relevance:

> **69 We wish to emphasise this last question. The provisions to which we have referred find their place in legislation concerned with equality. It is not the purpose of such legislation to address all forms of bullying or anti-social behaviour in the workplace. The legislation therefore does not prohibit all harassment, still less every argument or dispute in the workplace; it is concerned only with harassment which is related to a characteristic protected by equality law—such as a person's race and gender.**

203. The EAT further considered the relevant causal test **in Bakkali v Greater Manchester Buses (South) Ltd t/a Stage Coach Manchester: UKEAT/0176/17/RN**; per Slade J:

> **31. […] Conduct can be "related to" a relevant characteristic even if it is not "because of" that characteristic. It is difficult to think of circumstances in which unwanted conduct on grounds of or because of a relevant protected characteristic would not be related to that protected characteristic of a claimant. However, "related to" such a characteristic includes a wider category of conduct. A decision on whether conduct is related to such a characteristic requires a broader enquiry. In my judgment the change in the statutory ingredients of harassment requires**

> **a more intense focus on the context of the offending words or behaviour. […] "the mental processes" of the alleged harasser will be relevant to the question of whether the conduct complained of was related to a protected characteristic of the Claimant […] However such evidence from the alleged perpetrator is not essential to the determination of the issue. A tribunal will determine the complaint on the material before it including evidence of the context in which the conduct complained of took place.**

204. In relation to the proscribed effect, although C's perception must be taken into account, the test is not a subjective one satisfied merely because C thinks it is. The ET must reach a conclusion that the found conduct reasonably brought about the effect; see **Richmond Pharmacology v Dhaliwal [2009] IRLR 336 EAT**.

205. Guidance on the threshold for conduct satisfying the statutory definition was given by the EAT in **Betsi Cadwaladr University Health Board v Hughes [2014] 2 WLUK 991**; per Langstaff P:

> **10. Next, it was pointed out by Elias LJ in the case of Grant v HM Land Registry [2011] EWCA Civ 769 that the words "violating dignity", "intimidating, hostile, degrading, humiliating, offensive" are significant words. As he said:**
>
> > **"Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."**
>
> **11. Exactly the same point was made by Underhill P in Richmond Pharmacology at paragraph 22:**
>
> > **"..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 indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."**
>
> **12. We wholeheartedly agree. The word "violating" is a strong word. Offending against dignity, hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence.**

Victimisation

206. So far as material, EqA section 27 provides:

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

Conclusion

Reason for Dismissal

207. The Claimant was dismissed for the reasons set out in Ms Matthews' rationale document and dismissal letter. In summary this was because she believed there had been an irrecoverable breakdown in the working relationship, with the Respondent no longer having trust and confidence in the Claimant, and he feeling the same about Respondent, or at least "the London Team". Whilst she was in little doubt that the Claimant's conduct over a long period of time had substantially caused this state of affairs, it was the breakdown (i.e. the position that had been reached) which was her reason for dismissal.

208. The substance of the Claimant's case at the Tribunal is that there had been a conspiracy (he did not use that word in his witness statement or claim form but it fairly reflects his description of Ms Grimwade orchestrating matters and featured in his contemporaneous correspondence) to see him leave the business. There was no evidence to support this assertion and we accepted the evidence of Ms Matthews about the matters she took into account and in particular, reaching her decision independently, as opposed to doing as she was told or being steered toward dismissal by a notetaker Ms Grimwade had put in place for that purpose (the Claimant's case). Ms Matthews gave a clear and consistent account, which was supported by the contemporaneous documents.

209. An irrecoverable breakdown in working relationships is some other substantial reason within ERA section 98(1)(b). This is a potentially fair reason for dismissal. Whether the Claimant's dismissal for this reason was actually fair in all the circumstances depends upon the application of section 98(4).

210. Whilst this was not a conduct dismissal, it is still relevant to consider whether the Respondent made a reasonable investigation into whether the working relationship had broken down and had reasonable grounds to support such a conclusion.

Reasonable Investigation

211. Ms Matthews received 7 lever-arch files, full of documents relating to the management of the Claimant and the attempts to resolve his many formal grievances and written complaints. This included Ms Young's extensive grievance investigation report. No material documents or other source of evidence has been suggested, which Ms Matthews ought to have obtained.

212. On the first day, Ms Matthews met with the Claimant and his trade union representative from 11.30am until 4.42pm. On the second day the meeting started at 10.22am and ran through until 12.36pm, at which point she adjourned to consider her decision. Ms Matthews explored this history and the various matters which pointed to a breakdown in the employment relationship at great length with the Claimant. He had a very full opportunity to contest what was said to show a breakdown. He also had the chance to demonstrate insight, persuade her that he would not repeat the damaging conduct going forward and that the position could be recovered.

213. The investigation carried out here was well within the reasonable band. It could not be said that no reasonable employer would consider this sufficient.

Reasonable Grounds

214. Ms Matthews had reasonable grounds to support a conclusion that the relationship had broken down.

215. The Claimant had been raising formal grievances or written complaints for years and despite efforts by many different managers to investigate and resolve matters, he remained deeply dissatisfied and continued to press forward in the same way. It was not the case that his grievances were all rejected out of hand, on the contrary the outcomes frequently included favourable findings but these were never enough to satisfy him. Rather than grievance investigations and outcomes or other responses leading to resolution, they instead resulted in further complaints, about those who were appointed to assist in this regard and / or the decisions they made. In this way, the Claimant raised grievance and complaint upon grievance and complaint, without end. The Claimant's approach to raising grievances and complaints was excessive, requiring a disproportionate amount of management time and resource to address. There was little to suggest the Claimant was willing to draw a line under past events and move forward with the Respondent constructively. He had intended to appeal the decision of Ms Young and only did not do so because the deadline was missed. The Claimant's suggestion that he could have brought a grievance against Ms Young and did not do so, advanced by him during the meeting as though it were a generous indulgence on his part, actually tended to demonstrate that when he disagreed with a decision he immediately thought in terms of raising another grievance.

216. Numerous steps had been taken to support the Claimant, by way of store moves, confidence building measures, training and a period in which he was provided with employment in a store outside of London where he undertook a customer assistant role whilst being paid as a store manager, none of which had been effective to satisfy his concerns and bring the ongoing disputes to an end.

217. Whilst the Respondent, by way of the various grievance processes and outcomes, was prepared to admit that it had got some things wrong and apologise for the same, the Claimant could not respond in like fashion. Being unable to recognise or admit that his approach might ever have been excessive or inappropriate, would make it difficult for Ms Matthews to be persuaded he could change his behaviour going forward.

218. Separately from the relationship having broken down from the Respondent's point of view, the same was substantially true for the Claimant too. Whilst at the meeting he sought to limit this to "the London team" at earlier stages he had said he had lost trust and confidence in "Tesco", without any regional qualification. Furthermore, the Claimant's implication, namely that everything would be alright if only he went to work outside of London lacked credibility. The Claimant believed he was the victim of a conspiracy, orchestrated by Ms Grimwade, lead Employment Relations Partner for London. Moving away from London would only be a solution if he was right about the conspiracy. If, however, there was no conspiracy (Ms Matthews' conclusion) then all that was left was the Claimant's tendency to raise grievances when managers made decisions he disagreed with and there was no reason to suppose that was less likely in any other part of the country.

219. The Claimant said he hadn't raised any grievances since moving to Flamstead. This was incorrect. Whilst he had not raised a grievance about any new matter occurring in that store, whilst working there he had been developing and advancing his detailed grievance to Ms Young about events going back to 2015. This had resulted in an enormous and complicated grievance, which was not at all easy to address. Whilst it has been referred to as having 76 points, many of the numbered paragraphs include multiple complaints. Even requests for documents were in substance complaints about things that had or had not been done. The total number of individual complaints within the grievance was considerably more than 76.

220. For the reasons set out above, the Respondent had reasonable grounds for arriving at a conclusion there had been an irrecoverable breakdown in the employment relationship.

Sanction

221. Although dismissal for SOSR is not, strictly, a sanction (in the sense of a punishment for misconduct) nonetheless it is relevant to consider whether, having arrived at a conclusion there was in irrecoverable breakdown, a decision to dismiss was within the band of reasonable responses.

222. From the Claimant's perspective, taking into account what he wrote at the time, trust and confidence in the employment relationship had gone long before Ms Matthews was involved. The Respondent was, however, far slower to reach this

conclusion. Eventually, however, the relationship appeared to have become a vehicle for never-ending disputation. The Respondent made substantial efforts to support the Claimant and resolve his grievances. None of this was effective to stem the flow of complaints, his dissatisfaction and suspicion. Over time, his grievances became longer, more complex and difficult to resolve. He was never satisfied and nor did there appear to be any realistic prospect of this being achieved.

223. In these circumstances, it was reasonable to decide to dismiss. Certainly, it could not be said that no reasonable employer would have decided to dismiss in these circumstances.

Appeal

224. Mr Ferrier gave the Claimant a very full opportunity to explain his grounds of appeal. Whereas previously the Claimant had been accompanied by a colleague, Mr Akram, at the appeal he had a trade union representative.

225. By the time of the hearing the Claimant had reduced the grounds upon which he pursued a challenge, in particular withdrawing “the investigation was not complete”. Narrowing or reducing the scope of his complaints was most uncharacteristic and it was reasonable for Mr Ferrier to infer this was only done with trade union “coaching” (i.e. strong advice) as complaining about an inadequate investigation, following a very thorough one, was typical of how the Claimant proceeded and tended to support the decision to dismiss.

226. Mr Ferrier reviewed not only the pattern of grievances but also the number of individual damaged relationships. The Claimant had appeared to dispute the proposition that he complained about a large number of individuals and / or those who had been tasked with resolving his grievances, in some cases even when he had never met them. Mr Ferrier had been struck by the Claimant’s willingness to make allegations or suggest bias without any proper basis and his view on this was a reasonable one.

227. Mr Ferrier was, reasonably, entitled to doubt suggestions from the Claimant that he might do things differently in future. There were a number of questions asked which in effect invited the Claimant to reflect on how he dealt with matters previously. Rather than admitting to any mistakes or volunteering a different approach, he responded by justifying his earlier actions. Following a short adjournment, the Claimant came back and immediately said he should have taken advice from the union. It was reasonable for Mr Ferrier to find such responses lacking in credibility and indicative of prompting by his representative.

228. The Claimant’s willingness to engage in mediation and the likely efficacy of this was also doubted by Mr Ferrier and this was a reasonable conclusion for him to reach. The Claimant was inconsistent as to with whom any mediation should take place. His comments tended to identify mediation as a process through which he had to go in order to retain his job, as opposed to something the Claimant positively wished to engage in, so as to rebuild relationships.

229. In addressing the two appeal points pursued (sanction too severe and Ms Matthews did not consider his version of events) Mr Ferrier conducted a very

thorough review of the decision to dismiss. He was not only satisfied that Ms Matthews had been entitled to conclude the relationship had broken down and that dismissal was appropriate, he came to the same conclusion himself. The approach adopted and decision made by Mr Ferrier were well within the reasonable band.

Unfair Dismissal

230. For the reasons set out above, the unfair dismissal claim fails.

Disabled Person

231. The Respondent concedes that the Claimant was a disabled person, within the meaning of EqA section 6, by reason of suffering with ocular hypertension at all material times.

232. For much of the period from 2016 until the end of his employment, the Claimant was also suffering with stress and anxiety. Whilst his witness evidence with respect to the various wrongs he believed were done to him by the Respondent was exhaustive, his account of the mental health symptoms he experienced was exceedingly brief. Looking at this alongside the medical records, we are nonetheless satisfied that he suffered a substantial adverse effect from November 2016, when he attended his GP, reported problems at work and was prescribed with the anti-depressant medication, sertraline. After this time on some days he suffered, variously, with headaches, sleepiness or difficulty sleeping, upset stomach or constipation. Occasionally, he found it difficult to concentrate or forgot things, such as putting in his eye drops. Whilst not very severe, the effect of these symptoms on the Claimant's normal day to day activities was more than minor or trivial. In March 2017 the Claimant's GP changed his medication to a different anti-depressant, citalopram. We find it is likely the Claimant's symptoms would have been worse had he not been taking anti-depressants at this time.

233. In August 2017, the Claimant's GP noted:

> **Low mood see prev, similar issues, no change, did not interact with iapt.p: iapt take citalopram properly.**

234. As can be seen, the Claimant was not taking his anti-depressant medication consistently. The same is true for the medication prescribed to him for his ocular hypertension. The Claimant was expected to take this consistently but instead did so intermittently, most likely restarting this when his symptoms were worse. The Claimant's approach to taking his medicine did not help with the management of either his physical or mental health problems. Nonetheless, as far as stress and anxiety is concerned, by August 2017 this had been ongoing for 10 months. There was little change during this time and nothing to suggest a rapid cessation of his symptoms was in prospect. From this point we are satisfied the adverse effect caused by his mental impairment was long term, in that it could well happen it would last for at least another 2 months and, therefore, more than 12 months in total. From that point he was a disabled person within the meaning of the Act. We find that he continued to suffer a substantial adverse effect, by reason of the same pattern of symptoms, the

nature and extent of which were reduced by the anti-depressant medication he took.

Knowledge

235. At the meeting with Ms Dawkins and Ms Etwareea the Claimant explained that following eye surgery in 2015, the pressure in his eye had gone up. He told them this necessitated "life time medication" to reduce the pressure and that he was under the care of a specialist eye hospital. We are satisfied from this point, the Respondent knew the Claimant was a disabled person by reason of eye pressure (i.e. ocular hypertension). Alternatively, the Respondent ought to have known he was disabled given this information.

236. The Claimant also told the Respondent about suffering with stress and anxiety. Although given we have not found the Claimant to be disabled by reason of that mental impairment until later in that year, the Respondent did not know of his disability then.

237. By his email of 31 October 2017 (sent after the point when we have found he became disabled) the Claimant told Ms Dawkins of various symptoms he was then experiencing, including:

> **I am very stressed and I am also feeling numbness in my hands, arms and legs that is similar to what I suffered before I had a panic attack the last time. I don't think that I will be able to attend work in the morning.**

238. We find that what the Claimant told his manager at this time, especially in light of what he had said earlier in the year, put the Respondent on notice of him suffering with an ongoing or recurrent mental health problem, namely stress and anxiety, which was significantly affecting his day to day activities. The Respondent knew from this he was a disabled person. Alternatively, it should have known.

PCPs

239. The PCPs contended for are:

239.1 Requiring work using a computer/mobile device;

239.2 Applying a shift pattern that involved travelling to and from work in low light conditions ("late shifts");

239.3 Requiring that work be carried out for 4-5 hours per day in an office that was artificially illuminated.

240. The PCP of requiring work using a computer or mobile device was applied, albeit intermittently. The Claimant would have to look at a computer screen, or other device screens during the working day, as would almost every member of the Respondent's staff. This was not, however, something he was required to do continuously. We did not accept the Claimant's evidence that as a manager he was required to work at a computer screen for 4 or 5 hours at a time. We preferred the evidence of the Respondent's witnesses to the effect it would be a dereliction of duty (our words not theirs) for the Claimant to spend such

extended periods in his office. Rather he should have been interacting with staff and spending much of his time on the shop floor. Even when there were computer-based tasks to complete, the Claimant could manage his own time and break-up any longer tasks at his own discretion.

241. The PCP of requiring shift work and travelling in low light was applied, to a limited extent. As a store manager, the Claimant would be expected to work one early and one late shift each week. This was necessary so that he would meet all of the staff. He could, however, choose when to do this, albeit a late on Friday or Saturday late was preferred by the Respondent, as these are key trading periods.

242. The PCP of requiring the Claimant to work for 4-5 hours a day in an artificially illuminated office was not applied. Whilst the in-store office may be artificially illuminated, the Claimant's role as a store manager did not require him to spend such a lengthy period in that location. Again we preferred the Respondent's evidence about the role of store manager, which would have him on the shop floor most of the time.

Disadvantage

243. There was no substantial disadvantage to the Claimant from the use of a screen at work. His condition was reasonably well-managed by the administration of eye drops, save that the Claimant did not always administer these consistently, as advised by his treating doctors. He explains that he would watch TV for up to an hour and there would be no need for him to sit in his office and stare at a computer screen at work for such a long period of time continuously, he could break up his own working day to avoid that and would be expected to be on the shop floor very frequently. The role of store manager in the format in which the Claimant was employed is very much 'hands on'.

244. There was no substantial disadvantage to the Claimant from being expected to do one early and one late shift each week. This was a limited requirement. The Claimant could choose the days when this was convenient to him. Most of the time he travelled to work using public transport and would not have to contend with any driving difficulty. This does not appear to be an issue he discussed with his treating physicians, which we would have expected if it were a particular problem.

245. As the PCP of being required to work 4-5 hours in an artificially illuminated office was not applied to the Claimant, the question of disadvantage does not arise. He could choose how to organise his working day and if was spending such long periods in this way, he was not doing that which the Respondent expected of him.

Steps

246. As the Claimant was not put at a disadvantage by any of the PCPs applied to him, the duty to make reasonable adjustments did not arise and his claim in this regard fails.

247. In case we are wrong in our conclusion about the PCPs being applied or disadvantage, we have gone on to consider whether if he had been so

disadvantaged, the steps the Claimant contended for would have been ones it was reasonable for the Respondent to have to take,

248. As a general point, we note that given the nature of the PCPs alleged, these directly engage his physical disability only. Their only potential relevance to the Claimant's mental health impairment would appear to be an indirect one, if the disadvantage caused by the PCP in relation to his physical disability became a source of significant stress. We pause to note there was little evidence to suggest this was true, as the matters which exercised the Claimant and were the subject matter of his formal grievances and written complaints, did not for the most part include the PCPs now relied upon or lack of accommodation for his ocular hypertension.

249. Making a referral to occupational health would not have been a step it was reasonable for the Respondent to have to take. Rather like consultation in **Tarbuck**, such a referral may result in the identification of steps it was reasonable for the Respondent to have to take. Where an employer does not refer the Claimant to occupational health, then it will not have a defence to a complaint about a failure to take reasonable steps by reason of its ignorance. The Claimant being assessed in this way does not, however, itself involve making an adjustment, as it does nothing to reduce or eliminate any disadvantage caused by a PCP.

250. We also noted that after the February 2017 meeting, in which there was discussion about an occupational health referral and the Claimant said he would get back to his managers about steps to be taken after speaking with his doctors, he did not do so. Thereafter, despite raising numerous written complaints with his employer, the Claimant did not ask to be referred for a health assessment. Only in 2019, in the course of agreeing a very lengthy grievance to be determined by Ms Young, did he resurrect this matter. She sought to remedy the point immediately, by offering the Claimant an occupational health referral in July 2019, which he declined. Although the Claimant's immediate explanation included that he was out of the country, he did not ask for it on returning. This matter appears to be something the Claimant was interested in only to the extent he could complain about the Respondent's failure. If he had any real interest in it actually being carried out, he would have referred to it in one of his many written complaints between 2017 and 2018.

251. Making changes to the way the Claimant worked, to reduce or manage the amount of time that he spent using a computer/mobile device screen would not have been a step it was reasonable for the Respondent to have to take. These were matters which it was already within the Claimant's discretion as store manager, to arrange, change and / or delegate as he saw fit. During the time he was carrying out the role of a customer assistant, there would be little screen use in any event, with only occasional glancing at a till display or handheld device.

252. Making alterations to the Claimant's pattern of work to reduce/manage the frequency of the occasions upon which he was required to work shifts which required him to travel to and from work in low light would not have been a step it was reasonable for the Respondent to have to take. Once again, this was already within his discretion to manage and vary as a store manager. It was

reasonable for the Respondent to require him to have some contact with all the store staff, including those who only worked early or late. Furthermore, any difficulties the Claimant did experience in this regard could be addressed by the expedient of him using public transport, which it appears he did most of the time in any event.

253. Offering the Claimant a stress risk assessment would not have been a step it was reasonable for the Respondent to have to take. This had nothing whatsoever to do with the PCPs or any disadvantage. Separately, for like reasons as set out above in connection with the step of an occupational health referral, this would not in and of itself reduce or eliminate any disadvantage caused by the PCPs.

254. Referring the Claimant for counselling when he informed them he was suffering from stress/anxiety would not have been a step it was reasonable for the Respondent to have to take. This had nothing whatsoever to do with the PCPs or any disadvantage. The PCPs relied upon, if they had caused a substantial disadvantage, would call for practical measures to accommodate his ocular hypertension. The Claimant did not subsequently raise the PCPs or any lack of accommodation for his ocular hypertension as something which was exacerbating his stress and anxiety. Furthermore, the Claimant did not ask for counselling to be provided to him contemporaneously or make representations that would alert his employer to the need for such support. Whilst the Claimant told the Respondent about his stress and anxiety, the cause of this was quite plainly his dissatisfaction with the decisions made on his various grievances and complaints, which would not in any event seem to have a medical answer. Separately, the duty to make reasonable adjustment concerns workplace or work-related matters (or closely connected concerns, such as travel to and from) and does not extend so far as to require the employer to become a primary healthcare provider.

255. The Respondent having to provide a support plan following periods of absence would not have been a step it was reasonable for the Respondent to have to take. This assertion by the Claimant is vague, as he does not identify any specific steps that such a plan should comprise. Support for the Claimant was discussed at the February 2017 meeting and on other occasions. Various measures were agreed and implemented, including a screen guard, a bridging programme, training and working at different stores. The Claimant was also supported by being paid as a store manager even when he was only working as a customer assistant. The Claimant did not, following his periods of absence, suggest these PCPs were causing him a disadvantage or say that further steps were needed to accommodate his ocular hypertension. The Claimant did not, as he said he would, seek information from his treating doctors about necessary adjustments and provide this to his employer. As previously described, the Claimant's ocular hypertension was well-managed, save that the Claimant did not always administer his medication correctly. The inference we draw from the medical evidence provided is that whereas his doctors told him to apply the eye drops on a regular basis (which information he passed to his employer) he did so intermittently, resuming this when the symptoms worsened. The most effective measure was, therefore, one within his own control.

256. Given the fact of the Claimant disclosing his ocular hypertension and the existence of an agreed measure with respect to a screen guard, this could have been recorded in a "workplace adjustment passport", which he would then have taken from place to place as he moved within the Respondent, to have the measures implemented elsewhere. This is a step it would have been reasonable for the Respondent to have to take, if he had been at a substantial disadvantage by reason of the PCPs. For the sake of completeness, however, we did not accept the Claimant's evidence that he later sought a screen guard at other stores and this was refused. Given his propensity to complain in writing, had this occurred it would swiftly have been followed by a written complaint and there is none. The interference we draw is that in practice the screen guard did not make much difference.

257. The step of extending the time for the Claimant's appeal against Ms Young's grievance findings is not a step it was reasonable for the Respondent to have to take. This had nothing whatsoever to do with the any disadvantage stemming from the PCPs. The Claimant was exceedingly familiar with the grievance process. He had ample time in which to raise an appeal if he wished to.

258. Expediting the resolution of the Claimant's grievances insofar as these related to unpaid wages is not a step that it was reasonable for the Respondent to have to take. Once again, this had nothing whatsoever to do with any disadvantage stemming from the PCPs. Separately, the substantial cause of delay in resolving the Claimant's grievances was due to their volume, complexity and frequency, coupled with his approach to progressing these. Had the Claimant made fewer, more focused complaints, these may have been dealt with sooner.

259. Supporting the Claimant's relationship with the business [i.e. more than it was already] is not a step it would have been reasonable for the Respondent to have to take. This is another vague assertion, the Claimant does not say what specific measures he is referring to. If he had been caused a substantial disadvantage by the PCPs, we do not find there are further steps the Respondent should have taken to support his relationship with the business. As set out above, the Respondent adopted various measures to support the Claimant. The Respondent addressed his grievances, although these did not much concern the PCPs or his ocular hypertension. For the avoidance of doubt, it would not be reasonable to require deciding managers simply to agree with the Claimant in all respects, which appears to be what he sought from his formal grievances and other written complaints, irrespective of the evidence obtained or the view formed in that regard by the manager.

260. Supporting the Claimant's store during his periods of sickness absence [i.e. more than it did already] is not a step that it would have been reasonable for the Respondent to have to take. This had nothing whatsoever to do with the PCPs or any disadvantage contended for. Furthermore, appropriate support was provided. When the store manager is absent unexpectedly, this will, obviously, create a difficult situation. Management and other resources will need to be drawn in from elsewhere. The Claimant did not say and nor do we find that the Respondent had a pool of managers without any duties of their own, on standby, who could simply be sent to a store when its manager was indisposed. The Respondent did provide additional staffing support to his store at these times.

We are not satisfied that it would have been reasonable for the Respondent to have to do more.

261. Moving the Claimant to a different store/role [i.e. more than it did] is not a step that it would have been reasonable for the Respondent to have to take. This had nothing whatsoever to do with the PCPs or any disadvantage contended for. Furthermore, the Respondent did move the Claimant to a number of different stores, not for its convenience but rather to support him. The Respondent even went so far as to provide him with a store outside of London and even when he was performing a customer assistant role, paid him as a store manager.

262. Offering the Claimant mediation [i.e. more than it did] is not a step it was reasonable for the Respondent to have to take. This had nothing whatsoever to do with the PCPs or any disadvantage contended for. The Claimant's damaged relations with a string of colleagues and managers were not connected with his ocular hypertension. Furthermore, the Respondent did offer the Claimant mediation and he was not interested in that. The purpose of workplace mediation is for the people involved to achieve a mutually acceptable resolution and move on. The Claimant was never close to wanting that. Typically, workplace mediation involves the various participants telling each other how they saw and felt about contentious matters, in order to gain mutual understanding. Apologies for how others were made to feel can be made. In this way, a line may be drawn under past troubles and the individuals start to look forward rather than back. The Claimant did not want this. We are not persuaded the Claimant was at all interested in understanding anyone else's perception of events. He wanted an adjudication, vindication and written apology. At one stage he indicated some interest in mediation if it were recorded. The purpose of mediation is not to obtain a series of recorded admissions, which can then be reviewed and relied upon at later times; that course anticipates future disputation in which the recorded material can be deployed.

263. The main difficulty the Claimant appears to have faced at this time was his dissatisfaction with various workplace matters, followed by what he regarded as unsatisfactory responses to his formal grievances or other written complaints. The obligation to provide reasonable redress with respect to grievances, should include a mechanism and a decision-maker who endeavours to reach a fair conclusion in light of the information obtained. The Respondent was not obliged simply to agree, with every complaint the Claimant made, irrespective of the evidence or the view of managers appointed to consider these matters. The Claimant had little or no trust in his colleagues or managers. When senior personnel who did not know the Claimant were brought in to assist, as soon as they made a decision or acted in some way the Claimant disagreed with, then they too would be viewed by him as deeply suspect. This had nothing to do with the PCPs or any disadvantage resulting from them.

<u>Indirect Discrimination</u>

264. In the course of his evidence, the Claimant indicated he was not pursing indirect discrimination and so we dismiss this on withdrawal.

265. We would not in any event have upheld this claim. The Claimant relies on the same PCPs as for his reasonable adjustments claim. We found only two of those

were applied and then only to a limited extent or intermittently. For the same reasons we found the Claimant was not put at a substantial disadvantage by these PCPs, we are satisfied that others with the same disabilities would not have been put at a particular disadvantage.

Harassment

266. The conduct relied upon in this regard was:

266.1 Bex Dawkins and Stacey Etwareea agreeing in February 2017 that the Claimant would be referred to Occupational Health but then failing to make the referral;

266.2 Bex Dawkins further agreeing in June 2017 that the Claimant would be referred for an Occupational Health assessment but then failing to ensure that this was done;

266.3 Failing to implement the recommendation of Hayley Young in 2019 that the Claimant should be referred to Occupational Health, a failure that continued through to the termination of the Claimant's employment.

267. We find there was discussion of an occupational health referral in February 2017 and it was agreed the Claimant would be so referred. He was asked to give permission for this and said yes. Objectively, this strongly suggests an agreement and, realistically, Miss Dawkins agreed with this view in her evidence at the Tribunal. The referral did not happen.

268. We do not find there was a further agreement between Ms Dawkins and the Claimant to refer him to occupational health in June 2017. In his witness statement, the Claimant says he asked Ms Dawkins about the occupational health referral in June 2017. He did not, however, put that to her in cross-examination and her evidence, which we accepted on this point, was that after the initial discussion in February 2017, the Claimant never came back to her and asked about occupational health. Its absence from the grievances he wrote at this time is notable. This is something which is more important to the Claimant now, because he relies upon it as something the Respondent got wrong, than it was at the time.

269. For the sake of completeness, whilst we are not bound by the findings of Ms Young, we are not sure whether she did find there was a separate agreement reached with the Claimant about an occupational health referral in June 2017 (which appeared to be his reading of her report). Whilst she upheld his grievance complaint about a failure to refer him to occupational health in June 2017, in her conclusion on this she simply refers back to her reasoning with regard to February 2017. Ms Young appears to have focused on this referral as a step which should have been taken in February 2017 and still had not been done in June 2017. Ms Young's interview with Miss Dawkins did not include her being asked whether and what discussion about this, took place with the Claimant in June 2017.

270. Ms Young's grievance findings did include the Claimant being referred to occupational health. We find this recommendation was not implemented.

271. As far as the two non-referrals we have found (February 2017 and October 2019) are concerned, the first was unwanted as the Claimant gave permission for this, which suggests it was wanted, and it did not happen, which is the opposite of what he wanted and, therefore, unwanted. We are not, however, satisfied the second non-referral was unwanted, since that would require that he did want to be referred to occupational health at this time and our finding is he did not. Despite many formal grievances and written complaints after February 2017, the Claimant did not raise his non-referral to occupational health until 2019, in the course of agreeing with Ms Young what his grievance should comprise. She then offered him an occupational health referral in July 2019. If the objective in a grievance was to obtain a remedy, this was an easy win. The Claimant declined in 2019, on the basis he was out of the country at the time. Notably, however, he did not follow this up on returning. We find that by 2019, the Claimant did not wish for an immediate occupational health referral. His purpose in pursing this as a grievance was to obtain a finding against his managers, rather than to actually receive an assessment of his occupational health.

272. The February 2017 non-referral (which we have found was unwanted conduct) occurred because the Claimant's managers forgot. They were, initially, waiting to hear back with information from his doctors. When that did not materialise, Ms Dawkins and Ms Etwareea forgot to pursue the referral. They did not fail to make a referral because the Claimant was disabled. This is not a case where the fact of the Claimant's impairment operated on the minds of these two managers and consciously or unconsciously contributed to them not referring him. Nonetheless, the non-referral related to his disability. An occupational health referral would have involved an assessment of the Claimant's health, how this impacted on him in the workplace and whether there were measures the Respondent could put in place to assist him. In not referring him, that step was not taken. This is an omission which is related to the Claimant's disability, not because of why it occurred but rather by nature of the step that was omitted.

273. Given the Claimant's managers simply forgot to pursue a referral after February 2017, it follows this was not done for the purpose of causing the proscribed effect. Nor did it in fact cause the proscribed effect. The Claimant was not very upset by this omission. If he had been then it would have featured in his grievances or other written complaints before 2019. This did not create an intimidating, hostile, degrading, humiliating or offensive environment for him.

274. The harassment claim fails.

Victimisation

275. The Claimant's 2019 grievance included:

> **6. In February, 2017 I had a support meeting with Bex and Stacey and I gave written permission for them to refer me to occupational health, to see what support I needed, to this day I have not been referred. I also told them I couldn't do early or late shifts because of my eyes but no support was provided. Why not? My eye condition has deteriorated since I gave permission to be referred, who is responsible for that?**

276. We find this did amount to a protected act. The Claimant had told his employer he was suffering from a lifelong eye condition, for which he had surgery, was under the active care of a specialist eye hospital and required ongoing medication. He had described the symptoms he experienced. This was enough for the Respondent to understand that he was a disabled person by reason of ocular hypertension. Notwithstanding our conclusion that a referral to occupational health would not have been a step it was reasonable for the Respondent to have to take even if the PCPs had put him at a substantial disadvantage, complaint number 6 (above) is a factual complaint of a failure to support him with his disability by referring him for an assessment. This is in substance a complaint of a failure to make reasonable adjustments. It does not matter that he is wrong about that.

277. The detriments relied upon by the Claimant for victimisation are:

    277.1 Omission to refer him to occupational health;

    277.2 Dismissing him.

278. Given the protected act was in his 2019 grievance, it cannot have been causative of any non-referral to OH in 2017 and 2018. We understand the Claimant's complaint in this regard to refer to the absence on an occupational health referral between Ms Young's report of 7 October 2019 and his dismissal. The reason he was not referred to at this time is because the recommendation was overtaken by events, namely the decision to call the Claimant to a meeting at which a decision would be made about the employment relationship and termination. The Claimant's non-referral was not because of him doing a protected act.

279. As to dismissal, we have already set out our findings with respect to dismissal and this did not include him doing a protected act. The frequency, number and pattern of the Claimant's grievances or complaints were part of the reason for dismissal. The specific content of any particular complaint was not.

280. The victimisation claim fails.

Time

281. The Claimant's complaints about dismissal were in-time. This raised the prospect of a continuing act argument with respect to his earlier complaints. In order to decide whether there was a continuing act, it would be necessary for the Tribunal to make findings of fact about the decision-maker and / or appeal officer's reasons, along with the extent to which, if at all they were involved in earlier matters and / or were influenced by others. Although the Claimant shied away from using the word 'conspiracy' in his claim form or witness statement, in substance it was what he was alleging and he actually said this in some contemporaneous correspondence. Ms Grimwade appeared to be put forward as the person orchestrating this. We find there was no conspiracy and nothing to link Ms Matthews or Mr Ferrier to the earlier decisions or omissions about which the Claimant complains. They approached their respective tasks independently. Nor were the earlier matters about which the Claimant complains and his

dismissal, part of some ongoing policy or practice. For these reasons, we found no continuing act encompassing all of the various matters complained of.

282. As to whether it was just and equitable to consider the Claimant's late complaints, we have found that it was. The Claimant does not have a good reason for his late complaints. Rather, having been dismissed at the end of 2019, he decided not just to complain about that, but also the many things which preceded that, going back to 2017. There was no obstacle to him presenting a claim to the Tribunal about these earlier matters when they occurred. Notwithstanding the absence of a good reason for bringing these matters forward within the time limit, the balance of prejudice favours extending time. Whilst the Respondent's witnesses would face some difficulty recollecting events because of the passage of time, this must be considered from the point when the claim was presented rather than the final hearing. In practice the risk of fading memories was very much ameliorated by the disputed matters being so heavily documented. The tendency of the Claimant to bring grievance upon grievance, and separately to complain in writing to the Respondent's senior managers, has meant that steps taken and the reasons for them were documented when they occurred. Given the nature of the Claimant's claim, alleging a vast ongoing conspiracy to exit him from the business, this would in any event require the Tribunal to interrogate the evidence relating to earlier matters. The additional burden on the Respondent in these circumstances, if required to answer the complaint about earlier events, was modest. If the Claimant were right about the unlawful discrimination he alleged these would be serious matters. Weighing all of this, it is just and equitable to extend time.

283. The Claimant's claims do, however, all fail on their merits for the reasons set out above.

Employment Judge Maxwell

Date: 8 March 2022

Sent to the parties on:

24 March 2022

For the Tribunal Office: