Case Number: 2206045/2020

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr R Harmer	**v**	Monex Europe Limited
Heard at: London Central		**On**: 10-14 January 2022 (&17 January 2022 in chambers)

Before: Employment Judge B Beyzade
Ms T Shaah
Mr I McLaughlin

Representation

For the Claimant: Mr N Caiden, Counsel
For the Respondent: Ms H Curtain, Counsel

JUDGMENT

The unanimous judgment of the tribunal is:

1. The claimant's claims for indirect and direct disability discrimination are dismissed following withdrawal of those claims by the claimant pursuant to Rule 52 of the *Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013*.

2. The complaint of discrimination arising from disability contrary to section 15 of the Equality Act 2010 is dismissed as it is not well founded.

3. The complaint of a failure by the respondent to comply with its duty to make reasonable adjustments contrary to sections 20 and 21 of the Equality Act 2010 is not well founded and is dismissed. This means that the respondent did not fail to comply with any duty to make reasonable adjustments.

4. The complaint of harassment contrary to section 26 of the Equality Act 2010 is dismissed as it is not well founded. This means that the respondent did not subject the claimant to harassment related to his disability.

5. The complaint of victimisation contrary to section 27 of the Equality Act 2010 is dismissed as it is not well founded. This means that the respondent did not subject the claimant to detriments for bringing any protected acts.

REASONS

Introduction

1. On 17 September 2020, the claimant presented a complaint of disability discrimination including direct and indirect discrimination, discrimination arising from disability, failure to make reasonable adjustments, harassment, and victimisation. The respondent admitted that the claimant had been dismissed but stated that the reason for dismissal was that the respondent lost trust and confidence in the claimant and his ability to carry out his role; the claimant did not possess the necessary skills and competency to carry out his role; and that he misrepresented his skills and competencies when he originally applied for his role; and also due to his conduct. The respondent denied the claimant's claims in their entirety.

2. A final hearing was held on 10, 11, 12, 13 and 14 January 2022. This was a hearing held by Cloud Video Platform ("CVP") pursuant to Rule 46 of the Tribunal Rules. The Tribunal was satisfied that the parties were content to proceed with a CVP hearing, the parties did not raise any objections, that it

was just and equitable in all the circumstances, and that the participants in the hearing (and the Tribunal itself) were able to see and hear the proceedings. There were also an additional hearing date listed on 17 January 2022 when the Tribunal met in chambers (in private) for deliberations and judgment.

3. The parties filed a Witness Statements Bundle that was 128 pages and an agreed Bundle of Documents consisting of 1626 pages. The Tribunal also had in its possession a copy of the Tribunal file which included the claimant's Claim Form, the respondent's Response Form, Request for Further Information, Response to Request for Further Information, an Application for Further Information and Specific Disclosure dated 4 November 2021, Notice of Hearing and Case Management Orders made at a hearing on 20 January 2021. The claimant's representative confirmed at the outset of the hearing that the claimant did not pursue his application for Further Information and Specific Disclosure.

4. The claimant's representative confirmed that the claimant's claims for direct and indirect disability discrimination were withdrawn. The respondent's representative applied for those claims to be dismissed and the claimant's representative did not object. The Tribunal dismissed the claimant's claims for indirect and direct disability discrimination upon withdrawal by the claimant of those claims pursuant to Rule 52 of the *Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013*. The respondent's representative withdrew the respondent's contention that part of the claimant's claim was out of time and conceded that the claimant's claims were presented in time.

5. At the outset of the hearing the parties were advised that the Tribunal would investigate and record the following issues as falling to be determined, the parties being in agreement with these:

[Please see Annex 1 of this Judgment]

These reflect the amended List of Issues filed with the Tribunal following discussion with the parties on the first day of the hearing.

6. By consent, the Tribunal were required to address matters at the final hearing relating to liability only. Employment Judge Snelson's order dated 25 January 2021 required that liability should be treated as including any *Chaggar* points.

7. It was recorded pursuant to the limited admissions made by the respondent on the agreed List of Issues that:
   (a) The claimant relies upon a mental impairment, namely anxiety and/or depression. The respondent concedes disability but disputes knowledge (including constructive knowledge).
   (b) Protected Act 4 (iv) was admitted as being a protected act.
   (c) Detriment 9 (ix) relied upon by the claimant said to be caused by the protected acts was admitted as being a detriment, whereas detriment 10 (x) was admitted as being a detriment if the facts are proven.
   (d) In relation to the dismissal arising from disability claim, the respondent accepts, in principle, that dismissal amounts to "unfavourable treatment" but disputes that the claimant's dismissal was because of something arising in consequence of the claimant's disability.
   (e) In relation to the claimant's harassment claim, the respondent accepts, in principle, that dismissal amounts to "unwanted conduct" but disputes that the claimant's dismissal was related to disability and disputes, in any event, that the dismissal had the statutory purpose or effect.

8. The claimant gave evidence on his own behalf.

9. Mr S Pratley, Miss L Williamson and Mrs E Kennedy gave evidence on behalf of the respondent.

10. At the outset of the hearing the parties agreed to work to a timetable to ensure that their evidence and submissions were completed within the five days allocated for the final hearing.

11. Both parties' representatives provided written submissions and a number of authorities from the Employment Appeal Tribunal ("EAT"), the Court of Appeal ("CA"), and the Supreme Court ("SC") on the morning of the fifth day of the hearing. Additionally, the parties' representatives made closing oral submissions and provided a Chronology, Cast List, and an Agreed Reading List.

Findings of Fact

12. On the documents and oral evidence presented the Tribunal makes the following essential findings of fact restricted to those necessary to determine the list of issues –

Background

13. The claimant commenced employment with the respondent on 15 July 2019 in the post of Compliance Surveillance. He was provided with a Contract of Employment dated 25 June 2019. His line manager at that time was Miss L Williamson who was the respondent's Regulatory Compliance Manager.

14. The respondent, Monex Europe Limited, is a limited company located at 1 Bartholomew Lane, London, EC2N 2AX engaged in financial services including providing foreign exchange and international payment products and services to its business clients.

15. The claimant passed his probation period on 14 October 2019.

16. The claimant was awarded a discretionary bonus on 20 December 2019 in the amount of £4000.00.

17. The claimant suffered from a mental impairment, namely anxiety and/or depression. According to the claimant's GP records the claimant suffered from anxiety disorder in 2004 and anxiety states in 2015 – 2016. The

claimant was prescribed medication for anxiety a number of times including on 20 December 2019.

Events in early February 2020

18. On 3 February 2020 the claimant was absent from work for a period of one day. The Self-Certification Form dated 7 February 2020 stated that the reason for the claimant's absence on that day was '*food poisoning stomach issue*.'

19. A team meeting took place on 6 February 2020, which was attended by the claimant, Mr Pratley (Head of Compliance), Miss Williamson, and Mr E Hamill (Compliance Front Office Liaison). This was a catch-up meeting requested by the claimant following his sickness absence on 3 February 2020. A to-do list email was sent to the compliance team on 3 February 2020.

20. There was a conference call attended by the claimant, Mr Pratley, Miss Williamson, and Ms A Donnelly (Director of Fscom, an external consultancy firm engaged by the respondent) on the following day. The purpose of this meeting was for the claimant to discuss the revised "Payment Account" issue with Ms Donnelly so as to determine what impact it would have on the respondent's client payment facility. The claimant did not circulate dial-in details or come prepared to discuss the topic in question. He only chased Ms Donnelly on the evening before and in the morning of the meeting for details relating to dialling into the call. The claimant left Mr Pratley and Miss Williamson to lead the meeting and discuss the revised "Payment Account" matter with Ms Donnelly in order to understand its impact on the respondent.

21. An Informal meeting between the claimant and Mr Pratley took place, immediately following the conference call with Ms Donnelly for the purpose of Mr Pratley exploring what had gone wrong at that meeting. This at the time was focused on the failures around the practical arrangements for the conference call, rather than the subject matter. He asked the claimant

directly if everything was okay and the claimant replied that everything was fine. The claimant mentioned that the only issue he had recently was as a result of a stomach bug which led to his sickness absence on 3 February 2020.

22. The claimant passed his UK Financial Regulations examination on 10 February 2020.

23. On 11 February 2020 the claimant made an enquiry about weekend access to the respondent's offices. Mr S Fray, Chief Technology Officer and Director replied on the same day advising that this was not permitted unless the claimant was accompanied in case of a medical emergency.

18 February 2020 meeting

Alleged Protected Act (i)

24. An initial meeting took place between the claimant and Mr Pratley on 18 February 2020 to discuss the conflicts of interest register.

25. A second informal discussion took place on 18 February 2020 between the claimant and Mr Pratley to discuss the claimant's work. Three further matters had arisen since the morning meeting. There was discussion in relation to the conflicts of interest work, various tasks the claimant was assigned including re-iterating how he should begin his various tasks and what the content of the work should be. Mr Pratley questioned whether the claimant possessed the required compliance knowledge to carry out his role. The claimant was shocked and disappointed having received this information. The claimant left during the meeting and took a break for period of between 10-20 minutes.

26. Miss Williamson was present for the second half of this discussion on 18 February 2020 during which wider work issues centred on outsourcing, gifts and entertainment and conflicts were discussed. Miss Williamson identified an error in terms of advice the claimant provided that day to a unit in Spain which would be in breach of EU passporting regulations and

asked the claimant to send the information that would stop the breach from occurring. The claimant explained that he had turned down a £120,000.00 job at Barclays in order to work for the respondent and that he was paid more than at his previous employer, SMBC's leaving salary.

Proposed PIP

27. On 21 February 2020 Miss Williamson met with Mrs E Kennedy (Head of HR) and Ms S Farrow (a member of the respondent's HR department) to discuss her concerns relating to the claimant's performance and Miss Williamson was advised to prepare a Performance Improvement Plan ("PIP") and meet the claimant informally to discuss this.

Information relating to claimant's searches of employee inboxes

28. On 26 February 2020, Mr Fray sent an email to Miss Williamson, Ms Farrow, and Mrs Kennedy, asking whether they were aware that the claimant had recently accessed the company email inboxes of three individuals in order to carry out searches of those inboxes, and asked whether they knew why the claimant might have been doing so. Two of these individuals had recently left the respondent's employment and the other individual was an employee with whom the respondent was involved in legal proceedings. Miss Williamson replied to Mr Fray's email explaining that the claimant and Mr Hamill were testing the respondent's system and monitoring calls and emails until 7 January 2020 in accordance with the respondent's monitoring plan, which might have explained any searching of inboxes that the claimant had carried out prior to that date, but not thereafter. Mr Fray responded by confirming that the email searches in question were performed by the claimant after 7 January 2020, which was after the date by which he was instructed to complete these searches.

28 February 2020 meeting

Alleged Protected Act (ii)

29. On 28 February 2020 there was a meeting between the claimant and Miss Williamson during which a proposed PIP (prepared by Miss Williamson) was discussed. Miss Williamson read the proposed PIP to the claimant

verbatim. She felt that, given the allegations of bullying/harassment against her (which she learned about due to pub gossip she was informed of), she felt this would be the best approach to take. She also invited the claimant to provide her with any suggestions he had regarding the ways in which the respondent could support the claimant in achieving the objectives that were outlined in the PIP.

30. The claimant commented that he believed his performance had improved following the previous conversations about his performance, but he failed to offer any other thoughts on the content of the PIP. Following this comment from the claimant, he was asked to sign the PIP on the basis that HR wanted the claimant to sign the PIP to confirm that he understood the contents of the document and the reason for it. Upon making this request, the claimant took the copy of the PIP, he stood up and walked out of the meeting room. As the claimant was leaving the room, he said he would be discussing the matter with HR.

31. Miss Williamson sent the claimant an email noting her concerns about his lack of participation in the PIP meeting. She also suggested that the claimant should take some time to consider the information contained in the PIP and proposed that they schedule a meeting for later that day, at 1.00pm, to discuss and agree any comments, objectives, and additional support the claimant required.

32. On the same day the claimant met with Mrs Kennedy following his meeting with Miss Williamson. The claimant told Mrs Kennedy that he was experiencing issues in relation to his mental health, he had been depressed for one month, and that he was on beta blockers and sleeping tablets. He complained that he was being intimidated by Miss Williamson and he felt bullied by her. He stated that the company were not aware of his medical condition. She advised him that she had provided the PIP template to Miss Williamson, and she explained the PIP process. She said if he was not happy he did not need to sign this, and it was there for both parties to agree fair and reasonable objectives and goals. She explained

that if Miss Williamson was aware of his condition she would have approached this differently. The claimant agreed that Mrs Kennedy could discuss this information and his health with Miss Williamson and that he was happy to meet with her and Miss Williamson to discuss this further. He indicated that he did not want to make a formal complaint about Miss Williamson.

33. On 28 February 2020 the claimant met with Mrs Kennedy and Miss Williamson to discuss the proposed PIP, and he made bullying and harassment allegations against Miss Williamson. A file note was produced by Mrs Kennedy which explained in detail the content of that meeting. After around 40 minutes Miss Williamson said that she cannot work with the claimant. There was no mention during that meeting of the claimant's anxiety or the treatment he had been receiving in respect of this.

34. The claimant was having a conversation with Mr D Jack after the meeting. Mr N Edgeley, Director of the respondent told the claimant not to discuss this matter with anyone, and to go to lunch and to relax. He apologised for discussing the issues in the office.

35. Mr E Hamill advised Mrs Kennedy at around 4.30pm to speak to the claimant as he was '*acting weird*' and he was saying '*this will be the death of me*.'

36. Later that day Mrs Kennedy went to the third floor and observed the claimant bending down over Miss Williamson's desk/cabinet. Mrs Kennedy asked about his wellbeing and the claimant confirmed that he was fine and '*wasn't suicidal*' and he said he did not want her to contact his mother as this would '*be the death of her*.' She suggested that he went home to rest and to make an appointment with his GP. He walked over to Mr Pratley's window/desk picking up notebooks and papers and then to the cupboards saying he has been checking them all. She asked if he would like anyone to contact him over the weekend and he replied that he was fine.

37. On that day Mrs Kennedy requested a block to be placed on the claimant's pass until 7.30am on 3 March 2020 as a precautionary measure. She remembered a discussion she had with a director in relation to the claimant accessing and looking through confidential HR files on 21 February 2020 and concerns about his behaviour surrounding this. The claimant was not aware of his access being blocked at that time.

2 March 2020 meeting

38. On 2 March 2020 Mrs Kennedy had a meeting with the claimant to discuss how he was feeling. During this meeting, the claimant explained that the meeting on 28 February 2020 had been very therapeutic and that talking to everyone had helped. He also told her in an email that day that he booked a doctor's appointment in three weeks' time with his GP. She asked the claimant to go back to his doctor to get an earlier appointment and to explain the recent events including the PIP and how it affected him. She advised that she will refer him to an Occupational Health advisor. He initially said he did not want to go home at first as he was on his own, but she advised him to speak to his doctor with regards to support.

3 March 2020 and thereafter

39. On 3 March 2020 the claimant sent an email to Mrs Kennedy to advise that he will not be coming in that day, that he will take some time off as suggested, and he advised that he had booked a doctor's appointment on the following day, and he would keep her informed. Therefore, the claimant's last day at work and the last day that he undertook any work for the respondent was on 2 March 2020.

40. On 4 March 2020 the claimant attended a GP appointment with a private doctor, and he was signed off with work related stress until 13 March 2020.

41. On Friday 6 March 2020 the claimant tried to access the respondent's offices at 6.50pm in order to collect his belongings, and his security pass did not work. This was after the respondent's normal business hours.

42. Mrs Kennedy sent an email to the claimant on 12 March 2020 to inform him that the respondent had located an Occupational Health provider and requested that the claimant should stay home and not return to work for the moment. Mrs Kennedy was trying to ensure that he was assessed as soon as possible with a good Occupational Health provider. He was in receipt of full pay at that time.

43. The claimant met with Mr N Walker, an external OH adviser, engaged by the respondent on 14 April 2020. The respondent did not have in-house Occupational Health services.

First Occupational Health report

44. Mr N Walker prepared an Occupational Health report on 29 April 2020 confirming that the claimant was unfit to work. He advised Mr Walker that his symptoms started approximately 2 months ago including ongoing stress related problems and were due to a relationship breakdown with his line manager. He had difficulties sleeping and he was on anti-depressant medication. It was noted that no specific questions were asked by the respondent in the Occupational Health referral. He was to be reviewed by his GP and an indication of his return-to-work date would be forthcoming. The respondent was advised to carry out an individual stress risk assessment to identify workplace stressors and to implement a control strategy, and also to consider a phased return to work when he is ready to return to work. It was recommended that it would be beneficial for him to work from home on occasions. The reported noted that there was no indication for any further Occupational Health intervention. That Occupational Health report was sent to the respondent on 6 May 2020, and it was sent to the claimant on 15 May 2020.

45. On 14 May 2020 the claimant was informed by way of an email from Mrs Kennedy that he would now receive Statutory Sick Pay ("SSP") because the company only pays 10 days full sick pay. She said that the company will keep the 25 days as full pay and correct payroll so that SSP will be

payable from 20 April 2020 onwards until the claimant was fit to return to work.

46. The claimant told the respondent in email correspondences dated 14 May 2020 that he was fit to return to work and that his GP will provide a backdated fit note if that would help.

47. The claimant sent a fit note to Mrs Kennedy by email dated 15 May 2020 confirming that he was fit to return to work, with amended duties, from 14 April 2020. The fit note stated that his medical condition was '*anxiety state*.'

48. Mrs Kennedy sent an email to the claimant on 18 May 2020 advising him that that the respondent required him to be seen by an Occupational Health adviser for second time to confirm if he was fit to work.

Second Occupational Health Report

49. Thereafter, on 26 May 2020, the claimant attended a telephone Occupational Health appointment with Dr B Dees. Dr Dees prepared an Occupational Health report confirming that the claimant was fit to return to work. The report noted that the claimant denied any past medical history of relevance. He was prescribed anti-depressants and sleeping medication by his GP. He reported that as a result of medication or his rest or his time with his family he was feeling better, and he felt able to concentrate. He was sleeping better, exercising better, and eating better. Dr Dees recommended that a stress risk assessment be carried out by the respondent. Although there was no need for a phased return to work, Dr Dees suggested that a mentor be appointed and to re-look at the organisational and the reporting lines. On 1 June 2020 this second Occupational Health report was sent to Mrs Kennedy by email.

50. On 11 June 2020 Mrs Kennedy contacted the claimant confirming that she had now received Dr Dees' Occupational Health report and that the claimant was now fit to return to work and that she will contact the IT

Department to arrange for the necessary equipment to be provided to him as the respondent's employees were continuing to work from home at that time. He was advised that considering their previous discussions and what was suggested in the report, that his line manager will now be Mr Pratley.

Invitation to meeting to discuss performance

51. Mr Pratley sent a letter to the claimant on the same day inviting him to attend a meeting on 19 June 2020 to discuss his concerns relating to the claimant's performance. He referred to the following as material shortcomings:
    - a considerable shortfall in regulatory knowledge;
    - poor regulatory report writing;
    - a reliance on others for advice or information: and
    - a repeated inability to follow instructions.

    He advised that examples of these behaviours went back as far as November 2019.

52. He also stated that he was concerned that the claimant overstated his experience on his CV and in relation to material factual inaccuracies on his Linked In profile including his job title. He advised that the claimant's behaviour had been erratic and inconsistent, and that he had been physically searching in places in the office where he had no reason to search. He said he was worried about the levels of trust and confidence in the claimant. He set out the process that he intended to follow. He advised that if at the end of the process he reaches the conclusion that he did not have sufficient trust and confidence in the claimant to perform his role he may decide to dismiss him '*on notice or pay in lieu of notice*.'

53. The claimant attempted to access the respondent's premises on Sunday 14 June 2020. He was not able to access the respondent's offices that day (the claimant was advised previously that he could not attend the office at weekends by himself).

54. Mr Pratley sent an email to the claimant on 15 June 2020 regarding his attempted access of the respondent's premises on the previous day. He stated that this incident added to his concerns about the claimant's erratic behaviour. Mr Pratley confirmed that the claimant was not required to work prior to the meeting with him on 19 June 2020. He was told not to attempt to access the respondent's building or the respondent's IT systems, and that if he wanted anything to prepare for the meeting on 19 June 2020, he should contact HR who will make the necessary arrangements to provide him with the materials he needs.

Alleged Protected Act (iii)

55. On 15 June 2020 the claimant sent an email to Mr Pratley and Mrs Kennedy making allegations of disability discrimination referring to his depression, anxiety, and stress which he considered to be a disability under the Equality Act 2010. He complained that he was not allowed to leave his desk for more than ten minutes and that reasonable adjustments have not been made (citing the example of the stress risk/health assessment recommended in both Occupational Health reports), the lack of access to a company doctor and SSP issues which he said had forced him to return to work. The claimant said he was raising a formal grievance and he also made a Subject Access Request. The claimant advised he has been left with little choice other than to pursue Employment Tribunal proceedings and requested permission to access his workstation.

56. Between 15 June 2020 and 19 June 2020 the claimant, Mrs Kennedy and Mr Pratley exchanged various emails regarding the meeting on 19 June 2020 and the issues raised in Mr Pratley's letter of 11 June 2020.

57. On 15 June 2020 Mr J Dowling, Consultant sent an email to Mr Pratley regarding issues he observed in terms of the claimant uploading documents onto the Gabriel portal. This was a portal used to upload documents on the FCA website. There were another occasion where he was querying uploading documents with the FCA, but that he did not

provide relevant information such as the respondent's correct FCA registration number and did not address the FCA correctly in his email.

58. When Mr Pratley showed Mr Dowling the claimant's CV in June 2020 his immediate first reaction was that it was the CV of a different person.

Alleged Protected Act (iv)

59. On 17 June 2020 the claimant sent an email to Mr Pratley advising that he had no qualms with him being aware of his intention to bring a claim against the respondent in an Employment Tribunal.

Claimant's dismissal

60. On 18 June 2020 the claimant sent an email to Mrs Kennedy and Mr Pratley setting out the issues in relation to the laptop and other matters he wanted to raise.

61. In light of the issues the claimant experienced with the laptop, the meeting scheduled for 09.00 on 19 June 2020 did not take place.

62. On 19 June 2020, Mr Pratley sent an email to the claimant explaining that it was abundantly clear from the increasingly charged nature of the communications between the claimant and himself, that "*any prospect of our being able to work together* [had] *been significantly damaged*." He explained that he had spent the last 24 hours considering matters and concluded that any "*vestiges of trust and confidence in* [the claimant] *that may have existed*" on 11 June 2020 have been destroyed irreparably by the claimant's reaction and subsequent behaviours during the course of their email exchanges. Mr Pratley informed him that his employment was terminated with immediate effect and his final date of employment was on 19 June 2020.

Claimant's Grievance and Appeal

63. On 24 July 2020 the claimant's solicitor sent an email to Mrs Kennedy attaching a copy of the claimant's grievance and appeal.

64. The respondent's solicitor sent an email in response to the claimant's grievance and appeal on 30 July 2020 stating that even if the claimant had the right to appeal against his dismissal, any appeal was out of time and that the respondent were not willing to consider his appeal. He further stated that as the claimant's employment ended with no prospect of his dismissal being overturned, no purpose was served by engaging in any grievance process, but that the respondent will follow up internally to investigate the matters raised by the claimant's solicitor further.

Observations

65. On the documents and oral evidence presented the Tribunal makes the following essential observations on the evidence restricted to those necessary to determine the list of issues –

66. Parties agreed that the claimant suffered from a mental impairment, namely anxiety and/or depression. The respondent said it did not have actual or constructive knowledge of the claimant's disability.

67. Although the claimant's GP notes recorded that he suffered from anxiety conditions since 2004 and thereafter in 2015-2016, and he was provided with a private GP letter on 4 March 2020 confirming his previous medical history in respect of this. He did not provide this information to the respondent during his employment.

68. On 3 February 2020 the claimant was absent from work (for one day). The Self-Certification Form dated 7 February stated, 'food poisoning stomach issue.' The claimant signed this document to confirm this, yet in his witness statement and cross examination he stated that this absence was due to his mental health condition.

69. There was no evidence that the respondent had actual knowledge of the claimant's disability during the course of his employment. The claimant did

not advise the respondent during his employment that he had a pre-existing or long-standing medical condition. Mrs Kennedy's evidence indicated that the claimant told her his mental health condition started around a month before he informed her about it on 28 February 2020, and we accepted her evidence in relation to this matter.

70. The Tribunal did not accept the information orally provided by the claimant in relation to events that he said took place on 18 February 2020 or 28 February 2020 and we rejected the claimant's evidence that he notified the respondent about his disability or that he carried out protected acts during those meetings. The Tribunal did not accept that those conversations took place during those meetings as they were described by the claimant. The Tribunal preferred the respondent's witness evidence which was clear and consistent in relation to these meetings. The claimant's evidence was not accepted because he did not mention his previous history to the respondent, he provided an inconsistent reason for his absence on 03 February 2020, he purported to obtain a backdated fit note from his GP stating he was fit to work (when the Occupational Health report that was obtained stated that he was not fit to work), and there were key information and details not included in his witness statement. He also said he was forced out of the respondent's building (and told to go home and remain away from home for an indefinite period) on 03 March 2020, whereas Mrs Kennedy had simply suggested that he should go home and that he should make a GP appointment (his GP subsequently signed him off sick).

71. The respondent believed the claimant was reacting badly because issues were being raised with him about his performance. That is not the same as the respondent having actual or constructive knowledge about his disability. It is common that some employees react negatively when employers seek to manage performance issues. Any employee will find it difficult to accept such a situation when they are aware that the ultimate outcome could be dismissal (as referred to in the PIP).

72. We found that the first and the second protected acts relied on by the claimant did not occur because none of the contemporary documents supported the claimant's evidence in this regard and the respondent's evidence and explanation in relation to the events in question was consistent and clear and ultimately accepted by the Tribunal.

73. In relation to what happened on 02 March 2020, we accepted Mrs Kennedy's evidence which was supported by a contemporaneous file note. We considered that there were two file notes produced which had some differences albeit we accepted Mrs Kennedy's explanation for this and that the content of the latter file note reflected what had happened. In respect of the conversation on 28 March 2020 the Tribunal noted that Mrs Kennedy recorded in her file note that the claimant had said that nobody in the company knew about his mental health condition. The claimant had not provided her with his previous medical history, and he did not state that the bullying and harassment from Miss Williamson was affecting his mental health.

74. The private GP that the claimant consulted in March 2020 provided a letter to the claimant dated 4 March 2020, a copy of which was not supplied to the respondent. The Tribunal were very surprised this was not sent by the claimant to the respondent given the nature of his claim and the fact that the GP appointment was facilitated by the respondent. He said in cross examination he thought he had sent it, but he obviously had not done so.

75. The Tribunal observed that there was no occasion during the claimant's employment where the respondent had actual knowledge of the claimant's disability, however, that having received the claimant's email dated 15 June 2020 we considered that the respondent had constructive knowledge of the claimant's disability. We deal with this matter further below.

76. The email dated 19 June 2020 did not state that the claimant had a right of appeal. According to the respondent's disciplinary policy, the claimant should have been invited to a first instance meeting prior to dismissal and

afforded a right of appeal. This process was abridged, and the claimant was dismissed in writing, without any hearing taking place. We accepted Mr Pratley's evidence in relation to the claimant's dismissal and the reasons in respect of this, which we found to be credible and consistent.

Relevant law

77. To those facts, the Tribunal applied the law –

78. The relevant sections of the Equality Act 2010 ("EQA") applicable to this claim are as follows:

Section 6 Disability

(1)A person (P) has a disability if—

(a)P has a physical or mental impairment, and

(b)the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

(2)A reference to a disabled person is a reference to a person who has a disability.

(3)In relation to the protected characteristic of disability—

(a)a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;

(b)a reference to persons who share a protected characteristic is a reference to persons who have the same disability.

(4)This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)—

(a)a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and

(b)a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.

(5)A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).

(6)Schedule 1 (disability: supplementary provision) has effect.

79. The definition of discrimination arising from disability in EQA is as follows:

Section 15 Discrimination arising from disability

(1)A person (A) discriminates against a disabled person (B) if—

(a)A treats B unfavourably because of something arising in consequence of B's disability, and

(b)A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2)Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

80. In order for there to be unfavourable treatment, the claimant must be subjected to some form of detriment. The question of whether there is a detriment requires the Tribunal to determine whether "*by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work*" (*Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL*). The issue of 'less favourable treatment' cannot always be resolved without at the same time, deciding the reason why as the two issues are intertwined. It is therefore appropriate in certain cases for the Tribunal to ask the single question; 'was the claimant because of a protected characteristic treated less favourably?'

81. Guidance as to how to apply the test under section 15 was given in *Pnaiser v NHS England [2016] IRLR 170, EAT*:-

a. Was there unfavourable treatment and by whom?
b. What caused the treatment, or what was the reason for it?
c. Was the cause/reason 'something' arising in consequence of the claimant's disability? This stage of the test involves an objective question

and does not depend on the thought processes of the alleged discriminator.

d. The knowledge requirement is as to the disability itself, not extending to the 'something' that led to unfavourable treatment.

82. In terms of justification, the EAT in *MacCulloch v ICI [2008] IRLR 846* set out four principles to be applied by the Tribunal. These have since been approved by the Court of Appeal in *Lockwood v DWP [2013] IRLR 941*:-

"(1) The burden of proof is on the Respondent to establish justification: see Starmer v British Airways [2005] IRLR 862 at [31].

(2) The classic test was set out in Bilka-Kaufhaus GmbH v Weber 15 Von Hartz (case 170/84) [1984] IRLR 317 in the context of indirect sex discrimination. The ECJ said that the court or tribunal must be satisfied that the measures must "correspond to a real need … are appropriate with a view to achieving the objectives pursued and are necessary to that end" (paragraph 36). This involves the application of the proportionality principle, which is the language used in reg. 3 itself. It has subsequently been emphasised that the reference to "necessary" means "reasonably necessary": see Rainey v Greater Glasgow Health Board (HL) [1987] IRLR 26 per Lord Keith of Kinkel at pp.30–31. 25

(3) The principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it: Hardys & Hansons plc v Lax [2005] IRLR 726 per Pill LJ at paragraphs [19]–[34], Thomas LJ at [54]–[55] and Gage LJ at [60].

(4) It is for the employment tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own assessment of whether the former outweigh the latter. There is no "range of reasonable response" test in this context: Hardys & Hansons plc v Lax [2005] IRLR 726, CA."

83. The duty to make reasonable adjustments is set out in s20 of the EQA with s21 making a breach of the duty an unlawful act. The relevant provisions of s20 and s21 are:-

Section 20 Duty to make adjustments

(1)Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2)The duty comprises the following three requirements.

(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.

Section 21 Failure to comply with duty

(1)A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2)A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3)A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

84. Schedule 8, paragraph 20(1)(b) of the EQA states that an employer is not subject to the duty if they did not know or could not reasonably know that the claimant is disabled or that they would be likely to be placed at the disadvantage referred to in s20(3).

85. In relation to the duty to make adjustments, the degree to which any adjustment would overcome the disadvantage to the claimant is relevant to whether the adjustment is reasonable (*HM Prison Service v Johnson [2007] IRLR 951*). Further, the duty is intended to integrate disabled people into the workplace, and this is also relevant to whether any

adjustment is reasonable (*O'Hanlon v Revenue and Customs Comrs [2007] IRLR 404*).

86. s15 (4) of Equality Act 2006 provides that, the EHRC 2011 Statutory Code of Practice of, shall be taken into account, wherever it appears relevant to the Tribunal to do so. The Tribunal has taken into the account the EHRC 2011 Statutory Code of practice where it appears relevant to do so.

87. The Tribunal notes that the content of the former s.18B DDA1995 is now largely replicated by paragraph 6.23 onwards of EHRC Code of Practice:

• Extent to which taking the step would prevent the effect in relation to which the duty is imposed

• Extent to which it is practicable for the employer to take the step

• The financial and other costs which would be incurred by the employer in taking the step and the extent to which it would disrupt any of his activities

• The extent of the employer's financial and other resources

• The availability to the employer of financial or other assistance with respect to taking the step

• The nature of the employer's activities and the size of his undertaking.

88. Harassment is defined in section 26 of the EQA:

Section 26 Harassment

(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.

…

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.

(5) The relevant protected characteristics are—

…

disability;

…

89. In *Hartley v Foreign and Commonwealth Office UKEAT/0033/15 (27 May 2016, unreported)* it was held that the question whether there is harassment must be considered in the light of all the circumstances of the case. Where the claim is based on things said it is not enough only to look at what the speaker may or may not have meant by the wording.

90. However, even where certain elements of the test for harassment are met (for example, unwanted conduct and the violation of the claimant's dignity), the Tribunal must still consider the "related to" question and make clear findings as to why any conduct is related to a protected characteristic (*UNITE the Union v Nailard [2018] IRLR 730; Tees, Esk and Wear Valleys NHS Foundation Trust v Aslam [2020] IRLR 495, EAT*).

91. The test for victimisation is set out in s27 of the EQA:

Section 27 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.

92. Section 136 (1) to (3) of EQA (the burden of proof provisions) set out:
Section 136 Burden of proof

(1)This section applies to any proceedings relating to a contravention of this Act.

(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.

93. The cases *of Igen v Wong and Others [2005] IRLR 258* and *Madarassy v Nomura International PLC [2007] IRLR 246* were considered in this regard. The Tribunal should go through a two-stage process, the first stage of which requires the claimant to prove facts which could establish that the respondent has committed an act of discrimination, after which, and only if the claimant has proved such facts, the respondent is required to establish on the balance of probabilities that it did not commit the unlawful act of discrimination. In concluding as to whether the claimant had established a prima facie case, the Tribunal is to examine all the evidence provided by the respondent and the claimant.

94. In *Madarassy v Nomura International plc [2007] IRLR* Mummery LJ held at [57] that '*could conclude*' [The EA 2010 uses the words 'could decide', but the meaning is the same] meant: '[…] that "*a reasonable Tribunal could properly conclude" from all the evidence before it*.'

95. However, a simple difference of treatment is not enough to shift the burden of proof, something more is required: Madarassy per Mummery LJ at paragraph 56: '*The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without*

more, sufficient material from which a Tribunal 'could conclude' that, on the balance of probabilities, the Respondent had committed an unlawful act of discrimination.'

96. We have also considered the following authorities:

(a)*Anya v University of Oxford & Another [2001] IRLR 377* - it is necessary for the Tribunal to look beyond any act in question to the general background evidence in order to consider whether prohibited factors have played a part in the employer's judgment. This is particularly so when establishing unconscious factors.

(b)*Nagarajan v London Regional Transport [1999] IRLR 572, HL*,-The crucial question in every case was, 'why the complainant received less favourable treatment … Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job?'

(c)*Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, [2001] IRLR 830, [2001] ICR 1065, HL*, - The test is what was the reason why the alleged discriminator acted as they did? What, consciously or unconsciously was their reason? Looked at as a question of causation ('but for …'), it was an objective test. The anti-discrimination legislation required something different; the test should be subjective: 'Causation is a legal conclusion. The reason why a person acted as he did is a question of fact.'

(d) Bahl v Law Society [2003] IRLR 640 – "*where the alleged discriminator acts unreasonably then a tribunal will want to know why he has acted in that way. If he gives a non-discriminatory explanation which the tribunal considers to be honestly given, then that is likely to be a full answer to any discrimination claim. It need not be, because it is possible that he is subconsciously influenced by unlawful discriminatory considerations. But again, there should be proper evidence from which such an inference can be drawn. It cannot be enough merely that the victim is a member of a minority group. This would be to commit the error identified above in connection with the Zafar case: the inference of*

discrimination would be based on no more than the fact that others sometimes discriminate unlawfully against minority groups."

Parties' Submissions

97. Parties made detailed written and oral submissions which the Tribunal found to be informative. The Tribunal read both parties' representative's submissions and referred to the authorities cited therein. References are made to essential aspects of the submissions and authorities with reference to the issues to be determined in this judgment, although the Tribunal considered the totality of the submissions and authorities from the parties.

98. In addition to the cases cited above, parties referred the Tribunal to previous cases that have been decided which the Tribunal found to be informative including but not limited to the following:

No	Case name	Citation
1	Cosgrove v Caesar and Howie	[2001] IRLR 653 (EAT)
2	Archibald v Fife Council	[2004] UKHL 32; [2004] IRLR 651
3	Beneviste v Kingston University	UKEAT/0393/05/DA
4	Smith v Churchill Stairlifts plc	[2005] EWCA Civ 1220; [2006] IRLR 41
5	Villalba v Merrill Lynch	[2006] IRLR 437 (EAT)
6	Project Management Institute v Latif	[2007] IRLR 579 (EAT)
7	Abbey National plc and another v Chagger	[2009] EWCA Civ 1202, [2010] ICR 397 CA
8	Aylott v Stockton on Tees BC	[2010] EWCA Civ

		910; [2010] IRLR 944
9	Martin v Devonshires Solicitors	[2011] ICR 352 (EAT)
10	Woodhouse v West Northwest Homes Leeds Ltd	[2013] IRLR 773 (EAT)
11	Hensman v Ministry of Defence	UKEAT/0067/14/DM
12	Hall v Chief Constable of West Yorkshire	[2015] IRLR 893
13	Griffiths v SSWP	[2015] EWCA Civ 1265; [2016] IRLR 216
14	Lamb v Business Academy Bexley	UKEAT/0226/15/JOJ
15	Pnaiser v NHS England	[2016] IRLR 170 (EAT)
16	Basildon & Thurrock NHS Foundation Trust v Weerasinghe	[2016] ICR 305
17	Buchanan v Commissioner of Police of the Metropolis	[2016] IRLR 918 (EAT)
18	Urso v Department for Work & Pensions	[2017] IRLR 304
19	A v Z Ltd	[2019] IRLR 952 (EAT)
20	Seccombe v Reed	EA-2019-000478-OO
21	Ishola v Transport for London	[2020] EWCA Civ 112, [2020] IRLR 368
22	Tees Esk and Wear Valleys NHS Foundation Trust v Aslam	[2020] IRLR 495
23	Williams v Governing Body of Alderman Davies Church in Wales Primary School	[2020] IRLR 589

Discussion and decision

99. On the basis of the findings made the Tribunal disposes of the issues identified at the outset of the hearing as follows –

Claimant's disability

100. We accept that the claimant had a disability at the material times (between 03 February 2020 and 30 July 2020) which was a mental impairment namely anxiety and/or depression.

101. The respondent conceded that the claimant was disabled within the meaning of section 6 of the EQA at all material times, albeit they disputed having actual or constructive knowledge of his disability at any material time.

102. The Tribunal had regard to the documents to which it was referred including but not limited to the content of medical evidence and the reports dated 29 April 2020 and 28 May 2020 and the claimant's witness evidence in relation to his disability.

103. The Tribunal were satisfied that the claimant suffered from a mental impairment namely anxiety and/or depression at the material times which had a substantial and long-term adverse effect on the claimant's ability to carry out normal day-to-day activities.

104. The respondent disputes that it knew or ought to have known about the claimant's disability at the material times.

Respondent's knowledge of claimant's disability

105. The Tribunal did not accept that the respondent had actual knowledge of the claimant's disability. There was insufficient evidence before the Tribunal to show that the respondent had actual knowledge of the claimant's disability, namely a mental impairment (anxiety and/or depression) within the meaning of section 6 of the EQA.

106. We do not accept that the events summarised in paragraph 59 (i) to (iii) of the claimant's representative's submissions led to constructive knowledge of the claimant's disability by the respondent. Those matters were not

sufficient to show that the respondent had constructive knowledge that the claimant had a disability within the meaning of section 6 of the EQA.

107. The respondent first became aware that the claimant had any mental health impairment when he spoke to Mrs Kennedy on 28 February 2020. At that time, as recorded in Mrs Kennedy's file note, he stated that he had been depressed for about a month, he was taking medication, and that no-one within the respondent knew about this. Mrs Kennedy confirmed during cross examination that the claimant did not say his condition had deteriorated a month ago nor did he use the word "*reoccurrence*."

108. The respondent's representative submits that the Occupational Health reports dated 29 April 2020 and 28 May 2020 did not put the respondent on notice that the claimant had a disability within the meaning of section 6 of the EQA. The respondent's representative further submits that it was not clear whether the effect of the claimant's symptoms was substantial and/or long-term. The respondent contends that all that these reports indicated were that the claimant was suffering from symptoms and that these had commenced two months prior to the report and that this could be consistent with a disability, or it could also be consistent with a one-off and/or short-lived reaction to life events, that falls short of a disability citing the case of *Seccombe v Reed in Partnership UKEAT/0213/20/OO*, paragraph 41(4)). Whilst we accept up to and following receipt of those reports, that the respondent did not have constructive knowledge of the claimant's disability, we did not agree with paragraph 85 of the respondent's representative's submissions that the respondent could not have had constructive knowledge that the claimant was disabled at any time.

109. We formed the view that the respondent had constructive knowledge of the claimant's disability after having received the claimant's email dated 15 June 2020. The claimant's representative refers to this email in paragraph 59 (iv) of his submissions.

110. In respect of constructive knowledge, the claimant's representative refers to the summary of the law in *Seccombe* at [40]-[41]. He says that *Seccombe* points out the respondent must establish that it is unreasonable for it to be expected to know of the claimant's mental impairment, its substantial effect and that it is long term, and that by the date of the dismissal all the underlying material was there, and the respondent must, as also summarised in *Seccombe* (paragraph **Error! Reference source not found.**), make reasonable enquiries. We have considered the paragraphs of *Seccombe* to which we were referred, and the respondent did not establish that it was unreasonable for it be expected to know that the claimant had a disability within the meaning of section 6 of the EQA following receipt of the claimant's email of 15 June 2020.

111. In the claimant's email dated 15 June 2020 which was sent to Mrs E Kennedy and Mr S Pratley the claimant advised that his mental health problems were caused by the respondent, that his depression, anxiety, and stress were severe enough to be signed off work by a medical professional, and he had "*a mental impairment that causes a substantial and long-term effect on my (his) ability to carry out normal day-to-day activities*." He complains that reasonable adjustments had not been made and about the lack of access to a company doctor and occupational health. Considering the content of this email and all the other circumstances at the date this email was sent, as of 15 June 2020, we determined that the respondent had constructive knowledge that the claimant had a disability namely a mental impairment (anxiety and/or depression) within the meaning of section 6 of the EQA.

Claimant's dismissal

112. The claimant was dismissed by way of an email from Mr Pratley dated 19 June 2020.

113. In Mr Pratley's email it was confirmed that the reason for dismissal was on grounds of a complete breakdown in trust and confidence. Initially on 11 June 2020 he sent a letter inviting the claimant to attend a meeting on 19

June 2020 to discuss his performance concerns, but that meeting did not take place. He said in his email of 19 June 2020 that the decision to dismiss the claimant was taken following the claimant's reaction and subsequent behaviours.

114. The Tribunal considered the email of 19 June 2020, in the context of the previous correspondence sent including the letter of 11 June 2020 which also raised trust and confidence concerns and (in particular) in relation to the claimant's ability to perform his role.

115. When asked by the Tribunal why he had dismissed the claimant without holding a meeting to discuss the concerns relating to the claimant, Mr Pratley replied that he based his decision on the information from Mr Dowling including the report on how the claimant had contacted the FCA, the increasing heated conversations, and he also based his decision on comments made by the claimant such as being 'thrown out' on 2 March 2020, his concern about the redacted PIP, and the claimant's tone and language which broke down trust and were considered by him to be slanderous. Moreover, due to the extensive access rights that a member of the compliance team had within the respondent's business, it was clear that trust and confidence was of paramount consideration for the respondent in terms of its decision to dismiss the claimant.

116. He also said in reply to the questions from the Tribunal that he considered that having reviewed the claimant's CV repeatedly, it was impossible for the claimant to do what he said he did in his CV within the timescale in question. He considered the attempted access to the respondent's premises on Sunday 14 June 2020, which was outside of normal working hours.

117. He said that the standard of the claimant's work was not as required. The respondent's performance concerns are summarised at paragraphs 19-24 of the respondent's representative's submissions, whereas a summary of

the conduct concerns are set out in paragraphs 25-31. The respondent's concerns were substantial.

118. The claimant had conducted searches of cupboards on multiple occasions; reading confidential HR and client information; and he attempted to access the respondent's office at times when he knew that he was not authorised to do so.

119. The Tribunal considered whether the emails from the claimant dated 15 and 17 June 2020 played any part in the claimant's dismissal. The Tribunal concluded that these emails played no role whatsoever in respect of the claimant's dismissal.

120. We did not accept the claimant's representative's submission at paragraph 60 and 62 in relation to references to the claimant's behaviour and that they are "*merely symptoms of the underlying disabilities*."

121. The email from Mr Dowling which was a consideration that led the respondent to dismiss the claimant, was sent to Mr Pratley after the claimant's email of 15 June 2020 was sent.

122. There were further correspondences between the claimant and Mr Pratley and Mrs Kennedy after 15 June 2020 which were of a heated nature. The intention was clearly to continue with the meeting up to the point where the respondent received the claimant's email dated 18 June 2020.

123. The Tribunal were satisfied with the respondent's reason for dismissal and that this was the genuine reason for dismissal because of the evidence given by the respondent's witnesses, in particular Miss Williamson and Mr Pratley's evidence, which the Tribunal considered gave clear and consistent evidence relating to this matter, and the Tribunal accepted their evidence accordingly. Mr Pratley advised the Tribunal that the standard of work was so different to what would even be expected of a junior person, that he could not trust the claimant as a person to work with and that he made the decision to terminate the claimant's contract. The Tribunal

accepted Mr Pratley's evidence in this regard. The Tribunal were satisfied that the claimant's dismissal were in no way whatsoever connected to his disability.

Victimisation

a) Protected act (i)

124. The claimant said that the first protected act occurred orally during meetings between the claimant and Mr Pratley on 18 February 2020 ("PA 1"). The Tribunal found as a matter of fact that the conversations during those meetings did not occur as described by the claimant, and he did not inform Mr Pratley that he was being bullied and harassed by Miss Williamson and that this was affecting his mental health and requiring medication. The Tribunal's findings of fact in relation to that conversation are set out above. Mr Pratley's witness statement did not refer to the claimant raising issues of bullying and harassment during this meeting and his oral evidence was consistent with the fact that concerns about bullying and harassment were not raised by the claimant during this meeting. Miss Williamson said Mr Pratley did not advise her that the claimant had raised concerns about bullying prior to her having joined the meeting. We did not accept that the claimant did a protected act during the meetings that took place on 18 February 2020.

b) Protected act (ii)

125. The claimant said that the second protected act occurred orally during this meeting ("PA2"). The Tribunal found as a matter of fact that the conversation during this meeting did not occur as described by the claimant. The claimant did not inform Mrs Kennedy that he was being bullied and harassed by Miss Williamson and that this was affecting his mental health and requiring medication. The Tribunal's findings of fact in relation to that conversation are set out above. The complaints raised by the claimant during that meeting were recorded in Mrs Kennedy's contemporaneous file note and there was no suggestion in any of those complaints that the claimant was connecting the alleged bullying by Miss Williamson to his disability. We have found that at that time the respondent

had no actual or constructive knowledge in relation to the claimant's disability. We did not accept that the claimant did a protected act during the meeting on 28 February 2020.

c) Protected act (iii)

126. The claimant says that the third protected act took place when he sent an email to Mrs Kennedy and Mr Pratley dated 15 June 2020 ("PA3"). In this email the claimant made allegations of disability discrimination including not being able to leave his desk for more than ten minutes, failure to make reasonable adjustments, being placed on SSP, and the respondent's failure in its duty of care towards its employees. He referred to a potential claim for victimisation in the penultimate paragraph of his email. He also stated he had been left with no choice other than to start proceedings against the respondent in an Employment Tribunal.

127. The respondent's representative indicated in paragraph 6 of its submissions that it accepted that PA3 was a protected act "*as a matter of law*."

128. The Tribunal accepted that PA3 was a protected act within the meaning of section 27(2)(c) and (d) of the EQA.

Protected act (iv)

129. In relation to the fourth protected act that the claimant relies on, on 17 June 2020, the claimant's sent an email to Mr Pratley in which he stated, "*I have no qualms with you being aware of my intention to bring a claim against Monex to an employment tribunal*" ("PA4").

130. The respondent's representative indicated in paragraph 6 of its submissions that it accepted that PA4 was a protected act "*as a matter of law*."

131. Whilst the email does not explicitly mention the EQA, we noted that the claimant refers to his previous email he sent in which he says he included

Mr Pratley and Mrs Kennedy. The Tribunal assumed that this was a reference to the claimant's email dated 15 June 2020 referred to in the context of PA3 above. As a result we read this email in the context of the claimant's previous email dated 15 June 2020.

132. We accepted that this was a protected act within the meaning of section 27(2)(c) and (d) of the EQA.

Detriment (i)

133. Whilst the respondent concedes that proposing to implement a PIP was capable of amounting to a detriment "as a matter of law", the Tribunal considered that this was not a detriment on the facts. If a PIP was not proposed, the respondent would not have afforded an opportunity to the claimant to be aware of their performance concerns and the need for improvement.

134. In any event even if this were a detriment, which we did not accept, it was not caused by PA3 and/or PA4, as those protected acts which the Tribunal has found took place occurred substantially after the date that it was proposed the claimant be placed on a PIP, namely 28 February 2020. We accepted the respondent's explanation that the claimant was placed on a PIP as a result of concerns about his performance at work.

Detriment (ii)

135. The Tribunal considered that this was not detriment. The claimant agreed to go home following a discussion between him and Mrs Kennedy on the morning of 2 March 2020. This was in order to support the claimant. Moreover, this was in the context of the comments that the claimant made on the afternoon of 28 February 2020 that *"this work will be the death of me"* and, that Mr Hamill had raised concerns that he was worried that the claimant may commit suicide. Mrs Kennedy suggested that the claimant should go home in order to rest, and the claimant agreed to do so.

136. The claimant's GP certified the claimant's sickness absence two days later.

137. In any event even if this were a detriment, it was not caused by PA3 and/or PA4, as those protected acts that the Tribunal has found took place occurred substantially after the claimant agreed to go home on 2 March 2020.

Detriment (iii)

138. The Tribunal considered that this was not a detriment. The claimant was told he would be referred to Occupational Health. Occupational Health would need to report on any medical conditions, fitness to work and any required reasonable adjustments. He was also in receipt of full pay at the time. The request for the claimant to remain away from work was made on 12 March 2020 before his sick note expired (which was due to expire on 13 March 2020) and he did not email Mrs Kennedy to object to this request at the material time. Mrs Kennedy's response was entirely reasonable given the circumstances.

139. In any event even if this were a detriment, it was not caused by PA3 and/or PA4, as those protected acts that the Tribunal has found took place occurred substantially after this date.

Detriment (iv)

140. The Tribunal accepted that this amounted to a detriment. The respondent's representative accepts that in principle the lack of a stress risk assessment was a detriment.

141. Both Occupational Health advisers recommended that a stress risk assessment be carried out by the respondent. Mrs Kennedy accepted that the respondent should have carried out a stress risk assessment, and the respondent failed to do this. This meant that the claimant did not have the opportunity for potential areas of concern and support to be identified.

142. In any event, we found that this was not caused by PA3 and/or PA4, as those protected acts that the Tribunal has found took place occurred substantially after this date. Mrs Kennedy explained that when the claimant started working again a stress risk assessment would have been carried out.

143. This failure by the respondent was somewhat mitigated by the fact that two Occupational Health reports were obtained which recommended measures of support that could be put into place for the claimant.

144. The claimant's line manager was changed in advance of his brief return on 11 June 2020, which Dr Dees stated would remove *"80% of the issues".*

Detriment (v)

145. We did not accept that this amounted to a detriment. The respondent was advising the claimant what the allegations against him were. The claimant disputed these allegations, however, the proper forum during which he could put forward his reply would have been at the meeting on 19 June 2020.

146. Although the allegations were set out in broad terms, there would have been an opportunity for those allegations to have been discussed further during the meeting on 19 June 2020. The claimant was also given the option to request further material from the respondent's HR department in relation to the allegations.

147. In any event even if this were a detriment, it was not caused by PA3 and/or PA4, as those protected acts that the Tribunal has found took place occurred after this date. We were satisfied that Mr Pratley did not send the letter because of any of the protected acts that we found had taken place. The letter was sent following significant concerns about the claimant's performance and behaviour in the office.

Detriment (vi)

148. This allegation and the alleged detriment is not consistent with our findings of fact. The claimant's security pass was not stopped by the respondent, and in any event the 15 June 2020 date refers to the wrong date. The claimant sought to access the respondent's building on 14 June 2020 which was a Sunday, and the claimant was advised previously that he could not access the respondent's building during non-working hours without an accompanying colleague. The Tribunal did not consider that this amounted to unfavourable treatment as the respondent as an employer has a duty to not permit employees to work an excessive number of days or hours, and to not be in the building on their own.

149. There was a temporary block placed on the claimant's security pass on 28 February 2020, but the claimant was not aware of this. The respondent's records show there was no attempt to access the respondent's offices by the claimant on 28 February 2020, and the claimant was able to gain entry as normal on 3 March 2020. This temporary block followed a discussion between Mrs Kennedy and one of the respondent's directors in relation to the claimant accessing HR documents.

150. In any event even if these matters were detriments, they were not caused by PA3 and/or PA4, as those protected acts that the Tribunal has found took place occurred after 28 February 2020 and 14 June 2020.

Detriment (vii)

151. We accept that preventing the claimant having access to work systems, including for the purposes of the upcoming hearing on 19 June 2020, amounted to a detriment. The respondent's representative accepted that this was a detriment.

152. There was no evidence before the Tribunal to suggest that this was connected to PA3 and/or PA4. Indeed, Mr Pratley's email to the claimant dated 15 June 2020 was sent at 04.53. Mr Pratley stated in his email that he was concerned that the claimant had tried to the access the

respondent's offices the previous day and in light of his actions he was not comfortable with the claimant carrying out any work or entering the office until after he had made a decision following the scheduled meeting.

Detriment (viii)

153. The claimant was provided with the allegations against him in broad terms on 11 June 2020. This did not amount to a detriment on the facts. The content of that letter was sufficient for the claimant to understand the concerns that were being raised as these were resultant from specific discussions and incidents in connection with the claimant.

154. There was no evidence before the Tribunal to suggest that this was connected to PA3 and/or PA4. There was no evidence that Mr Pratley deliberately kept the letter vague because of the claimant's protected acts, which we found did not occur except in relation to PA3 and PA4.

Detriment (ix)

155. We accept that the claimant's dismissal was a detriment.

156. Both parties accepted that this could amount to a detriment as a matter of law.

157. However, there was no evidence before the Tribunal to suggest that this was in any way whatsoever connected to PA3 and/or PA4. We have set out above the reasons why the respondent dismissed the claimant.

Detriment (x)

158. We found that the failure by the respondent to afford the claimant a right of appeal in the circumstances amounted to a detriment. The failure to provide the claimant with a right of appeal was contrary to the respondent's disciplinary policy and the ACAS Code of Practice taking into account the circumstances of this case.

159. Both parties accepted that this could amount to a detriment as a matter of law.

160. However, there was no evidence before the Tribunal to suggest that the respondent's denial of a right of appeal to the claimant was in any way whatsoever connected to PA3 and/or PA4.

Discrimination arising from disability
(i)Unfavourable treatment

161. The respondent accepted that in principle that the claimant's dismissal amounted to unfavourable treatment. The respondent denied that the reason for the claimant's dismissal (namely: the respondent's loss of trust and confidence owing to its concerns about the claimant's performance at work, as well as concerns about the claimant's behaviour) were matters that arose in consequence of the claimant's disability.

162. We found that by dismissing the claimant the respondent treated the claimant unfavourably. However, we proceeded to consider whether the unfavourable treatment was something arising in consequence of the claimant's disability.

(ii) *Something arising in consequence of claimant's disability*

163. In Mr Pratley's email dated 19 June 2020 it was confirmed that the reason for the claimant's dismissal was on grounds of a complete breakdown in trust and confidence.

164. We considered whether the termination of the claimant's employment was something arising in consequence of the claimant's disability. This stage of the test involves an objective question and does not depend on the thought processes of the alleged discriminator.

165. We reminded ourselves that the knowledge requirement is as to the disability itself, not extending to the 'something' that led to unfavourable treatment. The respondent had constructive knowledge of the claimant's

mental impairment on 15 June 2020. Prior to that date there was no constructive knowledge of the claimant's disability on the part of the respondent and indeed, the respondent did not have actual knowledge of the claimant's disability.

166. The first matter raised by the claimant is that the respondent had outlined concerns about his behaviour, but that his behaviour arose in consequence of his disability.

167. It is important to consider the context in which Mr Pratley referred to the claimant's behaviour. Mr Pratley initially invited the claimant to a meeting on 11 June 2020 to discuss his concerns. At that stage it was felt that a meeting would be beneficial. Mr Pratley provided a short narrative of events between 11 June 2020 and his email of 19 June 2020 in which he concludes that any trust and confidence that existed when he invited the claimant to a meeting on 11 June 2020 had effectively been destroyed. He refers to the claimant's reaction and subsequent behaviours and that the damage done in his view was "*irreparable*."

168. Mr Pratley's email dated 19 June 2020 did not label the claimant's behaviours as "erratic", nor did he say the claimant's emails were aggressive or that they misrepresented the position. He referred to the "*increasingly charged nature of our communications*". In his letter dated 11 June 2020, Mr Pratley said he received reports that the claimant's behaviour in recent weeks had been "erratic and inconsistent." This included reports that the claimant was attempting to spread malicious information about work colleagues and had conducted physical searches in areas of the office that he had no reason to search. It is mentioned that the claimant overstated his experience on his CV and that there were factual inaccuracies on Linked In about his current role and experience. Furthermore in his email dated 15 June 2020 sent at 04.53 to the claimant Mr Pratley commented in relation to the claimant's attempt to access the respondent's offices the previous day (which was a Sunday) "…*I already*

have concerns about reports of your erratic behaviour, and this latest incident only adds to my concerns."

169. The claimant has adduced no medical evidence in support of his contention that his behaviour arose from common symptoms of the claimant's mental impairment, and indeed the claimant himself has given no evidence to the effect that he accessed and read confidential papers at the respondent's office because of something arising in consequences of his depression and/or anxiety. We noted that the claimant has continued to dispute that he did any such thing. In addition, the claimant did not say in his evidence that he misstated his experience on his CV or that his Linked In profile was inaccurate because of something arising in consequence of his depression and/or anxiety and indeed the claimant maintained that his Linked In profile was accurate. Similarly, the claimant did not claim in his evidence that he attempted to access the respondent's office when he was not authorized to do so because of something arising in consequence of his disability and he did not appear to accept that it was standard practice across the respondent's industry not to allow access outside normal business hours.

170. There was no evidence before the Tribunal to enable us to find that any of the conduct ascribed to the claimant by the respondent arose in consequence of the claimant's disability.

171. The second matter raised by the claimant is not displaying the greater levels of integrity and honesty expected in his role. In paragraph 60 (ii) of the claimant's representative's submissions reference is made to the letter of 11 June 2020 which contains allegations of material factual inaccuracies and trust and confidence. The claimant has not produced any medical evidence to show that his failure to display adequate levels of integrity and honesty formed part of the symptoms of the claimant's disability. As mentioned above, the claimant has given no evidence to the effect that he accessed and read confidential papers at the respondent's office or that the other concerns about his behaviour arose because of something

arising in consequences of his depression and/or anxiety. On the contrary, the claimant has continued to dispute that he did any such thing.

172. Thirdly the claimant refers to the respondent not having trust and confidence in him. He relies on the same matters as the first two points, and in particular the email correspondences between 11 June-19 June 2020 that he says led to the respondent deciding that it no longer had trust and confidence in him. The claimant asserts it is the same issues that arose in consequence of his disability as detailed above that led to him to correspond in the manner he did which resulted in the alleged breakdown in trust and confidence. Mr Pratley's letter of 11 June 2020 and the respondent's amended grounds of response is referred to by the claimant's representative in this regard. He says that the loss of trust and confidence is due to the claimant's behaviour, and this is explicable by the symptoms and side effects of medication.

173. The claimant has provided a number of printouts of generic, publicly available definitions of anxiety, depression, and associated disorders, and details of his medication. The documents relied on by the claimant do not give any indication of the symptoms that the claimant was in fact experiencing as a result of his condition at the material time. There is no medical evidence to support the claimant's contention that the loss of trust and confidence in him or any of the underlying matters arose as a consequence of his mental impairment. The claimant's evidence did not support that the issues which led to the respondent's loss of trust and confidence in him arose in consequence of the claimant's mental impairment.

174. Having considered the above we did not accept that the claimant's dismissal was something arising in consequence of the claimant's disability. We were satisfied that the claimant's disability played no part whatsoever in relation to the claimant's dismissal.

(iii) *Proportionate means of achieving a legitimate aim*

175. If we are wrong, in any event the Tribunal were satisfied that the respondent were pursuing a proportionate means of achieving a legitimate aim namely maintenance of appropriate standards of work and in particular the need to ensure a high level of integrity and consistency in the respondent's compliance matters for which the claimant was responsible for maintaining. We were satisfied that there were serious and significant concerns about the claimant's underperformance and his conduct. We note the claimant's representative accepts that the matters relied on by the respondent were a legitimate aim. We rejected the contention that the respondent did not employ a proportionate means of achieving a legitimate aim and we accepted Mr Pratley's evidence, particularly at paragraph 56 of his witness statement. We were satisfied that on the evidence we heard dismissal was the only appropriate sanction in the circumstances.

Failure to make reasonable adjustments

(a)Did the respondent apply a provision, criteria, or practice ("PCP")?

PCP (i)

176. We accepted that this amounted to a provision, criteria, or practice. This would be paramount given the nature of the business.

177. In paragraph 104 of the respondent's submissions the respondent agrees that it requires all its employees working in Compliance to display integrity and honesty, otherwise the very function of their role is irrevocably compromised and that in principle this is a PCP.

PCP (ii)

178. There was no evidence that this amounted to a PCP which put the claimant at a substantial disadvantage when compared with other non-disabled employees.

PCP (iii)

179. There was no evidence that this amounted to a PCP which put the claimant at a substantial disadvantage when compared with other non-disabled employees.

PCP (iv)

180. We did not accept that this amounted to a PCP. Even if it were the case that some information that was not provided in advance of the meeting (the claimant has not identified which information he says was specifically not provided), there is no evidence to show that this was a practice or approach that the respondent has followed or would follow in other cases. The claimant did not specify in his evidence with any or any sufficient detail how and why he says he was put at a substantial disadvantage in comparison with non-disabled employees in this regard.

(b) *Substantial disadvantage – dismissal/process*

181. PCP (i) did not put the claimant at a substantial disadvantage in comparison with non-disabled employees, all of whom similarly had to display the same integrity and honesty that was required of the claimant. The claimant has adduced no evidence whatsoever to indicate that his mental impairment resulted in a reduction in his honesty and integrity, and indeed there is no indication in either claimant's ET1 or the Agreed List of Issues that this is in fact the claimant's case. The Tribunal did not accept that PCP (i) placed the claimant at a substantial disadvantage. It was an intrinsic part of his role that an employee working in compliance he had to display integrity and honesty.

182. If we found that PCP (ii) was a PCP, we would not have accepted that this placed the claimant at a substantial disadvantage when compared with non-disabled employees. There was no evidence before the Tribunal which demonstrated this.

183. If the Tribunal found that PCP (iii) and/or (iv) were a PCP, the claimant says the process of dismissal could have placed the claimant at a

substantial disadvantage in terms of his ability to access information and work systems. We concluded that there is no reason why the claimant's mental impairment meant that the lack of access to work IT systems without explicit permission placed him at a substantial disadvantage in comparison with non-disabled employees. The claimant has not identified any reason why he was in greater need of access to the respondent's systems than anyone else. The Tribunal has heard nothing to support the contention that the respondent's decision not to allow the claimant access to the respondent's work systems was a decision that would have been or was in fact applied to other employees. The decision was based on the particular circumstances of the claimant's position, in particular the respondent's concerns about the claimant's attempt to access the respondent's offices on Sunday 14 June 2020 despite the respondent's general prohibition, together with the respondent's earlier concerns that the claimant had searched the desks and cupboards of other employees who worked at the respondent, accessing, and discussing the content of confidential papers.

(c) *Reasonable steps to avoid disadvantage*

184. In the event we found that all or any of the four PCPs that the claimant relied on were both PCPs and put him at a substantial disadvantage in relation to his disability in comparison with persons who are not disabled, we would have considered whether the respondent took reasonable steps to avoid the disadvantage. Therefore, we considered each of the four proposed reasonable adjustments put forward by the claimant in the list of issues.

185. Before we considered the claimant's proposed adjustments in turn, we noted that the respondent took some steps to support the claimant including changing his line manager to Mr Pratley on 11 June 2020.

Proposed reasonable adjustment (i)

186. We noted that the respondent said that the claimant could obtain documents that were required by him from the respondent's HR

department. In those circumstances, we do not find that it was necessary or reasonable to make a further adjustment to allow the claimant to access his work systems prior to the 19 June 2020 meeting.

Proposed reasonable adjustment (ii)

187. We considered that adjusting even temporarily, the greater/higher levels of integrity/honesty/trust and confidence would not be workable. The respondent required a higher degree in terms of the people involved in compliance work. We accept the respondent's representative's submission that it is clearly not reasonable to contend that the respondent should overlook reasonable concerns about an employee whose integrity and honesty it has reason to doubt, in circumstances where that employee's function was to ensure the integrity and honest management of the respondent's business. The respondent's concerns in this regard were in relation to a number of events, so a temporary adjustment of the respondent's expectations is unlikely to have avoided the claimant's dismissal.

Proposed reasonable adjustment (iii)

188. The claimant says that the respondent's own policy suggests that written material should have been provided including specific allegations in advance of the meeting on 19 June 2020. The claimant's representative says in paragraph 51 of his submissions that the claimant should have been afforded access to material that was produced during his Tribunal claim by the respondent.

189. The claimant does not identify what specific material he says he should have been provided with in writing and how and why this would have been a reasonable adjustment.

190. On the evidence we heard, we are satisfied that delaying the claimant's dismissal until he had access to the respondent's systems would not have resulted in any change in terms of the respondent's decision to dismiss the claimant.

191. In those circumstances we could not be satisfied that this would have been a reasonable adjustment that the respondent were required to make.

Proposed reasonable adjustment (iv)

192. We considered that this was not a reasonable adjustment that the respondent could have made in the circumstances. There was no suggestion that there were any workable alternatives to dismissal. Moreover we were satisfied that Mr Pratley considered that there were no alternatives to dismissal and dismissal was appropriate in the circumstances.

Harassment – Claimant's dismissal

Unwanted conduct

193. As confirmed in the list of issues, the claim of harassment is in respect of the claimant's dismissal on 19 June 2020. This claimant says that his dismissal was obviously unwanted conduct, and the very nature of dismissals is that objectively they have the proscribed effect. The respondent accepts that in principle this was unwanted conduct. The Tribunal found that the claimant's dismissal was clearly unwanted conduct. However, as the claimant's representative submits in paragraph 78 of his submissions the issue is whether the claimant's dismissal was "*related to*" the claimant's disability.

Related to disability

194. The claimant asserts that his dismissal related to his disability. The claimant submits that the burden of proof provisions in section 136 of the EQA apply and that there is no requirement for any motivation on the part of the decision maker "or even actual knowledge". The Tribunal considered paragraph 79 (i) to (vi) of the claimant's representative's submissions.

195. The respondent's representative says that it was clear that the respondent did not dismiss the claimant because he had a mental impairment and repeats its submissions in relation to the reasons for dismissing the

claimant. We considered paragraphs 17 – 31 and 113 of the respondent's submissions in relation to the claimant's harassment claim.

196. We were satisfied that the claimant's dismissal was not related to a protected characteristic namely a disability. As we concluded earlier, the claimant's dismissal was in no sense whatsoever connected with the claimant's disability and we set out the reasons for this earlier in this judgment.

Purpose or effect

197. If we are wrong to find that the claimant's dismissal were not related to a disability, contrary to our findings, then we would have concluded that this would have had the purpose or effect of violating the claimant's dignity.

Chaggar point

198. The question of whether the claimant would have been dismissed in any event, if there was a finding of any type of unlawful conduct by the respondent, is a remedy question. As we did not find that the respondent's conduct was unlawful, we do not need to consider this.

199. In any event, for completeness, if we are wrong in our conclusions and if the claimant's dismissal were (i) something arising in consequence of the claimant's disability and/or (ii) related to a disability and/or (iii) if it were connected with the claimant's emails dated 15 June 2020 and/or 17 June 2020 (PA3 and/or PA4); and/or (iv) a failure to make reasonable adjustments, the Tribunal would have found that the claimant would have been dismissed in any event for a non-discriminatory reason within four months of the date of his dismissal. Mrs Kennedy said during her evidence that the performance process normally took a period of 4 months. The Tribunal accepted Mrs Kennedy's evidence which it considered to be credible and consistent.

Conclusion

200. The claimant's claim for direct and indirect discrimination is dismissed upon withdrawal by the claimant pursuant to Rule 52 of the Tribunal Rules.

201. The Tribunal finds that the claim of discrimination arising from the claimant's disability is dismissed because he was not treated unfavourably because of something arising in consequence of his disability.

202. The Tribunal finds that the claimant's claim does not succeed in relation to the complaint of a failure by the respondent to make reasonable adjustments relating to the claimant's four proposed reasonable adjustments which did not place him at a disadvantage before this claim was presented to the Tribunal.

203. The Tribunal finds that the claim of harassment related to the claimant's disability is dismissed because the respondent did not engage in unwanted conduct related to a protected characteristic namely a disability.

204. The Tribunal finds that the claim of victimisation is unsuccessful and dismissed in that although two of the protected acts identified were made (PA3 and PA4 only), the claimant did not suffer any detriment by reason of these protected acts having taken place. The Tribunal finds that PA1 and PA2 were not protected acts.

_____

Employment Judge Beyzade

Dated: 14 April 2022

Sent to the parties on:

19/04/2022.

For the Tribunal Office

Annex 1

A) INTRODUCTION AND SUMMARY OF CLAIMS

1. *The Claimant's ET1 presented on 17 September 2019 brought claims of disability discrimination, his disability being a mental impairment of anxiety and/or depression, which are pursued as follows:*
    (1) *victimisation; as defined by s.27(1) EqA, contrary to ss.39(4)(c)-(d) EqA ["**Victimisation**"];*
    (2) *discrimination arising from disability, as defined by s.15(1) EqA, contrary to s.39(2)(c) EqA ["**Arising from disability discrimination**"];*
    (3) *failure to make reasonable adjustments, as defined by ss.20-21 EqA, contrary to s.39(5) EqA ["**Failure to make reasonable adjustments**"];*
    (4) *harassment, as defined by s.26(1) EqA, contrary to s.40(1)(a) EqA ["**Harassment**"].*

B) SUBSTANTIVE LIABILITY ISSUES

Disability

2. *The Claimant relies upon a mental impairment, namely anxiety and/or depression. The Respondent concedes disability but disputes knowledge (including constructive knowledge). Therefore the issue did the Respondent as at the time of the Claimant's dismissal have knowledge of the disability (including where relevant constructive knowledge)? This is relevant for all claims save for the victimisation claim and indirect discrimination claim.*

Victimisation

3. *Whether, as defined by s.27(1) EqA, the Respondent victimised the Claimant (contrary to s.39(4)(c)-(d) EqA), having regard to the following:*
    (1) *Did the Claimant do a protected act, as defined by s.27(2) EqA;*
    (2) *If so, was he subjected to a detriment because of it?*

4. *With respect to the protected act, 3(1) above, the following are alleged:*

(i) *on 18 February 2020, the Claimant orally informing Mr Pratley that he was being bullied and harassed by Ms Williamson and this was affecting his mental health, and requiring medication;*

(ii) *on 28 February 2020, the Claimant orally informing Ms Kennedy of HR that he was being bullied and harassed by Ms Williamson and this was affecting his mental health, and requiring medication;*

(iii) *on 15 June 2020, the Claimant emailed Ms Kennedy and Mr Pratley and made allegations of disability discrimination and that employment proceedings would be commenced; and/or*

(iv) *on 17 June 2020, the Claimant's email to Mr Pratley that stated "I have no qualms with you being aware of my intention to bring a claim against Monex to an employment tribunal". (This is Admitted as being a protected act).*

5. *The detriments relied upon by the Claimant said to be caused by the protected act(s), 3(2) above, are:*

(i) *on 28 February 2020, Ms Williamson proposing the Claimant be put on a performance improvement plan;*

(ii) *on 2 March 2020, Ms Kennedy of HR telling the Claimant to go home and remain away from work for an indefinite period;*

(iii) *on 13 March 2020, following his fit not expiring, Ms Kennedy telling the Claimant to remain away from work until further notice;*

(iv) *Failure to carry out a stress risk assessment as advised by OH since 29 April 2020;*

(v) *on 11 June 2020, the email from Mr Pratley that alleged amongst other things that the Claimant had inability to perform role, described his behaviour as erratic and inconsistent, overstated his experience in*

his CV/LinkedIn profile but provided no specific examples to illustrate/justify such allegations;

(vi) *stopping the Claimant's security pass, which he became aware of when he could not access the building on 15 June 2020;*

(vii) *preventing the Claimant having access to work systems, including for the purposes of the upcoming hearing on 19 June 2020, which the Claimant became aware of on 15 June 2020;*

(viii) *not providing in writing and well in advance of the meeting specific allegations for the Claimant to prepare against, including the alleged factual inaccuracies;*

(ix) *the Claimant's dismissal on 19 June 2020 communicated by email that included amongst other things that the Respondent no longer had trust and confidence in the Claimant (this is admitted as being a detriment); and/or*

(x) *failure to offer the Claimant any opportunity to appeal his dismissal (this is admitted as being a detriment if the facts are shown).*

Arising from disability discrimination

6. *Whether contrary to s.15(1) EqA and s.39(2)(d) EqA, the Claimant was subjected to discrimination arising from disability, having regard to:*
   (1) *Did the Respondent treat the Claimant unfavourably;*
   (2) *If so, was this because of something arising in consequence of his disability;*
   (3) *If so, was the treatment a proportionate means of achieving a legitimate aim?*

7. *In terms of the "unfavourable treatment", 6(1) above, the Claimant relies on the termination of his employment. The Respondent accepts, in principle, that dismissal amounts to "unfavourable treatment" but disputes that the*

Claimant's dismissal was because of something arising in consequence of the Claimant's disability and contends, in any event, that dismissal was a proportionate means of achieving a legitimate aim as pleaded at paragraph 47 (pp.48-49) of the Grounds of Response.

8. *The Claimant's case in relation to causation, paragraph 6(2) above, is that he was dismissed because of:*

    (i) *concerns as to his behaviour, including labelling it as "erratic", his emails as aggressive, allegations of misrepresentation. The Claimant's behaviour arose in consequence of his disability; restlessness, agitation, concentration problems, irritability, catastrophic thinking, taking unnecessary risks (separately a side of effect of the medication is also supressed inhibitions), a warped perception all being common symptoms of the Claimant's mental impairment.*

    (ii) *not displaying the greater levels of integrity and honesty expected in his role. The Claimant asserts that the so-called aspects said to lack integrity and honesty, overlap with the matters set out above and accordingly it is the same issues that arise in consequence; and/or*

    (iii) *not having trust and confidence in him. The Claimant asserts that it was once again the aspects canvassed in the two paragraphs above, and in particular the email correspondence between the 11 June-19 June that led to the Respondent deciding that it no longer had trust and confidence in him. Once again it is the same issues that arise in consequence as detailed above that led to him corresponding in the manner he did that led to the alleged breakdown in trust and confidence.*

9. *The Respondent's pursued legitimate and proportionate aim is set out at paragraph 47 (pp.48-49) of the Grounds of Response.*

Failure to make reasonable adjustments

10. *Whether, as defined by ss.20-21 EqA, the Respondent failed in its duties to make reasonable adjustments (contrary to s.39(5) EqA), having regard to the following:*
    (1) *Did the Respondent apply a 'provision, criterion, or practice' ("PCP");*
    (2) *If so, did this PCP put the Claimant at a substantial disadvantage with respect to the termination of his employment/process leading to the termination;*
    (3) *If so, has the Respondent taken such steps as were reasonable to avoid the disadvantage?*

11. *With respect to the alleged PCPs, 10(1) above:*
    (i) *a higher degree of trust and confidence required by the Respondent of employees in compliance than in other functions;*
    (ii) *preventing those who have been signed off and/or those whom the Respondent is concerned about having workplace and/or work systems access;*
    (iii) *not providing full evidence ahead of meetings that may result in dismissal (in this case 19 June).*

12. *Whilst the duty is on the Respondent to make adjustments, for the purposes of ensuring appropriate evidence the Claimant relies upon the following adjustments:*
    (i) *allowing the Claimant to access his work systems prior to 19 June 2020 meeting, even if supervised or logged;*
    (ii) *adjusting, even if temporarily, the greater/higher levels of integrity/honesty/trust and confidence normally applied;*

(iii) *providing evidence and matters to be discussed in writing, and in advance of meetings; and/or*

(iv) *not dismissing the Claimant.*

Harassment

13. *The claims of harassment is for the Claimant's dismissal on 19 June 2020.*

14. *The questions are, whether, as defined by 26(1) EqA and contrary to s.40(1) EqA, the Respondent harassed the Claimant on the grounds of disability, having regard to the following:*

    (1) *Has the Claimant shown that he has been subjected by the Respondent to unwanted conduct;*

    (2) *If so, was such related to the relevant protected characteristic of disability;*

    (3) *If so, did such unwanted conduct have as its a) purpose or b) effect, violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating, or offensive environment for the Claimant (taking into account the perception of the Claimant, the other circumstances of the case, and whether it was reasonable for the conduct to have that effect)?*

15. *The Respondent accepts, in principle, that dismissal amounts to "unwanted conduct" but disputes that the Claimant's dismissal was related to disability and disputes, in any event, that the dismissal had the statutory purpose or effect.*