



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. A Mills

**Respondent:** Driver & Vehicle Standards Agency

**Heard at:** Nottingham

**On:** 8<sup>th</sup> November 2022 (Reading day) &  
14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup> & 18<sup>th</sup> November 2022

**Before:** Employment Judge Heap  
**Members:** Mr. C Goldson  
Mrs. D Newton

## Representation

**For the Claimant:** In person  
**For the Respondent:** Mr. A Serr - Counsel

# JUDGMENT

1. The remaining complaints of victimisation are dismissed on withdrawal by the Claimant.
2. The complaint of constructive dismissal fails and is dismissed.

# REASONS

## BACKGROUND & THE ISSUES

1. This is a claim brought by Mr. Andrew Mills (“The Claimant”) against his now former employer, the DVSA (“The Respondent”). The Claimant commenced two sets of proceedings. In the first he complained of constructive unfair dismissal and various strands of disability discrimination. In the second he made complaints of post termination victimisation. Both claims were consolidated to be heard together.
2. At the time that he presented the first Claim Form the Claimant was unrepresented. By the time of the second claim he had secured representation

by solicitors, although they parted company before this hearing, and at all times since then the Claimant has been acting as a litigant in person.

3. The first claim came before Employment Judge Blackwell at a Preliminary hearing which took place on 15<sup>th</sup> June 2021. By that time the Claimant was legally represented and it was agreed that further and better particulars of the claim were required. Those were duly produced on 21<sup>st</sup> February 2022 along with the further Claim Form complaining of post termination victimisation.
4. Disability remained in dispute and that question was considered at a Preliminary hearing before Employment Judge Broughton on 11<sup>th</sup> August 2022. She concluded that the Claimant was not at the material time a disabled person within the meaning of Section 6 Equality Act and accordingly all complaints of unlawful disability discrimination were dismissed save as for the complaints of victimisation.
5. There was then a further Preliminary hearing before Employment Judge Camp on 4<sup>th</sup> October 2022. By that time the Claimant was acting as a litigant in person. At that hearing Employment Judge Camp refused an application made by the Claimant to amend the claim to add further complaints of victimisation and also of detriment and dismissal contrary to Sections 44 and 100 Employment Rights Act 1996. Employment Judge Camp issued a Judgment dismissing certain parts of the claim as a result and the Judgment set out that the only remaining complaints were of “ordinary” unfair dismissal and victimisation which were limited to three acts of post termination victimisation which were set out at paragraph 38 of the second Claim Form. That was the claim that was therefore before us for determination.
6. Prior to the commencement of the hearing the Respondent had prepared a draft list of issues. We went through that with the parties before we commenced the evidence. Some refinement was made to the list of issues at the Tribunal’s request so as to replicate all of the matters on which the Claimant was relying as being causative of his resignation for the purposes of the constructive dismissal claim and to encompass all protected acts upon which he relied within the Claim Form for the victimisation complaints. That finalised list of issues was agreed by the Claimant as being all the matters which the Tribunal were required to determine. However, during discussion of the list of issues the Claimant abandoned the third complaint of victimisation as to a delay in him progressing to his Approved Driving Instruction third stage examination because in fact he never made that application.
7. Following evidence from the two witnesses who dealt with the circumstances which gave rise to the remainder of the victimisation claim the Claimant withdrew those complaints and we have dismissed them on withdrawal. We therefore do not need to say anything further about those complaints or the circumstances that gave rise to them.

8. The only complaint that therefore remained before us is that of constructive dismissal. The Claimant relies upon a breach of the implied term of mutual trust and confidence and relies on the following acts as being destructive of that implied term:
- a. That he was bullied by his temporary manager Mr. Rayfield and/or the Respondent did not take reasonable steps to protect him from bullying by Mr. Rayfield;
  - b. The Respondent through Amanda Lane failed to interview any witnesses in respect of his grievance against his line manager, Tony Walker;
  - c. The Respondent through Craig Lambourn indicated that a further investigation would be necessary following the outcome of the grievance by Tony Walker against the Claimant to establish if his behaviour towards colleagues could be in breach of the Civil Service code and the DVSA policies on respect in the workplace and warranted disciplinary action;
  - d. The Respondent through Craig Lambourn transferred the Claimant temporarily to the Leicester Cannock Street testing centre and/or the Respondent so informed the Claimant of the move after his sickness absence had begun; and
  - e. The Respondent failed to investigate the collective grievance in respect of Andrew Rayfield submitted on 28<sup>th</sup> October 2020 in a timely manner.
9. The Respondent denies that there was any breach as alleged or argue in the alternative that the Claimant waived his right to rely on them due to the delay in his resignation. Alternatively, it is said that following his evidence the reasons for his resignation are not clear and that in all events if he had been dismissed then there was a potentially fair reason for that dismissal and that he had contributed to it by his conduct.

### **THE HEARING**

10. The claim was allocated 6 days of hearing time with the first day being a reading in day for the Tribunal. Given the volume of documents within the hearing bundle and the number of witness statements that we were required to read we also spent some of the morning of the second day of hearing time concluding our reading in.
11. We concluded the evidence in the early afternoon on the fifth day of hearing time and conducted our deliberations thereafter. The parties were to return at 2.00 p.m. on the final day of the hearing to receive our Judgment. However, we determined that rather than delivering a lengthy oral Judgment which might be difficult for the Claimant as a litigant in person to follow and fully digest why we had reached the decision that we had – particularly when under pressure and stress – that we would hand down our Judgment with full written reasons as they were likely to be required anyway. In view of that the Judge raised with the parties by email in the morning of 18<sup>th</sup> November that we would be prepared to hand down

the Judgment by email instead which would save both parties the time and cost of attending the hearing. Both parties were in agreement with that proposed and we proceeded accordingly.

12. Given that the Claimant was acting as a litigant in person during the course of the hearing we adjourned at times when it was clear that he needed more time to properly consider the issues in the claim and to prepare cross examination questions; referred him to the list of issues to ensure that all matters were covered and assisted him where appropriate in considering areas where he need to put questions to the Respondent's witnesses so as to place him on as equal a footing as possible with the Respondent who was represented by experienced Counsel. That included an adjournment in the afternoon of the fourth day of the hearing to allow the Claimant time to prepare cross examination questions for Mr. Brimelow. The adjournment was opposed by the Respondent although we granted it with reasons given orally at the time. Neither party has asked that those reasons be included within this decision and so we need say no more about them.
13. Although we do not rehearse here all that we have seen and heard during the course of the hearing the parties can be assured that we have taken into account all that they have told us both in evidence and submissions before reaching a conclusion in respect of the claim before us.

## **WITNESSES**

14. During the course of the hearing we heard evidence from the Claimant on his own account.
15. On behalf of the Respondent we heard from the following witnesses:
  - a. Andrew Rayfield – A Driving Test manager for the Respondent who had assumed line management responsibility for the Claimant and who the Claimant contends bullied him during that time;
  - b. Craig Lambourn - Operational Delivery Manager for the Respondent who oversaw and implemented recommendations made in respect of grievances raised by and against the Claimant;
  - c. Amanda Lane – the manager responsible for investigating a grievance raised by the Claimant against his line manager, Tony Walker, and a counter-grievance raised by that individual against the Claimant;
  - d. Simon Rossiter – the decision maker in respect of the above grievance;
  - e. Mike Dalton – the decision maker in respect of a collective grievance raised by driving examiners, including the Claimant, against Andrew Rayfield;
  - f. Kelly Phillipson – Operations Manager for the Respondent's Test Theory Centre which dealt with the Claimant's application to be placed on the Approved Driving Instructor ("ADI") register after his employment with the Respondent had terminated; and
  - g. Tim Brimelow – National Deployment Manager for the Respondent's ADI booking team.

16. In addition to the witnesses from whom we have heard we have paid careful reference to the documentation within the hearing bundle before us and to the helpful submissions received both from the Claimant and from Mr. Serr on behalf of the Respondent. If we fail to mention something in this Judgment that does not mean that we have not considered it as the parties can be assured that we have taken into account everything that we have been told when reaching our decision.

### **THE LAW**

17. Before turning to our findings of fact, we remind ourselves of the law which we are required to apply to those facts as we have found them to be.

### **Constructive dismissal**

18. Section 95 provides for a situation where an employee terminates the employment contract in circumstances where they are entitled to do so on account of the employer's conduct – namely a constructive dismissal situation.

19. Tribunals take guidance in relation to issues of constructive dismissal from the leading case of **Western Excavating – v – Sharp [1978] IRLR 27 CA:-**

*“If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains; or, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract.”*

20. Implied into every contract is a term that an employer will not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and the employee. Breach of that implied term, if established, will almost always inevitably be repudiatory by its very nature.

21. The question of whether or not there has been a repudiatory breach of the duty of trust and confidence is to be judged by an objective assessment of the employer's conduct. The employer's subjective intentions or motives are irrelevant. The actual effect of the employer's conduct on an employee are only relevant in so far as it may assist the Employment Tribunal to decide whether it was conduct likely to produce the relevant effect.

22. If there is a fundamental breach of contract, an employee must, however, resign in response to it. That requirement includes there being no unconnected reasons for the resignation, such as the employee having left to take up another position elsewhere or any other such reason if that is unrelated to the breach relied upon. However, if the repudiatory breach was part of the cause of the resignation, then that suffices. There is no requirement of sole causation or predominant effect (see **Nottinghamshire County Council v Meikle [2004] IRLR 703**).
23. It is possible for an employee to waive (or acquiesce to) an employer's breach of contract by their actions, including continuing to accept pay or a lengthy delay before resigning. In those circumstances, an employee may affirm the contract and will be unable to rely upon any breach which may have been perpetrated by the employer in seeking to argue that they have been constructively dismissed.
24. Tribunals are also assisted by the guidance in **Kaur v Leeds Teaching Hospitals NHS Trust [2018] I.R.L.R. 833** which requires us to consider the following when determining a complaint of constructive dismissal:
- (i) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
  - (ii) Has he or she affirmed the contract since that act?
  - (iii) If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of trust and confidence? and
  - (iv) Did the employee resign in response (or partly in response) to that breach?

## **FINDINGS OF FACT**

25. We ask the parties to note that we have only made findings of fact where those are required for the proper determination of the issues in this claim. We have therefore invariably not made findings in respect of each and every area where the parties are in dispute with each other on the evidence.
26. The Claimant was employed by the Respondent as a Driving Examiner ("DE") based at one of their testing centres in Colwick in Nottingham. He worked there in that capacity between 3<sup>rd</sup> September 2018 and 16<sup>th</sup> March 2021 when his employment terminated by reason of his resignation. The Claimant had had a previous spell of employment with the Respondent which he had also resigned from before re-joining them. It is not necessary to deal with the reasons why the Claimant resigned from his initial period of employment.
27. At each of the test centres there is a Local Driving Test Manager or LDTM who effectively manages the centre itself and line manages each of the DE's. At the time that the Claimant joined the Colwick test centre the LDTM was a Tony Walker.

Grievance against Tony Walker

28. On 9<sup>th</sup> March 2020 the Claimant wrote to the then Area Manager, Thomas Neave, to raise a grievance against Mr. Walker (see page 376 of the hearing bundle). He set out that he was making a complaint of bullying and harassment and referred to Mr. Walker treating him differently to the rest of the team. He set out that the incidents that he was complaining of were too numerous to include within his grievance and therefore dealt only generically with the type of complaint that he was advancing. He did not set out in that document any examples of the conduct that he was complaining of although, as we shall come to, he did that at a later stage.
29. The trigger for the grievance related to an incident that had occurred during a telephone conversation between the Claimant and a colleague called Carol which concerned re-booking a driving test for a member of the public that had missed their own test. After that conversation Carol had called to express her dissatisfaction about how she perceived that she had been spoken to by the Claimant which she considered was condescending and that what he had asked to be done had been outside her normal procedures. She spoke at that time to Andrew Rayfield who had been covering line management duties at Colwick in the absence of Mr. Walker that day.
30. Mr. Rayfield asked Carol to send an email to himself and Mr. Walker so that it could be picked up when the latter was back at the test centre the following day. Whilst our view is that that was not strictly necessary because the matter could potentially have been resolved by simply making a note of the matter and raising it informally with the Claimant, we are satisfied that this was not done so as to seek to escalate the matter or cause a complaint to be made that had not otherwise been intended. We found Mr. Rayfield to be a credible witness and one who is minded to keep strictly to policy and that was the reason that he took the action that he did and so as to have a reference point for when Mr. Walker returned to the centre. It was not intended nor did it reasonably and objectively have the effect of bullying the Claimant.
31. Mr. Walker spoke to the Claimant about the matter in a meeting which was held in private and sent him an email on 12<sup>th</sup> February 2020 with a request for his version of events. The Claimant did not reply to that email and so Mr. Walker chased the matter up again on 29<sup>th</sup> February 2020 expressing his disappointment and requesting a response by the following week. Although there was a reference to the original meeting being a “fact find” we understand from the evidence of Mr. Rayfield that that is not a formal process but one which is used to determine if there needs to be any formal investigation.
32. The Claimant replied to say that he had not seen the original email, that he did not accept the characterisation of his conduct described by Carol and that the note of the meeting that Mr. Walker had attached to his email amounted to a character assassination because he had described him as being angry and aggressive. He ended the email by saying that he intended to raise a grievance against Mr. Walker and copied in Mr. Walker’s line manager.

33. Further email communications followed which failed to resolve the issue and the Claimant reiterated his intention to raise a grievance against Mr. Walker. In turn Mr. Walker replied to say that he no longer considered it appropriate that he be involved in the Claimant's line management because he was raising a grievance (and indeed by that time he had done so) and that he should now contact Mr. Rayfield. Although Mr. Rayfield had originally been employed by the Respondent as a Driving Examiner at Colwick, by that time he had been promoted to an LD TM and was based at another of the three test centres in Nottingham.
34. On 25<sup>th</sup> March 2020 Mr. Neave wrote to the Claimant in polite terms expressing his concern about the situation and asking to meet with him to see if the matter could be resolved using the dispute resolution policy. As we understand it that policy is in effect an attempt to resolve matters on an informal footing such as the use of mediation to try to repair relationships. Mr. Neave expressed a preference to use that process to try to resolve matters but explained that if the Claimant still wanted to raise a formal grievance then he was entitled to do so and he explained how the Claimant could go about that.
35. The Claimant did not wish to seek an informal resolution of his complaints and submitted his grievance formally to Mr. Neave. That was acknowledged on 2<sup>nd</sup> April 2020 by Mr. Neave who asked the Claimant for examples of the bullying and harassment that he was complaining about (see page 396 of the hearing bundle). He at the same time asked the Claimant to again consider in the first instance dealing with an informal resolution and referred to the fact that meetings to discuss matters would need to take place by Skype or on the telephone because by that time England was in the first national lockdown due to the Covid-19 pandemic.
36. The Claimant replied on 5<sup>th</sup> April 2020 to say that he was not comfortable dealing with matters without a face to face meeting and as that could not be done it would not be possible to move matters forward at that time. He did not at that stage provide the examples that Mr. Neave had asked for about his complaints of bullying and harassment.
37. On 29<sup>th</sup> April 2020 Mr. Neave notified the Claimant that he would not be progressing the grievance as a formal complaint because he could not move forward with it without the examples that the Claimant relied upon as amounting to bullying and harassment. He also pointed out that he could not place matters on hold for an indefinite period of time until face to face meetings were again possible. No-one knew at that stage of course how matters were going to turn out in respect of the pandemic and lockdowns.
38. The Claimant replied to express his dissatisfaction at that position and on 7<sup>th</sup> May 2020 provided details of the allegations that he said amounted to bullying and harassment by Mr. Walker (see pages 428 and 429 of the hearing bundle).



39. Whilst he referred to there being instances of bullying going back to the commencement of his employment, the only actual examples of what he said amounted to bullying and harassment that he gave were these:
- a. The incident with the complaint from Carol and that Mr. Walker had referred to the Claimant looking at three disciplinaries but that had dealt with things differently for another DE, Mr. Johnson, who had had a complaint made against him;
  - b. An incident when he had left the office to get tea and coffee supplies for the Approved Driving Instructors (“ADI’s) and Mr. Walker had taken him to task and made reference to a disciplinary; and
  - c. That Mr. Walker had described him as an aggressive character who refused to cooperate.
40. However, in the meantime, Mr. Walker had been notified that the Claimant’s grievance was not going to be progressed because he had not provided examples of the complaints that he was making. As a result of that Mr. Walker issued what has been termed as a counter-grievance against the Claimant. That was sent to Mr. Neave on 30<sup>th</sup> April 2020 (see pages 399 to 403 of the hearing bundle). The grievance that Mr. Walker raised expressly set out that it did not contain allegations of bullying, harassment or discrimination (something that it appears requires confirmation on the template grievance form) but that the complaint was that the Claimant’s grievance had been malicious because it had no foundation in evidence and that he had deliberately not followed the dispute resolution procedure so as to elongate the process to Mr. Walker’s detriment.
41. Mr. Walker provided an update to his complaint on 25<sup>th</sup> June 2020 (see pages 415 to 417 of the hearing bundle) although that related more to his position that there had been no cause for the Claimant to allege that he had been bullied and harassed and to suggest a way in which he wanted his own grievance to be resolved. That included his position that he could not work with the Claimant again irrespective of the outcome of his complaints.
42. The Claimant’s grievance was progressed following his email of 7<sup>th</sup> May 2020 setting out the details of his complaints against Mr. Walker. Both that grievance and the grievance of Mr. Walker were passed to Amanda Lane, an LDTM in another area to investigate. That was done by Craig Lambourn who by that time had taken over responsibility for the grievances from Mr. Neave whose role as Operational Delivery Manager (“ODM”) he had assumed on 18<sup>th</sup> May 2020.
43. Mr. Lambourn provided terms of reference to Amanda Lane in respect of both the Claimant’s grievance and that of Mr. Walker. She then carried out investigations in respect of both grievances. We comment only on the process and outcomes of the grievances where there is a need to do so in view of the issues involved in these proceedings.

44. Following receipt of the terms of reference Ms. Lane arranged to meet with both Mr. Walker and the Claimant in order to deal with her investigations into their respective grievances.
45. The Claimant met with Ms. Lane for an investigatory meeting on 11<sup>th</sup> August 2020. Towards the end of the meeting the Claimant gave the names of three other DE's at Colwick who he said had commented that Mr. Walker had either bullied him or made comments of the type that he was treated differently to others.
46. Ms. Lane sought advice from Human Resources ("HR") after the meeting and she determined thereafter that it was not necessary for her to interview those individuals. Her rationale for that was that it would require all DE's at Colwick to be interviewed rather than any who had effectively been cherry picked and none of them could in any event shed any light on the three instances of bullying conduct which the Claimant relied upon because he had accepted that that had all taken place "behind closed doors" and there were no witnesses. She therefore viewed interviewing anyone else as "fishing".
47. In our view it would have been better for Ms. Lane to have interviewed the DE's named by the Claimant. That is because if they had made comments about bullying on the part of Mr. Walker and that was their perception, examples of other instances that they had witnessed might well have informed Ms. Lane about what had gone on "behind closed doors" and whether the Claimant's account was to be preferred.
48. However, whilst that it our view it was nevertheless legitimate for Ms. Lane to approach the investigation in the way that she did given that no-one named by the Claimant had witnessed anything material of which he was complaining. Indeed, in his evidence before us the Claimant was not able to say what, if anything, any of those people interviewed would have said that would have changed the outcome, they were not approached at any stage of the internal processes by the Claimant or his trade union representative to give statements and we have not heard evidence from any of them. This was therefore not a serious omission on the part of Ms. Lane and there is nothing at all to say that it would have affected the outcome of the grievance for the reasons that we have already given.
49. Ms. Lane met separately with the Claimant and again with Mr. Walker to discuss the grievance of the latter. Those meetings took place on 21<sup>st</sup> and 25<sup>th</sup> August respectively. She also met with Mr. Rayfield as part of her overall investigations and that meeting took place on 10<sup>th</sup> September 2020.
50. The Claimant accepted in his evidence that it was understandable that Ms. Lane spoke to Mr. Rayfield as part of the investigation because he was a witness to the "Carol complaint" given that he had initially taken the telephone call from her.
51. Ms. Lane compiled a report in respect of her investigation and sent that to Mr. Lambourn on 6<sup>th</sup> October 2020. Whilst Mr. Lambourn was the decision maker at that time, that role was subsequently passed on to Simon Rossiter, another ODM of the Respondent, in November 2020. That was because, as we shall come to,

by that time the DE's at Colwick had raised a collective grievance against Mr. Rayfield and Mr. Lambourn stepped back to seek to mediate a way forward in respect of those collective complaints.

52. We accept the evidence of Mr. Rossiter that he spent some time considering Ms. Lane's reports and the evidence that was appended to them which she had gathered during the course of the investigations. The relevant part of her report in respect of the Claimant's grievance said this:

*"7. Summary of findings & conclusion*

*Andrew has raised this dispute as he feels he is treated differently to others in the office. The examples that were used involved the method (using threatening language in an inappropriate manner) in which Tony dealt with the three complaints on the 12th Feb 2020, not allowing Andrew medical appointments the same as the rest of the team, the way Tony has dealt with a verbal complaint differently to the written complaint Andrew had from Carol in deployment and that Tony describes Andrew as an aggressive character.*

*The meeting on the 12th Feb 2020 that Andrew is referring to was held behind closed doors with only Tony and Andrew present and their perceptions of that conversation and each other's behaviours on that day differ, there are no witnesses. There was no formal outcome to this meeting. Tony sent an informal email following this meeting asking for Andrew to send his thoughts across so him so he could answer the complaint, this is a reasonable thing to do and gives Andrew the opportunity to add his perception of the conversation. Andy did not reply, Tony chased on the 29th Feb 2020, Andrew stated he hadn't seen the email and went on to mention that he felt bullied by Tony and was going to put in a grievance.*

*The is no written evidence of medical appointments being refused.*

*Tony agrees he dealt with a verbal complaint differently to the written complaint as he would do regardless of the examiner. Tony confirmed that he would ask for written comments for any written complaint and would always try to deal with verbal complaints from ADI's verbally and at the time. I did ask if these verbal complaints*

*were ever followed with emails to the examiner and Tony didn't think they were. Andrew stated that Tony has referred to him as an aggressive character and Tony agrees that he finds Andrew's behaviour to be aggressive and challenging. I asked if this had been documented in follow up emails of which Tony said they had. I also asked if this behaviour had ever been taken down the formal route for conduct, as Tony explained it had happened on numerous occasions, Tony stated that Andrew's behaviour had never been addressed formally. Speaking to Andy Rayfield he described Andrew's behaviour as aggressive but also said he had never taken this down the formal route.*

*There is no evidence to support Andrew's claims of being treated differently, but there are numerous reports of Andrew's behaviour being aggressive.*

*For dispute resolution: Does the evidence support the complaint? NO"*

53. Ms. Lane's summary and conclusions in respect of the complaint raised by Mr. Walker said this:

*"7. Summary of findings & conclusion*

*Tony has raised this dispute as he feels Andrew Mills has raised a malicious complaint against him, with no foundation in evidence. Tony also claims that Andrew has deliberately not followed the dispute resolution policy when raising his complaint as a way of elongating the process and worsening the situation for Tony.*

*Andrew Mills did raise a formal complaint against Tony. Andrew Mills let Tony know of the complaint on the 2nd March and informed Tony's line manager on the 9th March.*

*At this time Andrew Mills did not provide any evidence. It took until the 7th May for Andrew Mills to follow up this formal complaint with evidence to Tom Neave. The evidence appears unfounded and unsubstantiated, following a recent investigation.*

*Tony appears correct in his assumption that there was no foundation to the evidence.*

*It appears the process was elongated by the requesting of face to face meetings during a global pandemic, when everyone was working from home, with no date for resuming normal work duties at this time. The time it took to provide evidence would also have elongated the process, this could have been provided a lot sooner as the evidence that Andrew provided was from before the 2nd March.*

*Andrew Mills did seek advice to follow the dispute resolution policy and was in contact with Tony Walker's line manger from the 9th March.*

*Andrew stated that Tony has referred to him as an aggressive character and Tony agrees that he finds Andrew's behaviour to be aggressive and challenging. I asked if this had been documented in follow up emails of which Tony said they had. I also asked if this behaviour had ever been taken down the formal route for conduct, as Tony explained it had happened on numerous occasions, Tony stated that Andrew's behaviour had never been addressed formally. Speaking to Andy Rayfield he described Andrew's behaviour as aggressive but also said he had never taken this down the formal route.*

*There is some evidence to support Tony's claims of Andrew Mills formal dispute being malicious. There are numerous reports of Andrew Mill's behaviour being aggressive and potentially may be viewed as upward bullying by Andrew, towards Tony Walker and Andy Rayfield.*

*For dispute resolution: Does the evidence support the complaint? Yes"*

54. We do not agree with the conclusion reached by Ms. Lane that the evidence supported the complaint because Mr. Walker's grievance had never included any complaints about bullying by the Claimant. It had centred on the grievance that he had raised being malicious and without evidential basis and the Claimant

having elongated the process to Mr. Walker's detriment. Ms. Lane had in fact found evidence that was unrelated to the actual complaint that Mr. Walker had raised.

55. Mr. Rossiter met with Mr. Walker on 6<sup>th</sup> November 2020 to discuss the investigation report findings before reaching his conclusions in respect of that grievance. He subsequently wrote to Mr. Walker on 10<sup>th</sup> November 2020 to set out his final decision. His conclusion was to uphold the complaint in part. He set out that there was insufficient evidence to conclude that the Claimant had raised his grievance maliciously or that he had elongated the process to cause undue distress. Given that that was precisely what Mr. Walker had complained about it is difficult at first blush to see on what basis Mr. Rossiter was in fact upholding the grievance in part. However, that followed on from the findings of Ms. Lane which we have already referred to above as to alleged upwards bullying by the Claimant. Again, that had not formed a part of the grievance that Mr. Walker had actually made.
56. We accept that Mr. Rossiter had wanted to meet with the Claimant on 6<sup>th</sup> November (the same date as he met with Mr. Walker) but those meetings were twice postponed at the Claimant's request and eventually took place on 24<sup>th</sup> November 2020 (see pages 833 to 842 of the hearing bundle). At the meeting the Claimant's Trade Union representative read from a pre-prepared statement which was critical of the way in which the investigation had been conducted.
57. Although in his evidence before us Mr. Rossiter was critical of that statement and saw it as attempting to undermine the investigation, we see nothing unusual about that statement as that meeting was the opportune time to raise any concerns about how the investigation had been conducted before a final decision was taken.
58. One issue within the statement raised the fact that Ms. Lane had not interviewed the other DE's identified by the Claimant in his investigatory meeting. Mr. Rossiter adopted the same view as Ms. Lane as to the evidential value that those individuals could add to the complaints made by the Claimant and although we would not have taken the same view, for the reasons that we have already said above there was a legitimate reason for taking that stance and overall it was not a serious matter.
59. Mr. Rossiter wrote to the Claimant by letter dated 30<sup>th</sup> November 2020 (but which it appears was sent the following day) rejecting his grievance which he set out was unsupported by any evidence (see pages 877 to 880 of the hearing bundle).
60. Although his outcome letter in both cases was relatively brief, both Mr. Walker and the Claimant had copies of the reports produced by Amanda Lane, the rationale of which Mr. Rossiter agreed with and had adopted. He also dealt with the points that the Claimant had raised in the pre-prepared statement read out by his Trade Union representative. That included the position about interviews of the other named DE's.

61. The Claimant was notified of his right of appeal and how that should be exercised. The Claimant duly appealed but the decision on appeal remained the same.
62. The Claimant was also notified at the same time as to the outcome of Mr. Walker's grievance against him (see pages 896 and 897 of the hearing bundle). Both he and Mr. Walker were informed that there would be a further investigation to establish if the Claimant's behaviour towards colleagues (i.e. Mr. Walker and Mr. Rayfield) could be in breach of the Civil Service Code and the Respondent's policies on respect in the workplace and whether they warranted disciplinary action. In fact, as Mr. Rossiter now accepts he made an error in respect of the wording of the letter because the decision as to implementing an investigation was one for Mr. Lambourn as ODM of the Nottingham area and his position was only a recommendation. We accept that that error arose because of the use of template letters which Mr. Rossiter had received from HR.
63. The Claimant is critical of the timing of the sending of those letters because on 30<sup>th</sup> November 2020 he had obtained a Statement of Fitness for Work ("Fit Note") signing him off as being unfit to attend work. We understand that the Claimant sent that Fit Note to the Respondent, but we are satisfied that Mr. Rossiter was unaware of it when he sent his outcome letters to the Claimant.
64. The Claimant is equally critical of the timing of correspondence that was sent to him by Mr. Lambourn on 2<sup>nd</sup> December 2020 confirming his decision on the implementation of the recommendations of Mr. Rossiter (see pages 900 and 901 of the hearing bundle). However, again we are satisfied from Mr. Lambourn's evidence that he was unaware at the time that he wrote those emails that the Claimant had been signed off sick and had submitted a Fit Note.
65. In his correspondence Mr. Lambourn confirmed that an investigation would take place into the matters which had been referred to by Mr. Rossiter in his outcome letter. We accept that that investigation would effectively start from scratch and it was not the case that the findings of Ms. Lane would be adopted and the matter simply move to disciplinary action. The Claimant would have been involved in that process and had the full opportunity to challenge any allegations made.
66. Whilst we have been somewhat critical of the conclusions of Ms. Lane and Mr. Rossiter, we accept that Mr. Lambourn was not dealing with the outcome of the grievances but merely the recommendations. His evidence was that there was a zero tolerance approach to bullying in the Respondent and therefore we accept that when faced with information that suggested that there might have been instances of upward bullying, he was required to act on that no matter where it had come from. His approach was not as a punishment of the Claimant as he appears to suggest for having raised a grievance or gone off sick.
67. Within the same correspondence Mr. Lambourn set out that as a temporary measure the Claimant would be transferred to Leicester to be line managed by a Mr. Heggs who was the LDTM at that testing centre. It was made plain that that arrangement was not assuming any guilt on the part of the Claimant as to the matters that were to be investigated but was because of the stress involved and

to protect the integrity of the investigation. It was in our view a sensible course of action. Given the grievance and counter-grievance it is almost impossible to see how the Claimant could return to being line managed by Mr. Walker, or indeed, Mr. Rayfield. It would have created an unhealthy at best working environment and more likely a toxic one and would have impacted both the Claimant and Mr. Walker.

68. Mr. Lambourn had been told by HR that the distance between the Claimant's home address and the Leicester testing centre was approximately 22 miles and that it fell within the 45 minute reasonable travelling distance operated by the Respondent. The Claimant's contract of employment did include a mobility clause which provided for moving between posts within reasonable travelling distance (see page 202 of the hearing bundle).
69. The Claimant is critical of the decision of Mr. Lambourn to transfer him because his position is that he had undertaken a dummy run which had taken him almost three hours as a round trip and that he could ill afford that additional time because he had caring responsibilities. However, the email from Mr. Lambourn made it plain – which the Claimant now accepts – that if he had any concerns then he should contact either Mr. Heggs or himself. The Claimant did not do so and in fact because he was absent on the grounds of ill health up to the point of his resignation he never attended at Leicester.
70. However, we accept the evidence of Mr. Lambourn that if the Claimant had contacted him then they would have discussed alternatives which could have included flexibility in working times so that he was not travelling in rush hour or working from the Respondent's Head Office in Nottingham until the investigation was concluded. However, he was unaware because the Claimant did not tell him or Mr. Heggs that the move to Leicester was controversial.
71. As it was, no investigation into disciplinary action was pursued because the Claimant resigned. Although there has since been a change in policy to the effect that the process would continue irrespective of resignation, that was not the case at the time of the termination of the Claimant's employment and so the matter was discontinued.

#### Collective grievance

72. As we have already set out above, following the Claimant's grievance against Mr. Walker he had removed himself from his line management and Mr. Rayfield had taken over. Whilst the Claimant had said that he was happy to continue to work from Colwick and be managed by Mr. Walker whilst the grievance was investigated, we accept the Respondent's position that that simply was not a tenable suggestion. Arrangements were therefore made for Mr. Walker to manage the Chilwell test centre which Mr. Rayfield usually managed and for Mr. Rayfield to manage Colwick, including line management of all staff there which included the Claimant.



73. Mr. Rayfield informed the Claimant that he was going to take over temporary line management duties for him on 16<sup>th</sup> July 2020. By that time, the Respondent was seeking to reintroduce on a phased basis a return to the normal working environment for DE's who had been working from home during the pandemic. We accept that working from home for DE's was most unusual because they were of course employed to undertake driving examinations which was not possible for a home working environment. However, during lockdown there was little option because of restrictions which had been put in place and the fact that no driving tests were taking place.
74. On 28<sup>th</sup> October 2020 all of the nine DE's at Colwick, including the Claimant, raised a collective grievance against Mr. Rayfield. Each of the DE's submitted a statement attached to the collective grievance, albeit a few of them were complaining about events that they had witnessed as opposed to matters directed at or directly involving them.
75. The Claimant's statement as part of the collective grievance said this:

*"With regards to the situation at Colwick / Andy Rayfield, my statement is as follows:*

*During Andy Rayfield's time as acting Manager I have seen a noticeable decline in moral amongst my colleagues and that is an ongoing matter of concern, this has been the case very early on into Andy's time at Colwick. I have witnessed him being derogatory to several of my colleagues in relation to their age, making comments using words such as "cronies". I have also witnessed him have strong opinions, on multiple occasions talking about sensitive issues such as politics and religion, with an office of people with varying beliefs and religious backgrounds I find this completely inappropriate and uncomfortable.*

*I have personally been targeted by Andy, on countless occasions questioned, physically followed around questioning me on how I carry out my role as a civil servant, accused of breaking civil service codes. Some of which have been followed up via e-mail.*

*I would also like to highlight that on more than 1 occasion I had been talking to colleagues on my dinner break outside the office about matters unrelated to work, and been approached by Andy in a confrontational way and interrupted, and made to feel we were doing something wrong.*

*Andy's management approach is inconsistent, confrontational and unprofessional with a -do as I say, not what I do attitude. Using quotes such as "I enjoy confrontation"*

*I would like to include my Q2 performance review as an example of how Andy conducts his management duties. During my Q2 meeting at the beginning of October, which lasted over 2 hours, certain subjects were discussed that were completely irrelevant to my performance. I was even told after submitting the completed form to quote; “you need to change that statement or it will be rejected “to which I replied “that’s not going to happen as that’s what was said and took place in my meeting “Andy used the phrase “it’s a reasonably management request” however asking someone to lie about what was said is completely unreasonable and an abuse of their position.*

*My most recent incident with Andy was in fact only today, 26th October, where he confronted me aggressively as he overheard me briefing my colleagues about a test I had just conducted. In short, Andy told me I was wrong on my judgement and when I asked for written clarification his comment was “you don’t need it, your most recent update from your superior on this occasion being me, that is the clarification” however Andy was wrong and his confrontational approach was witnessed by 3 members of the team, one of which corrected Andy and pointed out why he was wrong and why my assessment decision was right. Andy went on to say he didn’t say I was wrong in my assessment, he lied to my face and not for the first time, when he not only said I was wrong he tried goading me and saying I was talking over him. All of this was witnessed by others, with those commenting to me that they have never seen anyone let alone a manager speak to another member of staff so aggressively and unprofessionally.*

*I know that all of these examples have had an extremely negative impact on my colleagues and my own working environment at Colwick Test Centre”.*

76. As we have already observed, Mr. Lambourn had stepped back from dealing with the grievances of the Claimant about Mr. Walker and vice versa in order to try and mediate in respect of the collective grievance. An informal approach of that nature is the Respondent’s preferred method of seeking to deal with complaints in the first instance which is a sensible stance to adopt in such circumstances.
77. Mr. Lambourn held a meeting with all of the Colwick DE’s on 11<sup>th</sup> November 2020 to discuss the collective grievance. It was agreed that Mr. Lambourn and the complainants would go away and consider the next steps after the meeting and that he would liaise with the group spokesperson about that (see page 1745 of the hearing bundle).
78. A further group meeting took place on 25<sup>th</sup> November 2020 with the complainants and Mr. Lambourn. After the meeting Mr. Lambourn wrote to the DE’s (see pages 846 and 847 of the hearing bundle) asking them to confirm how they wished to approach the next steps of dealing with their complaints.

79. The options given were as follows:
- (i) Engage with group mediation to work together to agree a way of working together in future;
  - (ii) Engage in a group facilitation with him, the DE's and Mr. Rayfield to agree future working relationships and how any future concerns will be addressed and escalated;
  - (iii) Go direct to formal dispute resolution; or
  - (iv) Offer another appropriate solution to resolve the issues raised.
80. On 27<sup>th</sup> November 2020 the spokesperson for the DE group confirmed that there was agreement that mediation was not appropriate and that they wished the matter to progress to formal dispute resolution (see page 854 of the hearing bundle). Three days later Mr. Lambourn passed the grievance to HR with a view to an investigation manager being appointed.
81. HR informed Mr. Lambourn on 17<sup>th</sup> December 2020 that they had an investigator ready to take the grievance forward and that he could commence dealing with it in January. That of course took account of disruptions over the Christmas and New Year period.
82. Mr. Lambourn had asked the DE's, via their spokesperson, whether they were all happy with the content of their statements before the investigation commenced. A reply was forthcoming that that was the case with the exception of one DE who wanted to make some additions to her statement. Mr. Lambourn chased the matter up on 12<sup>th</sup> January 2021 and received the amended statement on the same day (see page 1044 of the hearing bundle).
83. Around the same time Mr. Heggs as the Claimant's temporary line manager arranged an occupational health referral. One of the reasons for the referral was to see if the Claimant was fit to participate in formal workplace meetings, including grievance meetings. The Occupational Health report was received by the Respondent on 5<sup>th</sup> February 2021. It set out that whilst the Claimant was unfit for work, he was able to attend workplace meetings (see page 1071 of the hearing bundle).
84. Mike Dalton, an ODM previously not involved with matters, was appointed as decision maker in respect of the grievance and Mr. Lambourn sent terms of reference to him on 12<sup>th</sup> February 2021. Although there was a delay in finalising the terms of reference which could foreseeably have been done sooner after the grievances were finalised on 12<sup>th</sup> January 2021, the Respondent was still at that time awaiting the occupational health report to see if the Claimant was fit to attend workplace meetings.
85. However, upon the terms of reference being finalised and documents relating to the grievance being sent to the investigating officer, he did in fact withdraw from dealing with the grievance because he realised that he did not have the capacity

to take it on and HR had to source a new investigation manager. That was Sarah Scott, the Deputy Head of Publishing.

86. There was also a delay until 4<sup>th</sup> March 2021 with the terms of reference and documentation relating to the grievance being sent to the original investigator. If they had been sent in a more timely fashion then the problems of identifying a new investigator would have come to light earlier but the Respondent was not to know that. Whilst things could have been dealt with more swiftly that needs to be looked at in the context that the grievance had a number of people involved and complexities arising from that and it was not the only matter that Mr. Lambourn and HR were dealing with.
87. On 12<sup>th</sup> March 2021 Mr. Lambourn updated the DE's spokesperson about the progress on the collective grievance (see page 1144 of the hearing bundle). As it was agreed at the earlier grievance meeting that Mr. Lambourn would liaise with that person there is nothing to suppose that he did not update the other DE's.
88. By the time that Ms. Scott commenced her investigation the Claimant had resigned although he was still involved in the process thereafter. She conducted interviews with all nine DE's who had complained, including the Claimant, between 31<sup>st</sup> March 2021 and 22<sup>nd</sup> April 2021. She also conducted an interview with Mr. Rayfield on 22<sup>nd</sup> April 2021 and she had a further telephone call with him to ask additional questions on 27<sup>th</sup> May 2021 and sent an email with further enquiries on the same date. She also interviewed Mr. Lambourn, Mr. Heggs and a Mr. Weaver in late April 2021.
89. The outcome of the collective grievance was dealt with by Mike Dalton as decision maker following the investigation by Sarah Scott and the production of her report on 28<sup>th</sup> May 2021. The collective grievance was not upheld and that was communicated to the complainants by Mr. Dalton on 29<sup>th</sup> June 2021. It is not necessary for us to deal with the reasons why that decision was taken because it did not come until after the Claimant had resigned from his employment with the Respondent and the outcome cannot therefore be causative of that decision that he made to terminate his employment.
90. However, the Claimant does rely on the content of the grievance and a number of comments made by DE's during the course of the investigation as evidencing that he was bullied by Mr. Rayfield. We have considered this issue very carefully. It might appear obvious to the Claimant that we should find that Mr. Rayfield did bully him because of the weight of complaints that were made about his alleged actions in the collective grievance and, particularly, that all DE's at Colwick complained about him in some way, shape or form.
91. However, we accept the force of the submissions made by Mr. Serr that in reality that is a dangerous approach. We have not heard evidence at this hearing from any of the other DE's that were involved in the collective grievance and so the veracity of their statements has not been able to be tested in cross examination.

92. Moreover, as this was a collective grievance it is plain that there was more than a degree of collusion between the DE's in the making of their complaints. They all plainly saw the statements of the others and over time they added more fuel to the fire in terms of their complaints about Mr. Rayfield.
93. Furthermore, we accept the evidence of Mr. Rayfield that from the get go there was negativity towards him from the DE's at Colwick when he returned as an LDTM. We find that that was the case for two reasons. Firstly, Mr. Rayfield had previously been a DE at Colwick and had in a reasonably short period of time gained a promotion to LDTM. He was therefore returning to line manage people who had previously been his peers and some who had been DE's for a substantially longer period of time. We accept his evidence that there was a view that promotion ought to be based on length of service and it was bound to foster resentment that he had achieved a relatively swift promotion ahead of longer serving colleagues.
94. Secondly, we accept that there had historically been a rather relaxed approach to the management of the DE's from Mr. Walker and that they were not used to being more robustly managed. We also accept that the DE's at Colwick as a whole did not like being managed and when Mr. Rayfield came along his different and more zealous management style caused an issue.
95. Any change from something of a laissez faire management style requires very careful handling to avoid upset and ruffled feathers. Mr. Rayfield did not have the required management experience in our view to avoid the ruffling of feathers and where he viewed things in his words as not sitting right with him, he stuck to the letter of procedure to deal with them. The DE's at Colwick were not used to that.
96. We deal further with that in the context of examples that the Claimant relies on as being instances of bullying by Mr. Rayfield but it appears to us that having taken a rather more zealous and hands on management approach than Mr. Walker, he brought about resentment and upset within the DE cohort at Colwick. Indeed, his evidence was that the entire team did not like being managed and some degree of irritation and ill feeling is inevitable when faced with a switch in management styles of this nature.
97. Our findings are also informed by the fact that we found Mr. Rayfield to be a credible and straightforward witness. We accepted his evidence that he had not made discriminatory comments and that he had not told another DE, Mr. Johnson, words to the effect that he was going to force the Claimant to resign. We found Mr. Rayfield to be a manager who sticks to the rules and follows policy and that does not sit well with a comment such as that being made to a subordinate and then colleague of the Claimant. Whilst Mr. Johnson might well have said that to the Claimant or words to that effect, he himself does not have first hand knowledge of having himself heard Mr. Rayfield say that. There are many reasons why something of that nature might have been said and Mr. Johnson clearly had an issue with Mr. Rayfield given his involvement in the collective grievance. Without the benefit of hearing directly from him in cross examination we prefer the account of Mr. Rayfield about what the actual discussion was.

98. In that regard, we accept that Mr. Johnson approached Mr. Rayfield and attempted to engage him in discussion which appeared to the latter to be fishing for information about the Claimant's grievance regarding Mr. Walker. Mr. Rayfield accordingly attempted to close the discussion down because, quite rightly, he considered that it was inappropriate. During that time, we accept that Mr. Johnson told Mr. Rayfield that the Claimant did not like being managed and he had replied in terms to say that did not mean that he could stop managing him.
99. There is support for our finding in that regard from the fact that we accept that the Claimant did not like being managed in a way that he perceived as being intrusive into his autonomy. Particularly, his reaction to Mr. Rayfield asking him in quite reasonable, pleasant and understandable terms on one occasion to ensure that he let him know when he was going to be away from his duties whilst working from home was met with quite unfounded accusations of bullying and micromanagement. We say more about that incident later.
100. We turn in that regard to some of the instances that the Claimant relies upon as being acts of bullying by Mr. Rayfield. We have already dealt with one of those with regard to the complaint from Carol above and so we do not need to deal with it again here but suffice it to say that we did not find that it amounted to bullying.
101. We have also touched upon the second incident which was that during a time with the DE's were working from home during the pandemic Mr. Rayfield sought to contact the Claimant four times during what would have been his normal working hours but could not get in touch with him. It transpired that the Claimant had left to go to the chemist to collect medication for his mother. Mr. Rayfield asked the Claimant in an email, in perfectly reasonable terms, to let him know if he was not going to be contactable in normal working hours. The Claimant took and continues to take significant issue with that.
102. However, we accept that Mr. Rayfield needed to know where the Claimant was when he was not working because he had a duty of care towards him. He wanted to ensure that he knew when he was not contactable in case he might have injured himself and that was the reason why he could not reach him. In addition, given the unusual situation of DE's working from home the Respondent had asked managers to keep an eye on the situation because some were abusing the situation and not undertaking any work during core hours and instead attending to personal matters such as decorating or gardening. We therefore accept that it was perfectly proper for Mr. Rayfield to ask the Claimant where he had been and to politely remind him as he did to make sure that he let him know if he was not contactable in working hours.
103. The email exchange made plain that no issue was taken as to providing flexibility if members of the team needed to do something in their core hours as long as the time was made up and he knew where they were. Indeed, Mr. Rayfield gave evidence about another member of the team who took his child to the park and there was no issue with that as long as he was aware of it. We also accept his evidence that all other members of the team let him know when they would be

away from their desks and there was no difference in treatment towards the Claimant.

104. Whilst the Claimant takes issue with Mr. Rayfield having sent screenshots of the times that he had tried to contact him onto Mr. Lambourn, that was simply to seek advice and guidance from his manager because the Claimant had accused him of bullying. Although the Claimant was working from home we accept entirely and can properly see why Mr. Rayfield would need to know when he was away from his duties. The Claimant's reaction and reply to the emails sent to him by Mr. Rayfield about this matter reinforce our views set out above as to the fact that he does not take well to being managed.
105. There is one further incident of note which is an interaction that Mr. Rayfield had with the Claimant in early September 2020 where he had overheard him make a comment to a disgruntled ADI who had said that things with the Respondent had not changed in 30 years. The Claimant had said words to the effect that he agreed with the comment. He raised that with the Claimant and followed it up in an email where he made a reference to what had been said potentially being seen as a breach of the Civil Service Code. Whilst we consider that, even on Mr. Rayfield's own account of what happened, to have been an unnecessary thing to mention because it was a minor matter we do not accept that it was done to bully the Claimant nor that it could reasonably and objectively have had that effect. It is simply an example of Mr. Rayfield's management style and the importance which he places on management and policy.
106. Although there were therefore things that Mr. Rayfield could have done better that was not because he was bullying the Claimant but done through a perhaps slightly overzealous approach and because of relative inexperience. He candidly accepted in his evidence that there were things that he had done in terms of management actions at the time which he would now do differently with the benefit of greater experience and hindsight.
107. We therefore do not accept that the actions taken by Mr. Rayfield amounted objectively to bullying of the Claimant. However, we should say that we have no doubt that the Claimant genuinely feels that what happened amounted to bullying but it is not unusual in our view for that to be a viewpoint when those who feel wronged are looking at otherwise relatively routine matters of management through a prism of suspicion and unfairness. Particularly, here the Claimant was also looking at matters in the context of his also genuinely held belief that he had been bullied by Mr. Walker and he essentially viewed Mr. Rayfield to be picking up where he had left off (see page 550 of the hearing bundle).

#### The Claimant's resignation

108. On 16<sup>th</sup> March 2021 the Claimant tendered his resignation with immediate effect. That was prior to Ms. Scott commencing her investigation of the collective grievance although as we have already observed the Claimant continued to play a part in it thereafter and was interviewed as part of the process (see page 1307 of the hearing bundle).

109. The Claimant's resignation letter set out that he considered that he had been constructively dismissed and raised the following matters:
- a. That he considered trust and confidence to have broken down irretrievably;
  - b. That the investigation into his grievance about Mr. Walker had been biased and unfair and that he had faced retaliation for raising it;
  - c. That his work location had been changed which added a three hour commute to his day and did not take into account his caring responsibilities;
  - d. That he had suffered harassment from Mr. Rayfield and that although a complaint had been made the Respondent had not done anything to address it;
  - e. That he had suffered disability discrimination and the Respondent had done nothing to support him and had instead isolated him, placed him in a position of having an additional three hour commute and commenced what he termed a "bogus" investigation in recrimination to him having raised a grievance;
  - f. That he had been told about the investigation after he had submitted a Fit Note and had heard nothing since; and
  - g. That he was now on long term sick.
110. The Respondent replied to the Claimant on 23<sup>rd</sup> March 2021 acknowledging his resignation and replying to the points that he had made in his letter. That letter appears at page 1182 and 1183 of the hearing bundle, but it is not necessary to set out its contents here other than to say that it disagreed with the points that the Claimant was making.
111. Thereafter, the Claimant issued the proceedings which are now before us for determination.

## **CONCLUSIONS**

112. Insofar as we have not already done so we now turn to our conclusions in respect of the remaining complaint of constructive dismissal.
113. We deal in turn with each of the separate instances upon which the Claimant relies as being destructive of mutual trust and confidence before dealing with, whether singularly or cumulatively, they were destructive of that term.
114. The first of those matters is that the Claimant alleges that he was bullied by Mr. Rayfield. For the reasons that we have already given above we do not accept that the conduct described by the Claimant can objectively be considered to be bullying and we do not accept that he was bullied by Mr. Rayfield. He was only subject to more robust management than that which had previously been the case and which the Claimant found objectionable as he did not care for management intervention in all events.



115. As part and parcel of this part of the complaint the Claimant also complains that the Respondent did not take reasonable steps to protect him from bullying by Mr. Rayfield. We discussed that aspect of the matter with the Claimant at the outset of the hearing because it was – and remains – somewhat unclear what he was saying that the Respondent should have done in that regard. The only thing that the Claimant was able to tell us in this respect is that Amanda Lane should have interviewed all of the DE's in respect of his grievance. However, it is not clear how that would have helped given that that grievance was about Mr. Walker and not Mr. Rayfield. In all events, we are satisfied that Mr. Rayfield did not bully the Claimant and so there was nothing to protect him from in that regard.
116. The second issue relied on by the Claimant is the fact that Amanda Lane failed to interview any witnesses in respect of his grievance against Mr. Walker. As a matter of fact that is correct and we have already observed above the reasons why we consider that a different approach should have been taken. However, there is nothing at all to suggest that the approach taken by Ms. Lane was intended to be in some way detrimental to the Claimant and although we would have acted differently, she did explain in her evidence why she dealt with matters as she did. We accept in this regard that she simply did not see them as relevant to the actual allegations.
117. More importantly than that, however, is that the Claimant was not able to say in his evidence what evidence any of the DE's that he named would have given that would have had any bearing on the outcome of his grievance. All that being the case, we do not accept that this incident is sufficient enough to be destructive of mutual trust and confidence and it was not a serious matter.
118. The third issue relied upon by the Claimant is that Mr. Lambourn indicated that a further investigation would be necessary following the outcome of the grievance by Mr. Walker to establish if his behaviour towards colleagues could be in breach of the Civil Service code and the DVSA policies on respect in the workplace and whether it warranted disciplinary action. As we have set out above, Mr. Lambourn had information before him that suggested that there might have been (and it was no more than that) upward bullying.
119. Although there could have been other more informal ways to deal with that, in view of the Respondent's zero tolerance approach to bullying it was open to Mr. Lambourn to commission an investigation. We have already set out above, that investigation would be starting from scratch and the Claimant would be involved in it with the opportunity to challenge any allegations which resulted. We do not accept therefore that informing the Claimant that an investigation was going to be commenced was destructive or mutual trust and confidence. Equally, we are satisfied that when Mr. Lambourn told the Claimant that he was going to be transferred he did not know that he had submitted a Fit Note.
120. The next matter relied upon by the Claimant is that Craig Lambourn transferred him temporarily to the Leicester Cannock Street testing centre and/or the Respondent so informed the Claimant of the move after his sickness absence had begun. As to the timing of that notification, as we have already observed Mr.

Lambourn did not know that the Claimant had submitted a Fit Note. As to the transfer itself, for the reasons that we have already given that was a necessary step to take to protect both the Claimant and Mr. Walker and any difficulties that resulted from that decision could have been discussed and remedied if Mr. Higgs or Mr. Lambourn had been made aware of them.

121. The final matter relied upon is that the Respondent failed to investigate the collective grievance in respect of Andrew Rayfield submitted on 28<sup>th</sup> October 2020 in a timely manner. Whilst we agree that, for the reasons that we have given above, there was some delay that could have been avoided it was not so serious as to be destructive of trust and confidence. Both Mr. Lambourn and HR were dealing with other matters and there was delay in amendments being made to a statement by one of the DE's and to obtain an Occupational Health report which needed to be taken into account. Whilst things could in places have taken place slightly swifter, those are minor matters and could not be seen as being destructive of mutual trust and confidence.
122. Whilst we have therefore made some criticisms of the Respondent in terms of not interviewing further witnesses and there being some delay in dealing with the collective grievance none of those things either singularly or cumulatively are so serious as to breach the implied term of mutual trust and confidence. They did not go to the root of the contract for the reasons that we have already set out in our findings of fact above and were minor matters for which there was reasonable explanation.
123. However, even had we found there to be a fundamental breach of contract we could not be satisfied from the Claimant's evidence that he resigned in response to it. In this regard, when asked by Mr. Serr why he had resigned at the point that he did the Claimant's evidence was that he could not remember and that the date of his resignation was not a "poignant" one. The Claimant does not therefore suggest that there was some trigger – or last straw – which prompted him to resign at the point that he did and in particular he does not suggest that it was any ongoing delay in resolving the collective grievance. Given the uncertainty about the reason that he decided to terminate his employment at the point that he did and could not recall why we could not be satisfied that the instances where we have been critical of the Respondent were the reasons behind that.
124. Moreover, even if we had found there to have been a fundamental breach of contract in respect of those matters and that the Claimant had resigned in response to them then we would have nevertheless concluded that the Claimant had by his delay in resigning waived his right to rely upon them and had affirmed the contract.
125. The last act which *might* be said to have triggered the Claimant's resignation given what was said in his resignation letter is the indication from Mr. Lambourn that he was to be temporarily transferred to Leicester and there was to be a further investigation. Those matters were communicated to the Claimant on 2<sup>nd</sup> December 2020, but his resignation did not come until almost three months later on 16<sup>th</sup> March 2021. Whilst we remind ourselves that mere delay by itself does

not constitute an affirmation of the contract if the delay goes on for too long it can be very persuasive evidence of an affirmation. The Claimant has not provided any reasons for the delay in him electing to resign and whilst he was absent from work on the grounds of ill health he nevertheless continued to accept sick pay from the Respondent. He did not make any protest about either the transfer or the proposed investigation despite certainly in respect of the former being invited to contact Mr. Lambourn and/or Mr. Heggs with any queries or concerns.

126. Given the passage of time we are satisfied that the delay, inaction as to raising concerns and the continuing acceptance of pay from the Respondent saw the Claimant affirm the contract so that he waived his right to resign in response to the conduct of which he complains.
127. For all of those reasons the remaining complaint of constructive dismissal fails and is dismissed.

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Employment Judge Heap

Date: 18<sup>th</sup> November 2022

JUDGMENT SENT TO THE PARTIES ON

18 November 2022

FOR THE TRIBUNAL OFFICE

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