



EMPLOYMENT TRIBUNALS

Claimant: Mr G Roberts

Respondent: Penrhyndeudraeth Town Council

HELD AT: Llandudno **on:** 3rd & 4th April 2023
Caernarfon 5th April 2023

BEFORE: Employment Judge T. Vincent Ryan
Mrs L Bishop
Ms P. Humphreys

REPRESENTATION:

Claimant: Litigant in person

Respondent: Mr A Pickett, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that the claimant's claims that the respondent failed in its statutory duty to make reasonable adjustments, ss 20-21 Equality Act 2010, fail and are dismissed.

REASONS

Introduction:

1. At the outset of the oral judgment the Tribunal acknowledged the service of volunteer town, and Community councillors, and of their paid clerks, in facilitating the exercise of local democracy; we thanked all parties present.
2. I explained that the Tribunal, acting in the interests of justice, was considering whether or not the respondent as an employer had failed in a statutory duty to provide reasonable adjustments. The duty arises in the circumstance where a provision, criterion or practice of a person, such as an employer, puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who were not disabled. It also arises where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. This Tribunal considered what happened in fact at the material time of the claimant's claims. The claimant repeatedly suggested that actions taken by

the respondent, or words spoken by councillors, or proposals and plans, that were not the subject of published notices and agendas given within statutory periods in advance, and that did not take place at what he considered to be quorate meetings, that were not voted upon and passed as formal resolutions did not happen. He further took the point on several occasions that where a written minute referred for example to the occupational health report, because the minute did not also use the words “reasonable adjustments” then the council cannot have discussed reasonable adjustments; on the basis that the minute must be comprehensive and record the full extent of every council discussion any semantic omission is, in the mind of the claimant fatal. The Tribunal emphasised that it was looking to see whether a statutory duty arose and what reasonable steps the respondent ought to have taken and did take. The Tribunal is not qualified to comment upon the intricacies of the governance and constitution of Town Councils; the claimant may be correct in saying that there are matters requiring scrutiny from the Ombudsman or the Audit Office; there may be matters of further concern to the electorate. All of those matters are outside the jurisdiction of the Tribunal. This is particularly relevant in so far as the Tribunal’s findings were that the respondent was ultimately unable to effect its preferred plan of action because of the claimant’s intransigence.

3. It was clear to the Tribunal during the delivery of judgment that the claimant does not accept the situation still. He indicated in his submissions that he would be appealing the judgment if it went against him and he said as much at the conclusion of the oral judgment, hence his request for Written Reasons.
4. To save repeating it in writing, as was repeated throughout the oral judgment, we have not made findings of fact as to whether formal notices were published, whether formal agendas were published, whether any or every meeting was quorate, whether resolutions were formally proposed and seconded or validly voted upon and properly passed; we have not made findings of fact critical of the preparation of formal minutes. Our findings relate to what the respondent did and tries to do in the context of the claimant’s claims in practice. We did not have sufficient evidence and submissions on the technical governance points in any event. If the point had been reached where progress could be made with the implementation of reasonable adjustments ensuring the claimant’s safe return to work, then for all we know all due and proper procedures would have been followed even to the satisfaction of the claimant. That point was not reached before the claimant presented his ET1.
5. The Tribunal acknowledges that what the claimant perceives to be poor governance is a stressor. For reasons explained in our judgment, it is not reasonable to assume that every allegation of poor governance made by the claimant based on his perception is correct or fair.
6. At the outset both parties queried whether the Tribunal would be prepared to hear evidence of matters arising after the issue of the claimant’s ET1 on 24 April 2022. The material time of the claims relates to the period immediately before presentation of the claim. That was agreed by all parties. That said both parties gave evidence and cross-examined witnesses in respect of matters arising between April 2022 and the hearing date. It was agreed at the outset, as explained by me, that the Tribunal would hear whatever evidence the parties wished to put in relation to the issue of reasonable adjustments, and that the

Tribunal will decide its relevance to the issues and what weight to attach to it. I explained that there may be evidence post-presentation of the claim that might shed light on earlier events or that helped to clarify matters in general. The claims however relate to a period pre-presentation of the claim.

7. The list of issues referred to below cites two PCPs and one auxiliary aid. During the first day of this final hearing the claimant withdrew his claim in relation to the first PCP listed in the list of issues at paragraph 3.2.1. In his written submissions on the last day of the hearing the claimant resurrected the matter saying that he only withdrew because of his disability, because he was asked whether he wants to withdraw it, because of the complexity of the bundle, and because of Mr Pickett's "conduct and behaviour". For the avoidance of doubt and in the interests of justice the Tribunal considered it would be appropriate to explain to the claimant what would have happened with regard to his claim in relation to the first PCP had he not withdrawn it. It was clearly withdrawn on reflection and having been given an opportunity to consider the matter. The claimant did have some difficulty finding documents but that was not the fault so much of the bundle as perhaps anxiety on the day of the hearing. Mr Pickett was asked by me to slow down on a few occasions and to await a full answer before asking the next question; so too was the claimant. The Tribunal was not critical of the "conduct and behaviour" of either Mr Pickett or the claimant in terms of their advocacy; that said I did indicate to Mr Pickett at one stage on day one of the hearing that his tone implied some frustration; Mr Pickett apologised and there was no repetition. I gave every opportunity for the claimant to consider whether he wished to withdraw the claim in relation to the first PCP or not, and he was clear to the satisfaction of both me and my colleagues, with whom I checked, that he wished to withdraw that claim. It was withdrawn. There is no "live" claim in relation to the first PCP. We have dealt with it as described below in any event, out of courtesy to Mr Roberts.

The Issues:

8. The issues in the case were set out in the minutes of a preliminary hearing held on 4 August 2022 by Employment Judge Howden-Evans. Repeatedly during the hearing we referred back to paragraph 3 of those minutes at page 42 of the hearing bundle (to which all page references relate unless otherwise specifically mentioned).
9. The claimant alleges that the respondent had a PCP, a practice, of not giving codes of practice, regulations and relevant law sufficient consideration and attention. This was the first PCP alleged by the claimant and it is the claim that was withdrawn by him. As explained at the time before the claimant confirmed withdrawal, the consequence of withdrawal was dismissal. I dismissed this claim. The Tribunal's findings in respect of this claim are those that it would have found had the claim not been withdrawn, or if it is adjudged that it was not properly withdrawn and ought not to have been dismissed.
10. The claimant also alleged that the respondent had a practice of not giving occupational health reports and their recommendation sufficient consideration and attention.

11. Furthermore the claimant said that the lack of an auxiliary aid, an agreed list of actions to implement the occupational health report, put him at a substantial disadvantage compared to someone without his disability.
12. In respect of the above the claimant contended that the respondent knew or could reasonably have been expected to know that he was placed at a disadvantage and that the respondent failed to make reasonable adjustments to remove the alleged substantial disadvantage. The alleged substantial disadvantage was the stress and frustration that impacted upon his mental health.

The Facts:

13. The parties each prepared what they each referred to as a neutral chronology.

The respondent's chronology is free of comment or submission and is therefore actually neutral. That chronology is adopted by the Tribunal. Its contents are effectively a finding of fact. The Tribunal will not therefore recite as findings the dates of every email, letter, meeting etc.
14. The respondent is a Town Council whose administration and governance is somewhat similar to that of a Community Council. At any one time during the relevant period it had approximately eight members. At the material time the chair was Ms Meryl Roberts, who gave evidence to the Tribunal. The respondent only ever has one employee at a time, namely its clerk. Councillors are volunteers duly elected by the electorate within the town. There is a considerable amount of statutory and regulatory governance such as under the Local Government Acts and Wales specific legislation, regulations, and codes. The respondent subscribes to an advisory and assistance service called One Voice Wales (OVW). The parent local authority is Gwynedd Council; it seems to the Tribunal that Gwynedd Council acts in the role of mentor or umbrella organisation providing support. The respondent has the power to engage subcontractors generally and specifically for these purposes to engage an independent HR consultant when required.
15. As stated, the councillors are volunteers. It was clear to the Tribunal that those Councillors mentioned during the course of the hearing gave willingly of their time and made considerable effort to properly honour their commitments as councillors. It was also duly noted that they will have had their personal and their professional lives to lead, creating other time commitments and stresses upon them. Many of the events described below occurred during restrictions imposed as a result of the Covid pandemic; the time in question was a difficult time for all concerned and both parties. There is no evidence to suggest to the Tribunal that the councillors did anything other than acting good conscience, good faith, with the best intent towards their electorate and towards the claimant.
16. The Tribunal also finds that the council in general, and specifically Ms Roberts from whom we heard evidence, and by reference to documentation and other

evidence Counsellor Sian Llewellyn (who did not give evidence), displayed sympathy and empathy for the claimant until such time as he became so intransigent that there was an impasse. At this stage, as detailed below, a number of councillors found the claimant's conduct to be causing them stress and anxiety as well as considerable frustration. This was to the extent of a number of resignations and a number of indications from certain councillors that they would not stand for re-election. It then became somewhat difficult to find suitable candidates for election, due in part to the difficulties that existing councillors were already finding in dealing with some of the claimant's behaviour. That behaviour is described below.

17. The claimant is employed as Clerk and Responsible Financial Officer. He has been so employed by the respondent since 1 August 2011. He is currently on sick leave. The claimant is a disabled person by reason of a number of "mental impairments". The claimant lives with anxiety and depression, Tourette's syndrome, obsessive-compulsive behaviour, phobic states with intrusive thoughts. The respondent concedes that the claimant is a disabled person and concedes that it has had knowledge of the claimant's anxiety and depression throughout his employment. It further concedes knowledge of OCD and Tourette's syndrome since 2019, and phobic state with intrusive thoughts from receipt of an occupational health report dated 17 December 2021.
18. The role of clerk includes to advise councillors on the formal business of the council. A clerk also prepares minutes, notices and the like. A clerk gives advice and councillors may follow that advice as they in good conscience and good faith deem appropriate. By the same token they ought only deviate from appropriate advice in good conscience and good faith and always acting in the best interests of the electorate within the law. The clerk does not have a vote or veto (and the claimant did not claim either). When a Council acts ultra vires/ beyond its powers matters may be referred to the Public Service Ombudsman for Wales for investigation and appropriate recommendation or other action; the council is also subject to scrutiny from Wales Audit Office. The Tribunal takes judicial notice of procedures akin to disciplinary procedures in respect of councillors and councils; they may be subject to what is commonly referred to as special measures. The Tribunal finds that at all times the respondent was aware of its legal obligations and responsibilities to its electorate, Gwynedd Council, and said regulatory bodies; the Tribunal further finds that there is no evidence to suggest that the respondent deliberately or negligently chose path of poor governance in breach of legal obligation.
19. The claimant is not a qualified lawyer. He appears to be very knowledgeable of formal procedures governing Council business. He says himself that he is obsessive about the application of applicable standing orders, rules, regulations and the like to the strict application of the written word. The Tribunal finds that this is so, but particularly only insofar as the claimant interprets those provisions. He will brook no question, challenge, or suggestion of any alternative interpretation. The Tribunal finds that the claimant considers that in all matters relating to council governance he is right, and that anyone who does not agree with him is by definition wrong. The Tribunal finds that in the claimant's mind his interpretation of an applicable rule will dictate what the council must do and from which it cannot deviate. Consistent with the claimant's steadfast belief in his own ability, accuracy, and propriety, anything less than a full application of his advice

seems to lead to a formal complaint whether that be to the council, the Ombudsman for Wales, the Audit Office, or some other regulatory body. The Tribunal is not qualified to say whether this trait of the claimant's is a consequence of his disability. The Tribunal is able to find however that questioning, challenging, failing to abide strictly to the claimant's prescriptions to the council amount to stressors causing him anxiety.

20. The claimant did not have any apparent difficulties at work in the period 2011 to 2019, when he describes everything as running like "clockwork". His genuine perception is that from 2019 onwards the administration of the respondent was chaotic and that the core problem was that councillors did not understand their roles. There is insufficient evidence for the Tribunal to conclude either that the governance of the respondent was chaotic or that the councillors did not understand their roles; it is evident to the Tribunal that Ms Roberts, as chair, made every effort to facilitate the claimant's safe return to work from illness, and good governance, while maintaining a busy work schedule and demanding personal commitments. The Tribunal wishes to express its sympathy to Ms Roberts for her bereavement during the material time of the events about which the claimant claims; naturally this too impacted upon her work as a counsellor and in part accounted for some delays.
21. The claimant lodged four grievances between June 2020 1 March 2022 which he summarised in evidence as follows (that is giving the title or headline in each case namely:
 - 21.1. 21 June 2021 "pay and workload" (p96-98)
 - 21.2. 18 July 2021 "respondent breaching obligations" (p186-187)
 - 21.3. 14 October 2021 "late part payment of salary & breach of obligations" (p216 – 218)
 - 21.4. 29th of March 2022 "failure to make reasonable adjustments" (p471-473).
22. During the material time, and to date, the claimant has lodged formal complaints with the ombudsman (namely one each in respect of councillors TP and NJ, and two complaints in relation to counsellor S LI); none of the complaints led to formal investigation albeit there was a recommendation for training in relation to one of the complaints. The claimant has made four complaints to the Information Commissioner's Office; none of the complaints has led to any sanction. The claimant presented a claim to the Employment Tribunal which he subsequently withdrew on 11 January 2022. The claimant has indicated an intention to take further unspecified court action (possibly seeking an order in respect of disclosure of documentation from the respondent) and that he will be complaining to the Health and Safety Executive. The claimant has made at least two complaints to the Audit Office and he says no further action will be forthcoming from it until conclusion of these proceedings.
23. The claimant has had a number of ill health absences from work; they are genuine and certified and related to his disabling condition. The claimant confirmed the following dates of absences:
 - 23.1. 9 July 2021 to 4 December 2021
 - 23.2. 27 February 2022 to 28 March 2022

23.3. 8 June 2022 to date

24. The relationship between the claimant and the respondent deteriorated from 2019 onwards but specifically, especially, during 2021. The claimant felt that he was unsupported by the respondent. He disapproved of actions on the part of the council and its decision-making where he felt that his advice was not followed either as to procedure or substance.
25. In his grievance of 21 June 2021 the claimant complained about his rate of pay but also workload and the intrusion of work duties and responsibilities on his private life; he found this to be causing him stress and anxiety. This arose during a difficult time for the country, the council and specifically its chair. There was a delay in resolving the grievance however it was resolved in a closed meeting held on 14 October 2021. The claimant's hours were reduced as requested; he was to be issued with a work mobile phone so as not to have to use his personal phone and his personal phone number was to be removed from council information leaflets and posters; he was permitted to use an out of hours message on his phone and email account. The claimant's hours were flexible but the total number of hours was reduced and he was not required to work out of hours. Further, in response to the claimant's concerns about additional workload his responsibility for health and safety at the park and cemetery were taken from him and reallocated to the chair by agreement.
26. In view of the claimant's absences from work due to ill health Ms Roberts wrote to the claimant on 1 November 2021 (page 240 – 241) inviting him to a capability meeting. To be discussed at that meeting was a possible referral for occupational health advice, the implementation of reasonable adjustments including a phased return to work, and reassuring the claimant about his workload during his absence. The claimant was asked to refrain from making external complaints about the council, as he had been at the previous close meeting referred to above. It was hoped that the meeting could be arranged the 10th or 15th November. Advice and assistance was being obtained from OVW who had also been in contact directly with the claimant, specifically PE had offered the claimant advice and assistance. The claimant refused to attend the meeting. He did not consider OVW to be impartial not least because of PE's prior involvement and the fact that in his mind the respondent was a customer of OVW. He would not engage in the process to consider the matters listed in that letter.
27. The claimant attended a return to work meeting on the 24 November 2021 where a phased return to work was agreed. OH referral forms were completed with a view to the claimant having a phased return to work on light duties, which was agreed. The respondent stated its intention to meet with the claimant again when he returned to full hours. He was asked again not to besmirch the name of the council.
28. The respondent referred the claimant for OH advice and assistance. A report dated 17 December 2021 was obtained. The report is a page 293-294. It contains a list of recommendations. Insofar as that list would provide the claimant with reassurance and provide both parties with an aide memoir of matters to which they should work for agreement upon implementation then this was an auxiliary aid. The list itself would not remove a substantial disadvantage in practice; implementation of the list or agreement on any other such matters which

would then be listed may have had a practical effect on the removal of any substantial disadvantage to the claimant. The list would provide some certainty and provide assurance and aided in that regard.

29. A meeting was called by the respondent on 31 January 2022 for the claimant to meet Ms Roberts and councillor SN as part of a committee. The purpose was to meet with the claimant to discuss the implementation of the said occupational health report. In preparation Ms Roberts had circulated the report. The risk assessment form was to be discussed as part of the overall process at the meeting. The claimant attended the meeting with a completed risk assessment form in which he had, to borrow a phrase from Mr Pickett, rehashed his withdrawn Employment Tribunal claim. The claimant sought to obtain concessions from the respondent in respect of the matters that had been presented to the Tribunal, which the respondent had contested, and which the claimant had withdrawn. There was an oral agreement to move on from that situation and look to the future which was also committed to writing but in fact the claimant wanted to prove his point with regard to all the matters raised at the Tribunal previously. This Tribunal finds that to this day the claimant is not prepared to draw a line under the events described by him in his first claim to the Tribunal. He cannot see a resolution of his issues with the respondent unless and until he receives what he considers to be either acceptance of fault by the respondent or such adjudication by an appropriate regulatory body. In effect the claimant reiterated allegations of maladministration against the respondent rather than engage in the scheduled attempt to resolve matters.
30. There was a meeting of the respondent Council on 15 February 2022. The minutes of which are at page 362. The councillors present found it impossible to deal with the claimant's risk assessment as it was set out because it was a repetition of allegations that were so serious as to undermine the relationship of trust and confidence and it had not sought to move on the agreed required adjustments.
31. At a further meeting on 28th of March 2022 councillors recorded that they considered the relationship was breaking down or had broken down and they wanted to take steps to explore possible termination of the claimant's employment. They did not decide at that meeting to dismiss the claimant. The claimant was not dismissed at that meeting. The council resolved to obtain employment advice.
32. At all times the respondent sought and obtained support and advice from OVW. Neither Ms Roberts individually nor the council as a whole took independent action regardless of the need for advice or regardless of advice obtained. In due course OVW advised that Ms Roberts take advice from the parent local authority, Gwynedd Council; she took advice from that council's head of legal services. The advice received included the suggestion that the respondent retain the services of an independent HR consultant. In June 2022 Ms Wendy Rees was engaged. This was after the presentation of the claimant's claim. Miss Rees gave evidence and was cross examined by the claimant on her involvement post presentation of the claim.
33. On 29th of March 2022 the claimant raised a further grievance which is at pages 471 – 473, complaining of a failure on the part of the respondent to make reasonable adjustments.

34. Again the parties had reached a deadlock. The claimant commenced early conciliation with ACAS and then presented this claim as stated. In view of the claimant's latest absence from employment due to ill health, which commenced on 8 June 2022 and continues, Miss Rees advised the respondent that there ought to be a return to work interview with a view to mediating between the parties to seek a resolution so that the relationship could get back on track. The meeting was arranged to be held on 7 November 2022, its aim being to discuss the claimant's risk assessment and the occupational health report, and thereby to consider the listed recommendations including reasonable adjustments. At the meeting the claimant restated his allegations of maladministration against the respondent emphatically reiterating his withdrawn claims that were made to the Employment Tribunal. Although he stated he would move on from the past and look to building a future working relationship, he would not in fact move away from his many and varied strident claims of bad practice. He would not engage with the agenda for the meeting as described above. The Tribunal accepts the evidence of Ms Rees that the claimant engaged in finger-pointing while raising his voice and threatening further adverse publicity about the council's conduct. The Tribunal describes this as aggressive. The claimant left the meeting abruptly in a manner understood by the respondent to be either temper or frustration or both. In any event the claimant brought that meeting to an end. The Tribunal did not hear witness evidence from any councillor other than Ms Roberts; in the light of Ms Roberts' evidence, the claimant's answers to questions under cross examination, the documentary evidence before the Tribunal, and Ms Rees' evidence, we find that Ms Rees' evidence (albeit post-dating claim) is probably indicative of the claimant's behaviour consistently throughout the material time. In that respect it may be corroborative but in any event the Tribunal considered Ms Rees' evidence to be valuable as she formed the final link in the chain of advice sought, from the clerk to OVW, to Gwynedd Council, to her.
35. At all times the respondent sought appropriate advice with a view to securing the claimant's safe return to work with the benefit of reasonable adjustments if possible; if it proved impossible then it sought advice to look towards how otherwise to resolve the situation of deadlock and the damage being done to the relationship by the claimant's intransigence and determined criticism of the respondent and individual councillors.

The Law:

36. s 20 and s 21 Equality Act 2010 (EqA) relate to adjustments for disabled people. Where a PCP of the respondent put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, the respondent would be required to take such steps as it is reasonable to have to take to avoid the disadvantage; that is the statutory duty.
37. Where a disabled person such as the claimant would, but for the provision of an exemplary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, the respondent would have to take such steps as it is reasonable to have to take to provide the auxiliary aid. That is the statutory duty.

38. S21 EqA provides that failure to comply with those requirements is a failure to comply with the duty to make reasonable adjustments and amounts to unlawful discrimination.
39. In his written submissions counsel for the respondent cited *Ishola v Transport for London* [2020] EWCA Civ 112 and *Nottingham City Transport v Harvey* UKEAT/0032/12/JOJ. A Tribunal must be careful about the definition of the PCP in issue to avoid the risk of allowing it to encompass any perceived act of unfairness of which a claimant complains; any such act ought not to be converted to a PCP as a matter of course or default.
40. That said, Tribunals ought not either obsess about whether particular treatment amounts to a practice or a criterion or a provision. There must however be something that the respondent does at work in general but which puts a disabled person at a substantial disadvantage with regard to work as opposed to a person who is not disabled. In a situation where there is one employee any practice will appear exclusive to the claimant, and this is not necessarily fatal to that conduct amounting to a PCP, if the practice is capable of general application in the event of there being more than one employee or it was a practice that was carried on with another employee at an earlier time or was carried on with another employee at a later time.
41. It is still important to establish what was the “thing” that the respondent did at work that puts the claimant at a substantial disadvantage in respect of the relevant matter (the continuance of safe employment and fulfilment of duties and responsibilities) compared with the person, in this case hypothetical, who was not disabled.
42. An employer must know of the substantial disadvantage. The duty is then to take such steps as are reasonable to remove the substantial disadvantage; that is not the same as saying that an employer is obliged to take every step that an employee demands or feels subjectively is in their best interest. There is no duty to placate.

Application of law to facts:

43. The respondent knew that the claimant was a disabled person by reason of some mental impairment throughout his employment. By the date of its receipt of the said occupational health report the respondent knew of all disabling conditions.
44. The respondent did not have a practice of “not giving codes of practice, regulations and relevant law sufficient consideration and attention”.
- 44.1. The respondent councillors sought initial advice in all matters from the claimant as clerk. When advice was required in respect of the clerk it sought advice and assistance initially from OVV, until it was referred to Gwynedd Council and then from that council’s Head of Legal Services. Upon receipt of advice to instruct an independent HR consultant it did so.
- 44.2. Tribunal finds that the respondent considered the advice given by all those named in the above paragraph. With regard to the claimant’s advice,

the respondent was in general guided by it until the relationship was put under such strain that it could no longer. It was only then it relied on other sources of advice; it followed all advice received from the other sources.

- 44.3. At all times the respondent was mindful of its duty to comply with the applicable codes of practice, regulations and relevant law. There is no evidence that it had ever sought to deviate from that authority and there is evidence to suggest that the respondent, and specifically its Chair, took strenuous efforts to ensure compliance, in other words to do the right thing and to do it properly. This included doing the right thing by the claimant.
- 44.4. Despite evident frustration with the claimant there is no evidence of animosity between the Chair and the claimant. There is evidence of the documentation that some councillors were complaining that the claimant was causing them stress and anxiety. There is evidence of frustration on the part of councillors but not of personal animosity. The Tribunal accepts that the respondent's ideal solution was to see to the claimant's safe return to work with reasonable adjustments in place.
- 44.5. More generally the Tribunal accepts that the respondent sought to act ethically at all times and that necessarily involved giving consideration and attention to the applicable law. There is a difficulty over the use of the word "sufficient" in the PCP as it is set out in the list of issues. The consideration of attention that the respondent thought was sufficient is clearly not what the claimant considers to be sufficient.
- 44.6. The Tribunal doubts that the claimant will ever consider that the respondent has acted appropriately. He will not do so because the respondent has not always acted in accordance with his advice and with his perception of the applicable standards. The Tribunal considers that the claimant sees himself as the ultimate arbiter of good practice. He will brook no question or challenge. He will not accept the propriety or even the rationale for acting contrary to his advice and his strict adherence to practical standards as he interprets them. A classic example of this was the claimant's statement that when two councillors spoke to him with a view to implementing reasonable adjustments, that conversation did not happen and it did not happen because there were not three councillors present, due notice of the meeting had not been published in advance, there was no agenda, there was no resolution of the Council with regard to that meeting, the notes of the meeting were not formal minutes properly passed and approved following resolution of the Council. In the same vein when asked whether the provision of a work mobile phone to ease pressure on the claimant's private life was an adjustment that removed a disadvantage to him causing him stress, he struggled to accept that it was, because it was offered again at a meeting that was not quorate et cetera. He conceded he did receive a phone. He conceded the phone was of use to him. He would not accept that the provision of the phone formed part of the formal execution of the council's duties towards him, not because of the substance but the format of the meeting at which it was offered.
- 44.7. The Tribunal concludes that the respondent gave sufficient consideration and attention to the applicable law seeking at all times to act

appropriately and properly within its constitution for the betterment of its constituents.

45. The respondent did not have a practice of not giving occupational health reports and their recommendations sufficient consideration and attention.
- 45.1. It is evident to the Tribunal that the respondent read and considered the occupational health report in full including the list of recommendations.
- 45.2. It is further evident that the respondent sought to engage with the claimant in a constructive dialogue with a view to agreeing reasonable adjustments that would permit the claimant's safe return to work.
- 45.3. The respondent wished to resolve personal issues and difficulties with the claimant and secure his continued employment, aided by adjustments such as those set out in the occupational health report.
- 45.4. Individual councillors prepared for a meeting with the claimant and attended that meeting with the intention of engaging in a constructive manner with him.
- 45.5. There is no evidence to suggest that any of the councillors opposed any of the recommendations in the said list. The problem arose when the claimant completed the risk assessment rehashing all his complaints of maladministration.
- 45.6. The claimant sought admission of fault and concession in respect of every allegation of maladministration that he had previously brought to the Employment Tribunal, to the Ombudsman, and to Audit Wales. The respondent considered that the claimant had brought them to a deadlock. Despite repeated requests he had continued to repeat these allegations in public and to council members as well as in the format of formal complaints. He would not move on from that to constructively engage in agreeing a safe return to work with adjustments in place. It would not be reasonable to expect the respondent to concede fault and to admit maladministration in order to placate the claimant.
- 45.7. Bearing in mind the matters that cause stress to the claimant, the Tribunal understands that the claimant's symptoms of depression and anxiety may be eased if someone was to tell him that he had been right all along and that everybody else was wrong all along. The Tribunal does not consider that such a step is a type of adjustment envisaged in EqA, but even if it was it would not in these circumstances be a reasonable step. The matters had already been litigated. They were the subject of ongoing formal complaint to regulatory bodies with powers to investigate, suspend councillors, disqualify councillors, to impose fines and to impose special measures. The first reasonable adjustment sought by the claimant, namely an acceptance of his rehashed Employment Tribunal claims, could have had very far-reaching effects on the administration of local democracy; this in a situation where the respondent was at all times following advice and assistance from other responsible sources of authority.

- 45.8. Once again the Tribunal comments on the use of the term sufficiency in the way that the PCP has been drafted. One person's sufficiency may be another's insufficiency.
- 45.9. The respondent made many and varied attempts to put in place adjustments. Adjustments were in place as a result of their various meetings. They are listed at paragraph 4 of the respondent's written submissions. The Tribunal accepts that list. The Tribunal also accepts the list at paragraph 5 of the written submissions of the respondent showing how the claimant "thwarted" the respondent's efforts through his lack of engagement up to and including November 2022, albeit that was after the material time and the presentation of the claim (it may nevertheless be indicative of consistent conduct by both parties throughout the material time).
- 45.10. Not only did the respondent not have a practice of not giving OH reports and their recommendations sufficient consideration and attention, in this specific case the respondent gave the claimant's OH report what we find to be sufficient consideration and attention.
- 45.11. The respondent did its conscientious best. It acted in good faith towards the claimant at all times. It attempted at all times to execute its statutory duties in accordance with the law, and that included discharging its duty of care to its employee. The fact is that the claimant, for his own reasons, would not engage constructively in its efforts.
46. Because the PCPs did not exist as framed, and as argued by the claimant, the statutory duty did not arise in relation to them. In any event the claimant was not at a substantial disadvantage because every effort was made to secure his safe return to work with consideration of everything listed by the occupational health clinician for his good.
47. Insofar as a list is an auxiliary aid, one existed. There was no final agreed list that could be implemented, but that was because of the claimant's refusal to engage. The claimant even minuted a proposed list. The obstacle to that auxiliary aid having any practical effect was the claimant. It cannot be said that the lack of an auxiliary aid put the claimant at a substantial disadvantage. What put the claimant at a substantial disadvantage was his inability or unwillingness to engage constructively with the respondent and his insistence on requiring admissions of maladministration.
48. The respondent did everything it could reasonably have been expected to do to remove any disadvantage, substantial or otherwise, affecting the claimant in the execution of his duties whilst at work.
49. For these reasons the claims fail.

Employment Judge T.V. Ryan

Date: 06 April 2023

Case Number: 1600453/2022

JUDGMENT SENT TO THE PARTIES ON 11 April 2023

FOR THE TRIBUNAL OFFICE Mr N Roche