EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondents**
Ms A M E Jung		Amnesty International Limited

Heard at: London Central Employment Tribunal

On: 28, 30, 31 March 2023, 3, 4, 5 April 2023
(27 March 2023 reading day; 6 April 2023 in chambers)

Before: Employment Judge Adkin
Ms H Edwards
Mr P Secher

Representations

For the Claimant: Ms E Banton, Counsel
For the Respondent: Ms C Darwin KC, Counsel

JUDGMENT

(1) The following claim was withdrawn and is dismissed:

a. Claim of direct disability discrimination brought pursuant to section 13 of the Equality Act 2010 (“EqA”).

(2) The following claims are not well founded and are dismissed:

a. Direct discrimination because of religion or belief brought pursuant to section 13 of the Equality Act 2010 ("EqA").

b. Unfair dismissal pursuant to sections 94 and 98 of the Employment Rights Act 1996 (“ERA”).

c. Automatic unfair dismissal section 103A ERA.

d. Protected disclosure detriment section 47B ERA.

e. Failure to make reasonable adjustments pursuant to sections 20 & 21 EqA.

f. Victimisation pursuant to section 27 EqA.

g. Harassment relating to religion and belief pursuant to section 26 EqA.

REASONS

Procedural matters

1. The parties attended in person in Victory House.

The Claim

2. The Claimant presented her claims on 7 October 2021 and 26 May 2022.

3. An agreed list of issues is attached as an appendix to this claim.

Evidence

4. The Tribunal received an agreed bundle of 852 pages which was produced in a "public" and a "private" version, although there was no difference between these bundles that had any significance in respect of the documents drawn to the Tribunal's attention during the hearing. This was referred to during the hearing as the main bundle. These reasons we will simply refer to it as the bundle. Some pages were added.

5. We received a supplementary bundle of 781 pages, to which a number of further pages were added. We refer to this as the supplementary bundle.

6. We received two witness statements from the Claimant and witness statements from the following:

6.1. Dr Agnes Callamard, Secretary General of the Respondent;

6.2. Mr Bruce Millar, the Claimant's line manager and dismissing manager, Deputy Regional Director – Campaigns, for the Eastern Europe and Central Asia Regional Office (EECARO);

6.3. Mr Kyle Ward, appeal manager, Deputy Secretary General;

6.4. Two witness statements from CM (a colleague), whose identity is subject of a Restricted Reporting Order under rule 50 made by EJ Walker dated 14 February 2022;

6.5. Two witness statements from Jillian (Jill) Berry, Director of People & Organisational Development;

6.6. Ms Marie Struthers, Director EECARO;

6.7. Ms Natacha Sengo, HRBP.

7. All witnesses were subject to cross examination by the other party and questions from the Tribunal.

Findings of Fact

The parties

8. The Respondent is the International Secretariat of a campaigning organisation which comprises an international movement of supporters who campaign on human rights issues. The organisation was founded in 1961.

9. The Claimant commenced working on a fixed term contract with the Respondent as a Research and Campaign Assistant on 14 March 2005, moving onto a permanent contract as a Campaigner on 1 July 2005. On 1 January 2018, following a job description regrading, her role was upgraded to that of Senior Campaigner. She worked full-time at various stages. During the period material to this claim her contractual hours were 21 hours per week.

10. The Claimant has always worked within the Eastern Europe and Central Asian Regional Programme (EECARO). During the times material to this claim she had a particular focus on Belarus. She had historically focused on Belarus, Ukraine and Moldova but also included Central Asia.

11. The Claimant worked alongside research and other programme colleagues to devise and oversee campaigns focusing on various human rights violations in the former Soviet space, with regular travel to the region and cooperation with International Secretariat colleagues, Amnesty colleagues in Sections, regional and intergovernmental stakeholders.

Respondent's Grievance policy

12. The grievance policy contains the following provisions relevant to this claim:

> "Key principles:
>
> • All attempt should be made to resolve a concern informally, using dialogue and mediation, where possible." [156]
>
> Grievance – any concern, problems or complaints that employees raise with their employers.
>
> Informal process - the process all employees should attempt before making a formal grievance.
>
> Formal process - the process where grievances are formerly investigated and heard by a hearing manager within a set timeframe. This process has an appeal stage. [158]
>
> 6.4 Mediation will be considered as a means to resolve an informal grievance. The mediation process is outlined in the Mediation

> Policy (part of the Framework document of Employee Performance and Conduct Management Policies), and good practice on mediation will be followed

Mediation Policy

13. The Respondent's mediation policy contains the following:

> By giving everyone the opportunity to explain their side of the story, and to talk without being interrupted, mediation can be very helpful when a situation is stuck. S135
>
> It is not an 'easy option' - when people are honest and are encouraged to say what they feel, the situation can provoke strong emotions - but once people have had a chance to express their feelings, they are more likely to let their hostility go.

Prisoners of Conscience and Political Prisoners

14. Central to the Claimant's claim in this matter is designation by the Respondent of Russian opposition politician Alexei Navalny ("**AN**") as a "Prisoner of Conscience", frequently abbreviated to **POC**.

15. The designation of Prisoner of Conscience leads to the Respondent's highest level of campaigning support, typically directed toward the individual's unconditional release. This designation has been used by the Respondent organisation since its creation in 1961.

16. Individuals who are not designated Prisoners of Conscience may be designated "Political Prisoners". Political Prisoners may also receive some campaigning support from the Respondent, albeit that this might be a lower level of resources than might be devoted to a POC. A typical campaign would be for the designated political prisoner to receive a fair trial, rather than for unconditional release.

17. Dr Calamard in her oral evidence suggested that this "theoretical" distinction between POCs and Political Prisoners was not black and white. This supported by training materials in the agreed bundle suggest that there was a mandate change in 2001 which meant that the Respondent could campaign for the immediate release of prisoners even where they were not POCs [240]. That is confirmed by a chart on page 246 which suggests that Amnesty does sometimes call for the immediate release of some who is not a POC.

18. One historical example cited to us by the parties is Nelson Mandela who was not ultimately a Prisoner of Conscience during his lengthy prison sentence because he had advocated violence and this was connected to his prison sentence. Amnesty did nevertheless campaign on his behalf.

Definition of Prisoners of Conscience

19. Important background to the dispute in this case is an apparent variation over time in the definition of who can be a Prisoner of Conscience. The particular point of dispute is whether an individual who has advocated violence in circumstances unconnected to his imprisonment should be precluded from being designated as a Prisoner of Conscience.

20. The Claimant maintains that this is or should be the Respondent's policy which means that Mr Navalny should be precluded from POC status due to historic advocacy of violence.

21. The Respondent has vacillated in recent years on the correct definition to use, but ultimately decided to revert to version of its policy that did not preclude Mr Navalny being a Prisoner of Conscience. This is in reliance upon the following exclusion clause:

> "The fact that a person has used or advocated violence in circumstances entirely unconnected to his/her imprisonment will not exclude a person from adoption as a prisoner of conscience."

22. The Respondent has in submissions referred to this as the "codified" version of the policy. We have used that terminology in these written reasons purely for convenience, rather than placing any particular significance on the use of the word codified.

Evolution of POC policy

23. We received unchallenged oral evidence from Dr Agnes Callamard, the Respondent's Secretary General that this exclusion clause dates all the way back to the founding of the Respondent organisation in 1961.

24. There was a statement on policy in 1991. Page 200 of the agreed bundle is an internal policy document, relating to a guidance issued in 1991 and reads as follows:

> AI Index: ORG 52/01/88 and POL 21/01/89
>
> (Internal)
>
> FURTHER GUIDELINES ON THE VIOLENCE CLAUSE IN STATUTE ARTICLE l(a)
>
> [REFERRED RESOLUTION 1, 1987 ICM, ORG 52/Ol/88; IEC GUIDELINES, POL 21/01/89,
>
> AMENDED BY DECISION 14 OF THE 1991 ICM]
>
> 1. Amnesty International will not adopt persons as prisoners of conscience who have used or advocated violence against persons. Violence against a person consists of the use or threat of physical force aqainst a person.

> This is subject to the clarifications indicated below.
>
> 2. **The fact that a person has used or advocated violence in circumstances entirely unconnected to his/her imprisonment will not exclude a person from adoption as a prisoner of conscience**.
>
> [emphasis added]

25. That codified version continued into the 2000s. A document issued to Amnesty International members only in May 2002 contained the following:

> Guidelines on hate speech in determining prisoner of conscience status (amended January 2017) [210]
>
> [213] B. Pretexts
>
> Guideline four
>
> 4. Amnesty International will adopt as a prisoner of conscience a person who is imprisoned for advocacy of hatred where the reason for the person's imprisonment is, in reality, a pretext for imprisonment on other grounds in violation of the Amnesty International Statute. **The fact that a person has advocated hatred constituting incitement to discrimination, hostility or violence in circumstances entirely unconnected to his/her imprisonment will not exclude a person from adoption as a prisoner of conscience**.
>
> [emphasis added]

26. In February 2012 the Respondent's policy in this area was summarised as follows:

> Policy summary: Prisoners of conscience and violence February 2012
>
> 2. AI policy on violence and POCs, **in short**
>
> AI calls for the immediate and unconditional release of POCs -- people imprisoned solely because of their political, religious or other conscientiously held beliefs, ethnic origin, sex, sexual orientation, gender, gender identity, colour, language, national or social origin, economic status, birth, or other status, who have not used violence or advocated violence or hatred.
>
> 3. Key concepts
>
> Use of violence in this instance refers to the use or threat of physical force against another person or persons. Any person whose actions or statements precisely meet this description would be excluded from consideration as a POC. AI does not oppose violence per se; but imprisoning people for violent acts is not

> contrary to international law and standards and therefore people who have been convicted for use of violence cannot be PoCs.
>
> [emphasis added]

27. We see the phrase "in short" in bold above as being significant. It seems to us most likely that this highlights a truncated definition of the policy on violence which omits the exclusion clause. Dr Calamard hypothesised in her oral evidence that recent sensitivities and a degree of polarisation of political debate led to the exclusion clause not being replicated.

Alexei Navalny videos – early 2000s

28. The Russian opposition politician Alexei Navalny achieved some domestic and international prominence as a critic of President Putin, before being imprisoned in 2021. At that time he had millions of subscribers on his YouTube channel and he ran on a political platform which included an anti-corruption element aimed at the Kremlin.

29. Further back in Mr Navalny's political career, in the early 2000s ran on a nationalist, anti-immigration political platform, making statements and producing videos in support of this. Some of these statements the parties agree are repugnant. It is not in dispute that he has not recanted these earlier statements and videos, which are still available to view, although by the time of his imprisonment in 2021 he had not been making statements or videos of that nature for over a decade.

30. At the invitation of the parties the Tribunal viewed three videos available on YouTube dating from the early 2000s, which we describe here.

"Cockroach" video - 2007

31. The Claimant's description of and comment on a video made by Mr Navalny in 2007 is as follows:

> 48. In the video, AN presents himself as a 'certified nationalist'. He talks about how everyone knows how to deal with pests in the home, like cockroaches and flies. He goes on to ask what should one do if the cockroaches are too big (he uses the Russian word 'veliki' which means 'great',) or the flies too aggressive? As he says that, an image of Muslim men appears in a photograph behind him. I learned subsequently that the men are Chechen fighters. An actor then enters the same studio space as AN, wearing a long gown and Arab keffiyeh, clearly intended as a grossly stereotypical depiction of a Muslim. The actor moves towards AN who 'shoots' him. The actor 'falls dead' in front of AN who looks at the camera, holds up a gun and says, "In such cases, I recommend using a gun."

32. The Respondent's position on what appears to be the most notorious of Mr Navalny's videos is set out in the witness statement of Dr Calamard:

> 41. In the Cockroach Video, where Navalny adopts his mocking style, he uses the metaphor of no house being safe from flies or a cockroach infestation, and goes on to give 'advice' as to what to do when cockroaches and flies become too aggressive. During the video, whilst Navalny talks of flies and cockroaches becoming aggressive, there is an image in the background of Chechen insurgents. This still is not of 'generic' Chechen fighters or Muslim men (as I believe the Claimant suggests). The still is of Chechen warlords (Salman Raduev and his associates), who were widely recognized in Russia at the time as Chechen insurgents responsible for acts of terror, abductions and killings (Raduev was convicted and imprisoned for such crimes in 2002).
>
> 42. In the next scene, a cloaked figure approaches Navalny in an aggressive fashion, and Navalny goes on to shoot the figure, before calmly recommending the use of a handgun. The video closes with the slogan 'Yes to allowing firearms' (translated).
>
> 43. Whilst I understand that people have argued that this video is offensive and is offensive to Muslims, the unanimous view of the CIMT was that it was not a bar to Navalny being given POC status as it was wholly unrelated to his arrest and was made some 14 years before his arrest

33. There is not a substantial factual dispute about what can be physically seen on video. The difference between the parties is in the significance of what can be seen. The Claimant's position is that that this video is advocating violence against Muslims. She characterised this video to the Tribunal as a call to genocide against Muslims.

34. The position of the Respondent is that the context in which the video was made in 2007 is significant. At that time the Chechen warlord depicted was regarded as a terrorist responsible for the killing of Russians. While the Respondent does not defend the violence advocated, it does not share the characterisation put forward by the Claimant as a call to genocide, but rather a populist message against a common enemy, who happens to be Muslim. It is not accepted by the Respondent that the figure that appears to be shot by Mr Navalny is a "generic" Muslim, but specific known Chechens relevant to that ongoing dispute.

<u>"Dentist" video</u>

35. The Claimant describes another video from around the same period in her witness statement as follows:

> 49. In the video, AN is dressed as a dentist and likens the extraction of rotten teeth to the deportation of illegal immigrants while showing footage of migrants being arrested and deported. He says a tooth without roots is dead and that a nationalist is

> someone who doesn't want the word 'Russia' to lose its Russian roots. It is acknowledged that the word 'Russian' for AN referred to an ethnic rather than civic identity. The video ends with his appeal for people to "think about the future, become a nationalist.

36. In the subtitles in the version of this video viewed by the tribunal Mr Navalny says "Nobody should be beaten. Everything that bothers us should be carefully, but firmly removed via deportation". In short this video is unpleasant and anti-immigrant but stops short of advocating violence and does not appear to have any connection to Muslims.

"March" video

37. This 57 second video shows a variety of different shots of what appeared to be nationalist or neo-Nazi marches with participants in some cases making raised arm salutes and aggressively shouting slogans. At one stage a Nazi flag can be seen in a still shot. The subtitles suggest that at one stage marchers chant an offensive slogan about Allah.

38. Mr Navalny addresses the camera suggesting that his supporters should not be amazed and that he has attended the Russian March for 4 years. In that shot there are no obvious nationalist slogans or gestures visible.

39. A different video piece shows Mr Navalny against a red backdrop addressing a crowd using a microphone asking "Do they need to be afraid?" to which the crowd responds "yes". It is unclear exactly who the crowd is and to whom "they" refers.

40. The logo VXK appears in the corner of the screen. It is unclear to the Tribunal which person or organisation produced this video.

41. Superficially this video creates the impression that Mr Navalny is in the thick of a nationalist or neo-Nazi event and is an active participant in it.

42. Upon closer analysis the video and still images are cut in a disjointed way with many different shots of different people in various locations at different angles. It is difficult to say whether all of the footage relates to the same event or whether it was shot at the same time and which events or parts of events if any Mr Navalny himself was personally present at.

Racist violence in Russia in 2006-2007

43. The Claimant has cited to the Tribunal research which analyses racist violence in Russia:

> "52. In 2006 and 2007, Amnesty published reports on racist violence in Russia [pgs. 275 – 315] which cite "an alarming rise in attacks against those of non-Slav origin" and "a significant rise in the numbers of people from Central Asia and the Caucasus who have been killed," noting that "the rhetoric of xenophobic organizations is increasingly being adopted and manipulated by politicians and officials." The Moscow-based not-for profit

> organisation, Sova Centre, which monitors nationalism and racism in Russia, also noted an alarming rise in racist violence and killings in 2006/2007 .The 2006 reports cites qualitative changes as well as a 17% rise in racist violence referring to "the introduction of firearms and explosives" by perpetrators and also notes "the active and ubiquitous expansion of ethno-nationalism both in public life (even some politicians formerly regarded as "liberal" used nationalist rhetoric)." It describes as "disturbing" its findings of 2007 whereby "[R]acist violence continues to grow at a high rate, including, in addition to neo-Nazi skinhead attacks, numerous everyday violent conflicts triggered by ethnic and racial hatred."

POC status for Navalny (first occasion) – May 2021

44. In May 2012 the Respondent gave Alexei Navalny POC status, after he was sentenced to 15 days in prison for resisting police during mass protests in Moscow.

Earlier mediaition

45. In early 2020 there was mediation between the Claimant and Marie Struthers, Director of EECARO. That mediation was successful and was resolved by granting the Claimant's wish not to carry out research on Belarus but only to work on the campaigning part of the Respondent's work.

POC status for Navalny (second occasion) - September 2018

46. Again in September 2018 the Respondent gave Mr Navalny POC status following him spending 30 days under "administrative arrest" for attempting to exercise his right to freedom of expression and peaceful assembly by encouraging mass peaceful protests against the authorities in relation to corruption and pension reform.

Poisoning

47. On August 2020 Mr Navalny was poisoned with "novichok", a nerve agent. He received hospital treatment in Germany.

POC status for Navalny (third occasion) – January 2021

48. On 17 January 2021 Mr Navalny returned to Russia and was immediately detained. The Respondent again gave Mr Navalny POC status.

Change in policy on Navalny POC status

49. In February 2021 an internal decision at the Respondent was taken to stop referring to Mr Navalny as a Prisoner of Conscience in public communications.

50. We were told that this was initially designed to be a decision for internal policy only but it was leaked with the result that the Respondent decided to make a public announcement of its position as follows on 25 February:

> After painstaking consideration, we concluded that we had made a mistake in our initial determination. In making that determination, we had focused solely on the circumstances surrounding Navalny's unjust arrest and detention, and given insufficient weight to some of his previous comments which, as far as Amnesty is aware, have not been publicly renounced. We concluded that some of these reached the threshold of advocacy of hatred, at odds with our definition of a POC, and took an internal decision to refrain from using the term in future.
>
> …
>
> It is true that some of the old comments made by Navalny became more prominent after his latest arrest, in the context of a deliberate campaign by President Putin and his supporters to discredit Navalny. This does not change the fact that when Amnesty examined some of those statements, we found some of them to be at odds with our policies. As a matter of principle, we cannot ignore the evidence before us.

Crisis Incident Management Team

51. The reversal of the Respondent's policy on Mr Navalny's POC status caused a significant backlash from activists on social media with the result that on 15 March 2021 a Crisis Incident Management Team ("CIMT") was set up at Respondent to assess the effect of the February 2021 POC decision.

52. CIMT originally comprised of three section directors: Mariela Belski (Amnesty Argentina and on CLT movement representative), Colm O'Gorman (Amnesty Ireland), Markus Beeko (Amnesty Germany) and senior directors Rajat Kholsa (Senior Director, Research Advocacy and Policy), Thomas Shultz-Jagow (Senior Director, Public Engagement and Growth) and Julie Verhaar, the then Secretary General.

Dr Callamard joins Amnesty

53. On 30 March 2021 Dr Agnes Callamard joined Amnesty and replaced Julie Verhaar as Secretary General. She had previously worked in non-governmental organisations (NGOs), academia and the United Nations. She was a Special Rapporteur engaged by the United Nations investigating extra-judicial killings which included the attempted killing of Alexei Navalny using novichok. She told the Tribunal that she had met Mr Navalny on one occasion and had met his wife and lawyer while he was in a coma.

Second reversal of Navalny POC decision – public communication May 2021

54. On 6 May 2021 there was a leak of the Respondent's pending decision to reverse its policy on Mr Navalny's status again to recognise him again as a Prisoner of Conscience.

55. By a public communication on 7 May 2021 the Respondent reverted to referring to Mr Navalny as a Prisoner of Conscience in public communication. That communication, which was critical of Mr Navalny's previous statements was as follows:

> "In February, Amnesty took an internal decision to stop using the prisoner of conscience term for Navalny due to concerns relating to discriminatory statements he made in 2007 and 2008 which may have constituted advocacy of hatred.
>
> As a result of this episode, Amnesty has commenced a review of its overall approach to the use of the prisoner of conscience term. As an initial interim step, our approach has been refined to not exclude a person from designation as a prisoner of conscience solely based on their conduct in the past.
>
> We recognise that an individual's opinions and behaviour may evolve over time. It is part of Amnesty's mission to encourage people to positively embrace a human rights vision and to not suggest that they are forever trapped by their past conduct.
>
> Moreover, when Amnesty designates an individual as a prisoner of conscience, this in no way involves or implies the endorsement of their views. Amnesty only concurs with opinions that are specifically consistent with the protection and promotion of human rights. **Some of Navalny's previous statements are reprehensible and we do not condone them in the slightest.** As a human rights organisation, Amnesty will continue to fight racism and all forms of discrimination wherever they exist.
>
> This means that by confirming Navalny's status as a prisoner of conscience, we are not endorsing his political programme but are highlighting the urgent need for his rights – including access to independent medical care - to be recognised and acted upon by the Russian authorities.
>
> Navalny has not been imprisoned for any recognisable crime, but for demanding the right to equal participation in public life for himself and his supporters, and for demanding a government that is free from corruption. These are acts of conscience and should be recognised as such."
>
> [emphasis added]

Internal communication – 7 May 2021

56. On the same day, 7 May 2021 Agnes Callamard, communicated the following message internally to all employees, including the Claimant:

> We are taking all steps which we believe are required to move forward Amnesty in a position of strength and I thank you all for your cooperation. We have taken the decision to re-instate Alexei POC status on the basis of the 2002 policy on POC according to which we cannot exclude a person from designation as a Prisoner of Conscience because of their conduct in the past. **Some of Navalny's past comments are indeed reprehensible, discriminatory and racist. We do not condone them in any form**. The decision to reinstate his status is based on the violation of his human rights as spelled out in the 2002 Policy. We also acknowledged that we had failed in our duty of care to Alexei when we removed his POC status while he was already imprisoned under conditions we will later describe as torture.
>
> Moving forward and until and unless agreed otherwise, the 2002 policy is unequivocally the framework within which we should operate as far as the POC determination status is concerned. We will also be initiating a review of the POC policy status shortly. The Terms of Reference for this study have been drafted and should be approved shortly.
>
> [emphasis added]

Q&A

57. This document was supported by an internal Q&A document entitled "Amnesty International's decision to reinstate Aleksei Navalny as a Prisoner of Conscience" which contained the following guidance and words of explanation:

> Why has Amnesty International decided to reinstate Aleksei Navalny as a Prisoner of Conscience (POC)?
>
> Following extensive internal consultations, a painstaking review of relevant policies and practices, and in consideration of the threats facing Aleksei Navalny, it is Amnesty International's conclusion that his POC status should be restored.
>
> Amnesty International acknowledges that revoking Navalny's POC status in February was the wrong decision. We deeply regret that this decision called into question our intentions and motives at a critical time, and that it distracted from the urgent campaign for Navalny's release. Clarifying our stance by redesignating Navalny a POC is the right thing to do - nothing is more important right now than Navalny's freedom and wellbeing.
>
> Why was the decision to revoke Navalny's status wrong?

> In revoking Navalny's POC status, Amnesty failed in its duty of care to Aleksei Navalny, at a time when his life was at grave risk. Our decision to revoke the status - and our handling of the subsequent scrutiny of that decision - breached our duty to put the safety and wellbeing of the people we campaign for ahead of internal considerations.
>
> Secondly, while Aleksei Navalny has in the past engaged in what may amount to hate speech, we recognise that an individual's opinions and behaviour may evolve overtime. It is part of Amnesty's mission to encourage people to positively embrace a human rights vision and to not suggest that they are forever trapped by their past conduct. We were wrong to hold this past behaviour against determining his POC status today.
>
> So Navalny's appalling statements about migrants don't matter anymore?
>
> Some of Navalny's past comments are indeed reprehensible, discriminatory and racist. We do not condone them in any form. The decision to reinstate his status is based on the violation of his human rights and the grave risks currently posed on his life, not on his personal views or political positions.
>
> Our 2002 policy handbook defines a Prisoner of Conscience as:
>
> "A person imprisoned or otherwise physically restricted because of their political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language, national or social origin, economic status, birth, sexual orientation or other status -who has not used violence or advocated violence or hatred."
>
> However, the 2002 guidelines also permit the adoption as POCs of "Persons who have advocated hatred in circumstances entirely unrelated to their imprisonment.
>
> Unfortunately, over a period of time, these guidelines have been applied inconsistently when making POC decisions.

Internal meeting – 7 May 2021

58. Also on 7 May 2021 there was an internal meeting at the Respondent about the POC Decision. The Claimant and others attended this meeting.

59. The Regional Programme Director Marie Struthers accepts that at this meeting she made comments akin to ‘‘give Navalny the benefit of the doubt’’ and ‘‘allow that people change’’, again in support of explaining the decision taken by CIMT (which did not include herself) regarding the change in Mr Navalny’s POC status.

60. The Claimant at this meeting suggested that there was an inconsistency in the way Mr Navalny had been treated and articulated a view that had Mr Navalny been "black or brown" his historic conduct would be treated differently by the Respondent. This point was apparently conceded by EECAEO Director Ms Struthers in the meeting. Ms Struthers in her witness statement admits that she said that had Alexei Navalny been "black or brown" they would probably be "in another situation". She states that this was a busy and stressful day and does not accept the interpretation placed on her comment by the Claimant, i.e. that there was a clear discrepancy because of race and that Mr Navalny was being treated better because he is white.

Conversation 10 May 2021

61. On 10 May 2021 the Claimant spoke to her manager Bruce Millar and said that she was so distressed by the Navalny POC decision that she felt she had no option but to resign. She said she could see no way of working in a team and under the Respondent's leadership.

62. The Claimant did not resign however and after discussion with friends and family, she decided instead to lodge a grievance with the HR team

63. Mr Millar appears not to have understood that the Claimant was contemplating resignation, but did understand she was saying that she could not come into work and as a result suggested that she took a few days away from the office. This absence was treated as special leave.

13 May 2021 meeting

64. There was a further meeting on 13 May 2021.

65. The Claimant did not attend this meeting. Mr Miller forgot to make a recording as the Claimant had requested. We are told that the Claimant was provided with a minute of that meeting.

Grievance 27 May 2021 (alleged protected disclosure)

66. On 27 May 2021 the Claimant raised a grievance, which she contends amounted to a protected disclosure. This grievance included the following passages:

> "against what I believe to be a racist/Islamaphobic decision to give the highest status and promotion that the organisation is able to give to Aleksei Navalny who has advocated not just hatred and discrimination but also violence against Chechens (as well as hatred and discrimination against South Caucasians) and, by extension, Muslims.
>
> "As someone from a Muslim background, living in a Muslim community that is forced to navigate, on a daily basis, the Islamaphobia that has become so prevalent in the UK and elsewhere, this decision affects me personally. I work in the Eastern Europe and Central Asia Programme, the programme

> that includes the Russia team and I am aware that it is colleagues that I work with on a daily basis who have driven and support the decision to reinstate Aleksei Navalny's POC status. This has had a huge impact on my sense of well-being and safety in the team as I am deeply offended that my colleagues seem so at ease to promote, at the highest possible level, the case of a known nationalist and xenophobe who has advocated shooting dead Chechen men who, as Muslims, look and dress like the men in my family – my brother, nephews, cousins, uncles. **That advocacy of hatred and violence towards marginalised groups increases the risk of just those things manifesting in society has been well-documented**."

67. The part in bold (added for emphasis in these written reasons) in particular was said to be the protected disclosure, when read in context.

68. The Claimant added:

> "I am totally committed to my work at Amnesty International and very upset and distressed by the fact that I can see no way forward in continuing to work here unless this decision is reversed, publicly, with full and stated awareness
>
> …
>
> Finally, I would like to add that **I fully support AI's concern for Navalny and commitment to trying to secure his release**, but there many ways and tools to do this that do not require POC status and endorsement at the highest level of the organisation."
>
> [emphasis added]

Online meeting 28 May 2021

69. During the course of an online meeting on 28 May 2021, the Claimant shared a link to the "cockroach" video with colleagues on a exchange of comments made during the course of a Microsoft Teams meeting.

70. One colleague thanked the Claimant for asking these question and sharing the video Aisha Jung, which 7 colleagues electronically "liked". Another colleague commented "many of us agree with you" which 4 colleagues "liked". Another colleague wrote "Well said, Aisha", which was liked by 3 colleagues. Another colleague wrote "Thank you Aisha for your courage", which 2 colleagues liked.

71. Another colleague wrote "Thank you for this presentation and I fully second Aisha's outrage at the paradox of reinstating the POC status of Nalvany while saying we are making efforts to become an anti-racist organisation. An additional question: when will the staff be provided with the Navalny incident review (redacted or summarized report)?" (5 colleagues liked this)

72. The Claimant herself then made the comment "As someone from a Muslim background I do not feel safe in this organisation".

Kyle Ward considers the Claimant's resignation

73. The Claimant's email dated 27 May 2021 was referred to Mr Kyle Ward, the Deputy Secretary General. In an email 4 June 2021 Mr Ward suggested that the Respondent

> "accepted her resignation. She has thrown down the gauntlet, and we have no need or interest in entering into further debate"

74. He explained that the gauntlet being thrown down was that she could not abide the policy with regard to POC status for Mr Navalny.

75. Mr Ward was given advice that it would not be an appropriate approach for the Respondent or in UK more generally to treat this as a resignation. This advice was given in the context of Mr Ward having worked for the majority of his career in the United Nations and outside of the UK. Mr Ward accepted the advice given to him and accordingly the Claimant was not treated as having resigned.

76. We accept Mr Ward's evidence that he then had no further involvement in the matter until he dealt with the Claimant's appeal following year. We do not accept the case put forward on behalf of the Claimant that Mr Ward's communication thereafter set the tone or determined the Claimant's ultimate fate.

Special leave, sick leave and Claimant's communication to colleages

77. After the Claimant's email of 27 May 2023 she was given in effect special paid leave for a period. She did not attend work.

78. On 8 June 2021, Bruce Millar the Claimant's line manager made enquiries about whether she could be offered counselling.

79. On 10 June 2021 the Claimant went from special leave onto sick pay. She wrote to her team by email in the following terms:

> "It is important for me that, as colleagues I work with regularly, you also know exactly why I am not at work.
>
> I have been signed off work by my doctor for work-related stress which has arisen following Amnesty's decision to reinstate Navalny's POC status. As someone from a Muslim background, living and loving in a Muslim community already preoccupied with navigating Islamaphobia on a daily basis, I find it deeply offensive and distressing that AI is endorsing, at the highest possible level of our organisation, the case of a known nationalist and xenophobe who has referred to Chechens as 'giant cockroaches' before advocating shooting them dead. I refer to the video that Navalny made in 2007: [*Link to Cockroach video*]
>
> As I have pointed out, the 'giant cockroaches' that Navalny refers to look like the men in my family: my brothers, nephews, uncles

> and elders. The actor made to represent a Chechen (who Navalny 'shoots dead') is clearly intended to look like a Muslim. Chechen's are not associated particularly with keffiyehs and it is clear to most audiences that the actor who is 'shot dead' is intended to represent a Muslim man, albeit a grotesquely racist representation of one.
>
> Navalny, nor his team, have apologised for, withdrawn or redressed this video or any of the racist and xenophobic statements he is on record for making. The correlation between such advocacy of violence, dehumanising hatred and discrimination to real life attacks against those demographics is documented and established.
>
> Those closer to me know very well how strongly I feel about the traumatic ongoing situation in Belarus and my total commitment to our work there and the close and trusting relationship I have built with partners there over 15 years.
>
> I am devastated that at this critical time in Belarus' history, I do not feel able to continue to do my job. I cannot square who I am with working for an organisation and with individuals who agree with the decision despite Navalny's advocacy of violence towards Muslims. My sick-leave is a preventive measure to protect my emotional and psychological well-being from this Islamphobia, as well as to honour my ethical values.
>
> We all experience privilege in different ways with greater or lesser degrees of self-awareness. In this instance, I do not have the privilege of ignoring, justifying or accommodating the decision on Navalny.
>
> Thank you to all those who have expressed support and solidarity with me. It continues to be a very difficult time and I appreciate it.

Policy clarification

80. In an internal document dated 3 June 2021 it was suggested that the definition of POC should be revised to make clear that the bar on those who had used violence or advocated violence or hatred should only relate to the circumstances leading to imprisonment. In this document it is suggested that this does no more than make clear what policy already is.

Grievance investigation

81. On 23 June 2021 a grievance investigation meeting was held by Ms Jyoti Parmar HRBP who led the meeting. Natacha Sengo attended to take a note.

82. The following month on 14 July 2020 the Claimant provided some detailed notes of the matters that she was “pretty sure” had been covered in this meeting. Her additions to Ms Sango’s notes appear in mauve.

83. On 29 July 2021 the Respondent wrote to the Claimant, having taken external advice, to explain that her complaints about the POC decision could not be dealt with as employee grievance. The scope of the investigation was set out. The scope included first, the effect communicating the decision to treat Alexei Navalny as a 'Prisoner of Conscience' had on the Claimant, and in particular whether the manner of this communication had the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for her and for other employees of her faith or ethnic origins. Second was the Claimant’s complaint that she felt "gas lighted" when she tried to raise her concerns about the decision with her team. Third, was the Claimant’s complaint that one of her managers (historically) made a comment about her family supporting ISIS, and his comments at the meeting on 7 May 2021.

84. On 9 August 2021 the Claimant stated that she does not wish to progress the grievance with these parameters given that the grievance being pursued by the Respondent “isn’t mine”. She went on:

> “My grievance is that the decision to reinstate his [AN’s] status was taken and then promoted at the highest possible level of the organisation (that of the SG personally) despite him producing videos advocating violence ("I recommend using a gun") towards Muslims - having described Chechens as "giant cockroaches".
>
> It is the decision that has left me feeling unsafe and discriminated against - not how it was communicated.”

85. She further clarified:

> “The issues of feeling gas lighted, having managers previously make Islamaphobic statements towards me or the issue of the meeting on Eid are secondary and not issues I would necessarily pursue a grievance over.”

86. In an email dated 20 August 2021 Ms Sengo wrote on behalf of the Respondent to the Claimant explaining that the Claimant’s grievance was not being proceeded with but an investigation would continue in any event.

87. On 23 September 2021 the Claimant wrote to the Respondent restating that her complaint is about the POC Decision.

88. On 1 October 2021 Ms Sengo wrote to the Claimant to reiterate that the POC Decision could not be dealt with as employee grievance. Ms Sengo invited the Claimant to meeting with external investigator Mr Michael Gibbs regarding the other elements of complaint.

Company

89. On 2 September 2021 the Claimant incorporated a company Pledge to Boycott Ltd as a Director.

Early conciliation ACAS

90. On 8 September 2021 an ACAS Early Conciliation certificate was issued.

Investigation/mediation

91. The Claimant's criticises the Respondent for failing to offer the Claimant a mediation rather than investigating the matter using Mr Gibbs, the external investigator. The Respondent's position is that the judgement of HR is that mediation would not work in this situation.

92. The point about mediation in this litigation is something that developed during the course of the hearing before us, having been raised in recent weeks by the Claimant's new solicitor who purported to amend the list of issues to include failure to mediate as part of the failure to follow the grievance procedure.

93. In her second witness statement at paragraph 84 the Claimant said:

> "I myself of course could have requested mediation given that I had been through the process successfully before. I can honestly say that it did not occur to me at any stage. On reflection, I believe this is because I was taking my lead from HR and their correspondence and my attention and energy was fully focused on that and on navigating all of the new stages of this whole process, as well as just trying to manage my day-to-day life with three kids, study and my emotional and mental health which has suffered so much."

94. On 5 October 2021 the Claimant did not attend a meeting with Mr Gibbs.

First Tribunal Claim

95. On 7 October 2021 the Claimant presented the first of two Employment Tribunal claims, with case number 2206526/2021.

Sick pay

96. On 3 December 2021 the Claimant's sick pay was reduced to half her ordinary salary.

Occupational Health report – 8.12.21

97. An occupational health report was prepared by Dr J. R. B. Cooper, Consultant Occupational Health Physician dated 8 December 2021. Dr Cooper reported that the Claimant was fit to work and said as follows:

> ' I do not believe any adjustments to the role will enable Aisha to return to work, although if the legal situation can be resolved, she may then be fit to start back again.' (569-572)

Communication about sick pay

98. On 17 January 2022 the Respondent wrote to the Claimant confirming that her sick pay was to end due to Occupational Health report findings, noting the conclusion that the Claimant was neither sick nor unfit to work.

Ukraine

99. On 22 February 2022 Russia military forces invaded Ukraine. This caused a significant workload for the EECARO team.

Return to work

100. On 17 March 2022 a return to work meeting was held to discuss how to facilitate the Claimant's return to work. In attendance were her manager Bruce Millar Acting Deputy Regional Director, the Claimant, Chris Chapman, Researcher and Policy Advisor attending as a workplace colleague and Betel Temelso, HR Advisor (for HR Support and taking notes).

101. The Claimant explained that her team continued to work on the Mr Navalny case, some of whom had openly made known their support of Mr Navalny whilst others, she felt implied their support of Mr Navalny through their silence. AJ said she accepted the difficulty of her proposals on BM and understands it is not possible for her to individually say who she can and cannot work with but described that she does not feel safe and is deeply offended and isolated.

102. The Claimant proposed the following "adjustments":

    102.1. To work in complete isolation from the EECARO team, only maintain a single point of contact with her line manager, BM, and limit work interactions to section colleagues and/or external partners.

    102.2. Not to attend any EECARO team meetings, or any other meetings where EECARO colleagues would be present .

    102.3. To not receive or be included in any group emails shared from or between any member of the EECARO team.

Termination

103. On 27 March 2022 the Claimant confirmed by email that she could not return to her job whilst the POC Decision was in place. She wrote:

> "I have decided, on reflection, that I simply can't see a way of returning to do my job and feel safe while the decision on Navalny's POC reinstatement remains in place."

104. Ms Sengo of the Respondent wrote back to the Claimant on 4 April 2022 as follows:

> As you know the decision to reinstate POC status to Navalny is not presently under discussion or review in any forum and the Employment Tribunal does not have the authority to overturn an internal organisational decision such as this. Therefore it is difficult to see how you can return to work in any capacity and as such we need to arrange a follow up meeting with you as soon as possible to discuss your ongoing employment, including the possibility of termination of your employment.

Claimant's disability

105. From 27 April 2022 onward the Claimant's mental impairments of work-related stress and anxiety amounted to a disability.

106. This was confirmed by Employment Judge Havard in a judgment promulgated on 20 February 2023.

Meeting to discuss termination

107. On 27 April 2022 there was a meeting to discuss Claimant's on-going employment. At this meeting, Mr Millar summarising the position, namely that the Claimant said she could not see a way of her returning to work whilst Amnesty maintained the POC Decision and that she would find it difficult to work with or under the leadership of Amnesty. She confirmed that this remained her position.

Dismissal

108. On 9 May 2022 Mr Millar wrote to the Claimant confirming her dismissal on notice in view of the Claimant's position that she could not see a way of returning to employment with the Respondent, that she felt unsafe. He stated that there had been a breakdown in trust and confidence.

Appeal against dismissal

109. Initially, the Claimant wrote in an email dated 16 May 2022 confirming she would not be appealing the dismissal. On the following day, 17 May 2022 the Claimant confirmed she would be appealing the decision to dismiss. She wrote:

> "To reiterate the points I have already raised, Amnesty's decision made me feel unsafe and at risk and this has impacted my health and ability to work. Amnesty may not consider my proposal's for

> returning to work as practical but I never envisaged that my long-term employment would be terminated. I had hoped that alternatives would be presented for me to consider and having failed to do so, I considered the position to be irreconcilable.
>
> I was left with no option but to seek recourse from the Tribunal especially as the grievance procedure was not followed."

Second Tribunal Claim

110. On 26 May 2022 the Claimant presented a second claim to the Employment Tribunal (claim number 2203151/2022).

111. The Claimant's GP Dr Michael Calais wrote on 20 June 2022 about her:

> "I can confirm she has recently been suffering from rising levels of severe anxiety and stress, which is affecting her sleep, and interfering with her normal day-to-day activities and ability to function as usual. She has had numerous appointments at this surgery regarding this, and has been signed off work until at least August (see copy of current Fit Note attached)".

Detailed grounds of appeal and assertion of disability

112. In preparation for the appeal hearing in an email dated 22 June 2022 the Claimant submitted a more detailed grounds of appeal against the decision to dismiss her by letter of 9 May 2022.

113. In that letter she highlighted that she did not accept the Occupational Health Report. She referred to medical notes covering the duration of her absence, through which her doctor had confirmed the impact to her health and inability to work.

114. She stated "The long-term nature of my symptoms, and impact, amount to a disability for the purpose of law" and "no reasonable adjustments have been made".

115. She complained that her grievance and protected disclosure had been ignored, she felt discriminated against and that she felt "unsafe".

Mr Ward's response

116. On 22 June 2022 Kyle Ward wrote to the Claimant:

> "Dear Aisha - As you are aware I am due to be hearing your appeal later today. I have just been advised that you have submitted evidence from your GP to the Employment Tribunal to say that you are unable to attend the ongoing Tribunal hearing listed at the start of July on the basis of anxiety. I am therefore quite concerned about proceeding this morning without some

> assurance that you can attend a formal meeting such as an appeal and on this basis I am postponing the meeting.

Appeal hearing

117. The appeal hearing took place on 15 July 2022, held by Mr Ward. Also in attendance were the Claimant, Emma Codd, HRBP (notetaker) and Chris Chapman (companion to the Claimant).

118. In that hearing, the Claimant said that she would not return to work whilst the POC decision remained in place. As to the Respondent's decision not to consider the POC decision as part of the Claimant's grievance, the Claimant said [689]:

> AJ – The onus here should not be on me. Amnesty is responsible because it is maintaining its support for a neo-Nazi. I'd be working in a team that does not make me feel safe. I don't see a possible return as Amnesty doesn't see any way of reconsidering this position. Therefore, I don't feel safe. Given Amnesty's history and policy, how can it be possible to justify a decision that flies in the face of Amnesty standards? I don't think anyone would feel safe in this case. If we had a LBQT person who had to face a decision where someone had openly supported shooting gay people, would they feel safe? I don't believe that they would. I've been working in some way for Amnesty since I was 15 years old and I've never known a case like this. I knew about plenty of cases against violence, but here it simply isn't the case, it's a one-off. Amnesty will stand by it, so yes, I don't feel safe. I don't feel safe with people who support someone who has so explicitly advocated xenophobia and nationalism and neo-Nazism.

119. Mr Ward acknowledged the Claimant's position, but declined to discuss the policy. The discussion went on as follows:

> KW – If the policy is not on the table for reconsideration, do you feel that it is impossible to return to work? Is this a fundamental issue to your being able to work?
>
> AJ – Yes, it is because I don't feel safe. This is why the Tribunal is important as this will discuss the discrimination against me.
>
> KW – It seems that this is an impasse, isn't it. The Tribunal is a separate matter and will not have any jurisdiction over the policy of Amnesty, so I'm not sure how that will impact us?
>
> ….
>
> KW – So until that decision is reached and the policy is reversed you don't feel you can return to work?

"AJ – I really did try to think about it again. When the Ukraine war broke out I really wanted to help, but whilst I was going over the notes I realised that there was no way that I can feel safe, I couldn't see how that would be possible with the same team and leadership.

KW – OK I think I'm clear on that point. Please can you explain the Protected Disclosure point in your appeal. You say it is yet to be addressed. What is it please?

AJ – The whistle blowing about Amnesty making this decision and its impact on Muslims has not been addressed and Amnesty are refusing to progress it.

KW – Whistleblowing to the Tribunal?

AJ – I called this out and it is in the public interest.

KW – So we are back to the same point, that the only way that this can be dealt with is by withdrawing the policy?

AJ – Yes

KW – Is there anything else or any way that we could come to some arrangement that would enable you to return to work pending the Tribunal?

AJ – I would really, really, really love to say that there is because I want to be doing my job, but I can't imagine the stress it would cause me to switch on and be online with colleagues who would support such a decision, so unfortunately not."

120. The Claimant agreed that it was a fundamental issue to her being able to work because she didn't feel safe. She said that she didn't see how a way back was "possible with the same team and Amnesty leadership" [FB/694].

Appeal outcome

121. By a letter dated 2 August 2022 Mr Ward confirmed that the decision to dismiss was upheld.

Termination of employment

122. The effective date of termination was 9 August 2022.

THE LAW

PROTECTED DISCLOSURE LEGISLATION

Protected disclosure detriment ("whistleblowing")

123. The Employment Rights Act 1996 contains the following provisions:

> 43B Disclosures qualifying for protection.
>
> (1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following-
>
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,
>
> 47B Protected disclosures.
>
> (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.
>
> 48.— Complaints to employment tribunals
>
> (1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.
>
> (2) On a complaint under subsection … (1A) … it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

124. The burden of proving each of the elements of a protected disclosure is on a claimant (*Western Union Payment Services UK Ltd v Anastasiou*, 13 February 2014 per HHJ Eady QC at [44]).

Disclosure

125. In *Kilraine v London Borough of Wandsworth* [2018] ICR 1850 the Court of Appeal held that a sharp distinction between "allegations" and "disclosures" which appeared to have been identified in earlier authorities was a false dichotomy, given than an allegation might also contain information tending to show, in the reasonable belief of the maker, a relevant failure. At [35], Sales LJ said:

> "In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a **sufficient factual content and specificity** such as is capable of tending to show one of the matters listed in subsection (1)."
>
> [emphasis added]

Reasonable belief in relevant failure

126. A belief may be wrong but nevertheless reasonable. In the case of *Babula v Waltham Forest College*, [2007] ICR 1026 CA, Wall LJ held as follows:

> 41. *Darnton's case* [2003] ICR 615 seems to me clear authority for the proposition that whilst an employee claiming the protection of section 43(1) of ERA 1996 must have a reasonable belief that the information he is disclosing tends to show one or more of the matters listed in section 43B(1)(a) to (f) , there is no requirement upon him to demonstrate that his belief is factually correct; or, to put the matter slightly differently, his belief may still be reasonable even though it turns out to be wrong. Furthermore, whether or not the employee's belief was reasonably held is a matter for the tribunal to determine.

127. Later on:

> 79. It is also, I think, significant that section 43B(1) uses the phrase "tends to show" not "shows". There is, in short, nothing in section 43B(1) which requires the whistleblower to be right. At its highest in relation to section 43B(1)(a) he must have a reasonable belief that the information in his possession "tends to show" that a criminal offence has been committed: at its lowest he must have a reasonable belief that the information in his possession tends to show that a criminal offence is likely to be committed. The fact that he may be wrong is not relevant, provided his belief is reasonable, and the disclosure to his employer made in good faith (section 43C(1)(a))
>
> …
>
> 82. In this context, in my judgment, the word "belief" in section 43B(1) is plainly subjective. It is the particular belief held by the particular worker. Equally, however, the "belief" must be "reasonable". That is an objective test. Furthermore, like the appeal tribunal in Darnton , I find it difficult to see how a worker can reasonably believe that an allegation tends to show that there has been a relevant failure if he knows or believes that the factual basis for the belief is false. In any event, these are all matters for the employment tribunal to determine on the facts.

128. Whether a belief is reasonable is to be assessed by reference to "what a person in their position would reasonably believe to be wrongdoing": *Korashi v*

Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4 per Judge McMullen QC at [62]. In that case Mr Korashi was a specialist medical consultant and an assessment of what was reasonable needed to be by reference to what someone in that position would reasonably believe.

Burden of proof

129. There is an initial burden of proof on a claimant to show (in effect) a *prima facie* case that she has been subject to a detriment on the grounds that she made a protected disclosure. If so, the burden passes to a respondent to prove that any alleged protected disclosure played no part whatever in the claimant's alleged treatment, but rather what was the reason for that alleged treatment. Simply because the respondent fails to prove the reason does not act as a default mechanism so that the claimant succeeds. The tribunal is concerned with the reason for the treatment and not a quasi-reversal of proof and deemed finding of discrimination i.e. there is no mandatory adverse inference mechanism (*Dahou v Serco Ltd* [2017] IRLR 81, CA).

Public interest

130. The Court of Appeal in *Chesterton Global Ltd & Anor v Nurmohamed & Anor* [2017] EWCA Civ 979 confirmed that public interest does not need to relate to the population at large, but might relate to a subset, in that case a category of managers whose bonus calculation was negatively affected. It seems that it cannot simply relate to the interest of the person making the disclosure. The following guidance was given on that case as to reasonable belief in the public interest:

> "27. First, and at the risk of stating the obvious, the words added by the 2013 Act fit into the structure of section 43B as expounded in Babula (see para. 8 above). The tribunal thus has to ask (a) whether the worker believed, at the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable.
>
> 28. Second, and hardly moving much further from the obvious, element (b) in that exercise requires the tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest; and that is perhaps particularly so given that that question is of its nature so broad-textured. The parties in their oral submissions referred both to the "range of reasonable responses" approach applied in considering whether a dismissal is unfair under Part X of the 1996 Act and to "the Wednesbury approach" employed in (some) public law cases. Of course we are in essentially the same territory, but I do not believe that resort to tests formulated in different contexts is helpful. **All that matters is that the Tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. That does not mean that it is illegitimate for the tribunal to form its own view**

> **on that question, as part of its thinking – that is indeed often difficult to avoid – but only that that view is not as such determinative**.
>
> 29. Third, the necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his head at the time he made it. Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, **in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable**.
>
> 30. Fourth, while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it: otherwise, as pointed out at para. 17 above, the new sections 49 (6A) and 103 (6A) would have no role. I am inclined to think that the belief does not in fact have to form any part of the worker's motivation – the phrase "in the belief" is not the same as "motivated by the belief"; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it."
>
> [emphasis added]

Causation

131. The causation test in a claim of public disclosure *detriment* is whether the alleged protected disclosure played more than a trivial part in the Claimant's treatment (*Fecitt v NHS Manchester (Public Concern at Work intervening)* [2012] ICR 372, CA).

DISCRIMINATION – EQUALITY ACT

132. Section 26 of the EqA provides:

> 26 Harassment
>
> (1) A person (A) harasses another (B) if—

> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
>
> (b) the conduct has the purpose or effect of—
>
> (i) violating B's dignity, or
>
> (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
>
> 136 Burden of proof
>
> (1) This section applies to any proceedings relating to a contravention of this Act.
>
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
>
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

133. In *Richmond Pharmacology v Dhaliwal* [2009] ICR 724 the EAT (Underhill, P) emphasised both the subjective and objective elements of a claim of harassment under section 26. There is a minimum threshold and following guidance was given at paragraph 22:

> "it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase"

Religious belief

134. The IDS handbook on discrimination provides the following guidance on "Genuineness of belief" for the purposes of a claim brought under the Equality Act 2010 on the basis of religion or belief:

> "11.33 As a general rule, tribunals should not impose too high a hurdle when it comes to the need for proof of actual adherence, particularly in cases based on the assertion of religious beliefs. In R (Williamson and ors) v Secretary of State for Education and Employment 2005 2 AC 246, HL — a case concerned with the interpretation of Article 9 ECHR (see 'European Convention on Human Rights — scope of Article 9' above) — Lord Nicholls observed: 'When the genuineness of a claimant's professed belief is an issue in the proceedings, the court will enquire into and decide this issue as a question of fact. This is a limited enquiry. The court is concerned to ensure an assertion of religious belief is made in good faith… But, emphatically, it is not for the court to embark on an enquiry into the asserted belief and judge its

> "validity" by some objective standard such as the source material upon which the claimant founds his belief or the orthodox teaching of the religion in question or the extent to which the claimant's belief conforms to or differs from the views of others professing the same religion. Freedom of religion protects the subjective belief of an individual.' In other words, while the courts can legitimately be concerned with whether or not the claim of religious belief is made in good faith, they should not concern themselves with whether the religious belief in question is a good faith in terms of judging the validity of that faith"

135. In *Bakkali v Greater Manchester Buses (South) Ltd* (t/a Stagecoach Manchester) [2018] ICR 1481, the EAT upheld a finding that a comment 'Are you still promoting IS' was not related to race or religion or belief when understood in context, and therefore was not unlawful harassment.

136. HHJ Auerbach sitting in the Employment Appeal Tribunal explained in *Tees Esk and Wear Valleys NHS Foundation Trust v Aslam and another* [2020] IRLR 495 at [21] the conduct must be found to relate to the protected characteristic itself. At paragraph 25 he said:

> 'Nevertheless, there must be still, in any given case, be some feature or features of the factual matrix identified by the Tribunal, which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim. In every case where it finds that this component of the definition is satisfied, the Tribunal therefore needs to articulate, distinctly and with sufficient clarity, what feature or features of the evidence or facts found, have led it to the conclusion that the conduct is related to the characteristic, as alleged. Section 26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise.'

Direct discrimination

137. We have considered the guidance set out in *Barton v Investec Henderson Crosthwaite Securities Ltd* [2003] ICR 1205, EAT, as approved and revised by the Court of Appeal in *Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases* [2005] ICR 931, CA.

138. We have also considered *Nagarajan v London Regional Transport* [1999] IRLR 572, *Madarassy v Nomura International plc* [2007] IRLR 246 CA, *Ayodele v Citylink Ltd* [2017] EWCA Civ 1913. In *Hewage v Grampian Health Board* [2012] ICR 1054, SC in which Lord Hope endorsed the following guidance given by Underhill P in *Martin v Devonshires Solicitors* 2011 ICR 352, EAT:

> "'the burden of proof provisions in discrimination cases… are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination — generally, that is, facts about the respondent's motivation… they have no bearing where the tribunal is in a position to make positive findings on the evidence one way or the other, and still less where there is no real dispute about the respondent's motivation and what is in issue is its correct characterisation in law'.

139. In *Madarassy v Nomura International plc* 2007 ICR 867 CA Lord Justice Mummery held as follows:

> "The court in Igen v. Wong expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination." (para 56)

140. In *Glasgow City Council v Zafar* 1998 ICR 120, HL, Lord Browne-Wilkinson said that in the context of a discrimination claim 'the conduct of a hypothetical reasonable employer is irrelevant. The alleged discriminator may or may not be a reasonable employer. If he is not a reasonable employer he might well have treated another employee in just the same unsatisfactory way as he treated the complainant, in which case he would not have treated the complainant "less favourably".' He approved the words of Lord Morison, who delivered the judgment of the Court of Session, that 'it cannot be inferred, let alone presumed, only from the fact that an employer has acted unreasonably towards one employee, that he would have acted reasonably if he had been dealing with another in the same circumstances'. It follows that mere unreasonableness may not be enough to found an inference of discrimination.

Reasonable adjustments

141. The duty to make reasonable adjustments is defined in sections 20 and 21 of the Equality Act 2010.

142. In considering reasonable adjustments claims, tribunals are required to have an analytical approach (*Environment Agency v Rowan* [2008] ICR 218). The correct approach is to identify (i) the Provision Criterion or Practice ("PCP") said to cause disadvantage; (ii) non-disabled comparators, where appropriate, (iii) the nature & extent of substantial disadvantage. This is in order to consider the extent to which taking the step would prevent the effect in relation to which a duty was imposed.

143. Regarding PCPs, in *Ishola v Transport for London* [2020] EWCA Civ 112, the Court of Appeal confirmed that one off events are not necessarily provisions

criteria nor practices (i.e. PCPs) and must be examined carefully to see whether it could be said that they are likely to be continuing.

Unfair dismissal

144. Section 98 of the Employment Rights Act 1996 provides as follows:

> 98 General
>
> (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
>
> (a) the reason (or, if more than one, the principal reason) for the dismissal, and
>
> (b) that it is either a reason falling within subsection (2) or **some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held**.
>
> …
>
> (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
>
> (b) shall be determined in accordance with equity and the substantial merits of the case.
>
> [emphasis added]

CONCLUSIONS

Unfair dismissal (Employment Rights Act, 1996 section 94 & 98)

Dismissal

145. *Was the Claimant dismissed?*

146. It is not in dispute that the Claimant was dismissed.

Reason for dismissal

147. If so, what was the reason or principal reason for dismissal?

148. The Respondent relies on some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

149. The Claimant says that the reason was automatically unfair and/or discriminatory, as set out below.

150. *Was the reason or principal reason for dismissal a potentially fair reason?*

151. We find that the reason for dismissal were circumstances amounting to some other substantial reason, which was a potentially fair reason.

Reasonable to dismiss (substantive decision to dismiss)

152. *Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?*

153. We find that in the circumstances the decision to dismiss fell within the range of reasonable responses. The Claimant refused to return to work then confirmed in an email dated 27 March 2022 that she could not return to work. This was a genuine breakdown in the relationship falling within the category some other substantial reason.

Procedure

154. The Tribunal considered whether it was appropriate that Kyle Ward was the appeal officer. We find that his prior involvement with the Claimant was very limited and somewhat historic and did not take the procedure adopted outside of the range of reasonable responses.

Public interest disclosure (PID) (Employment Rights Act section 47B)

PROTECTED DISCLOSURE

155. *Did the Claimant make one or more protected disclosures (ERA sections 43B)?*

156. The Claimant relies on her grievance 27 May 2021.

157. *Did that grievance amount to a protected disclosure, in particular*:-

158. Was it a disclosure of information which in the reasonable belief of the Claimant was made in the public interest and tended to show that the health or safety of any individual has been, is being or is likely to be endangered **(s43B(1)(d))**? We have considered each of the necessary elements below.

Disclosure

159. *Was there a disclosure of information?*

160. It was suggested in submissions on behalf of the Respondent that the disclosure was the first complete sentence on page 529 i.e. “That advocacy of hatred and violence towards marginalised groups increases the risk of just those things manifesting in society has been well-documented.”

161. The Tribunal does not consider that this sentence encapsulates the full disclosure. We have carefully checked the pleadings to understand the basis of the claim. The particulars of claim at paragraph 14 states "the Claimant reasonably believes that **the Respondent endorsement of Mr Navalny**, **was likely to increase the risk of Muslims being at risk of violence**, especially in the programme she worked with i.e. the former Soviet Countries" [emphasis added]

162. The first complete sentence on page 529 must be read in the context of the first three paragraphs of the grievance [528 - 529] - the key elements of which are that the Respondent had given

> "the highest status and promotion that the organisation is able to give to Aleksei Navalny who has advocated not just hatred and discrimination but also violence against Chechens (as well as hatred and discrimination against South Caucasian) and, by extension, Muslims."

163. In summary we find, considering the pleaded claim and the complete grievance document that the disclosure of information was that the Respondent had granted Prisoner of Conscience status to Mr Navalny, who had advocated violence against Chechens (as well as hatred and discrimination against South Caucasian) and, by extension, Muslims.".

164. It is irrelevant that the Respondent already knew of the content of this statement.

165. This has lead us to the conclusion that there was a disclosure of information.

Belief in health and safety endangered

166. *Did the Claimant believe that this tended to show that the health or safety of any individual had been, was being or was likely to be endangered?*

167. The Claimant was not challenged on the basis that she did not believe that the health and safety of Muslims was endangered. In any event the Tribunal finds that the Claimant did have this belief.

Was belief that health and safety endangered reasonable?

168. The Tribunal must consider whether this belief was reasonable.

169. A belief may be wrong but nevertheless reasonable. Different employees may hold different beliefs based on the same information and still be reasonable. It is not for the Tribunal to substitute its own view as to the belief to be drawn from the relevant disclosure. Nevertheless what is reasonable is objective (*Babula*). It follows that there must be some reasonable logic to it.

170. In order for Muslims to be endangered by the Respondent's re-designation of Alexei Navalny as Prisoner of Conscience, the Claimant must have believed that increasing the designation of Mr Navalny from political prisoner (the category below) to POC, would have the effect of increasing the likelihood of violence towards Muslims.

171. The Tribunal accepts that *in general terms* it was reasonable of the Claimant to believe that prominent people advocating violence or hatred toward Muslims had the potential to increase the likelihood of violence against that group. Further, as a leading opponent of President Putin with a domestic and international profile, we find that Alexei Navalny was someone with sufficient prominence to mean that his public statements were capable of influencing others.

172. There are five reasons, however, why we do not find that the belief in this case that redesignation of Mr Navalny as a POC in May 2021 would cause violence was reasonable.

173. First, the Tribunal received evidence that political prisoners would still receive the benefit of campaigning, albeit not at the highest profile that the Respondent organisation could provide. This must have been known to the Claimant. The redesignation of Mr Navalny as POC was therefore no more than a marginal increase in the level of campaigning and profile given to his case.

174. Second, in her grievance the Claimant stated that she “fully supported” trying to secure Mr Navalny's release [531]. Given the vehemence with which she expressed her concern about the risk of violence to Muslims, the Claimant would not have expressed this support if she believed that Mr Navalny’s release would lead to a likelihood of violence against Muslims. It follows that it was purely the redesignation in itself not Mr Nalvany’s release that she believed would lead to a risk of violence against Muslims.

175. Third, there is no evidence to suggest that redesignation within the Respondent’s categorisation of campaigning level had ever previously led to violence. This was not the first occasion that Mr Navalny had been designated as a Prisoner of Conscience. He had been designated as a Prisoner of Conscience in 2012, 2018 and in January 2021 before the final decision to redesignate him on 7 May 2021. It is not clear to the Tribunal that the Claimant had a detailed grasp of events going back to 2018 or 2012. The most recent vacillation on Mr Navalny’s POC status in 2021 must have been clear to her, since the removal of POC status was the cause of the social media “backlash” in January 2021.

176. Fourth, Mr Navalny’s political platform in 2021 was not anti-Muslim. The videos were made 13-14 years earlier.

177. Fifth and finally the redesignation of Mr Navalny’s status on 7 May 2021 was made in the context of a statement made by the Respondent that was expressly critical of Mr Navalny’s previous views. No one reading this statement could possibly form the view that the Respondent endorsed his earlier

pronouncements. On the contrary those pronouncements are clearly described as reprehensible.

178. A belief that a redesignation of the Respondent's categorisation of Mr Navalny in May 2021 would be likely to endanger people's safety in May 2021 we find is so tenuous that we cannot find that it was a reasonable belief.

Public interest

179. *Did the Claimant believed that it was made in the public interest?*

180. We find that the Claimant did believe that her disclosure was made in the public interest.

181. *Was that belief reasonable?*

182. We find that it was reasonable of the Claimant to believe that her disclosure was made in public interest. The basis of the Claimant's concern was about the public platform of the Respondent and the conduct of an individual with an international profile and the possibility of violence against a group of people. All of these matters pointed to a concern wider than the Claimant herself.

183. We find that it was reasonable of the Claimant to believe that she was raising this in the public interest.

Conclusion of protected disclosure

184. It follows from the analysis above that the grievance of 27 May 2021 was not a protected disclosure.

ALLEGED DETRIMENTAL TREATMENT

185. *Did the Respondent subject the Claimant to any detriments, as set out below? (Included within this issue are the questions of what happened as a matter of fact and whether what happened was a detriment to the Claimant as a matter of law)*.

186. In case we are wrong in our conclusion that there was no protected disclosure we have gone to deal with causation *in the alternative*.

187. The alleged detriments are refusals by the Respondent, set out in emails from Ms Sengo dated 29 July 2021 [551], and 20 August 2021 [552], to consider the Claimant's grievance.

188. In submissions this alleged detriment has been characterised as a refusal to progress the grievance which was said to be a "strikingly unusual" feature.

189. It is not factually accurate to suggest that the Respondent failed to consider the Claimant's grievance. The grievance was considered, and investigated as a workplace investigation, albeit without the Claimant's participation.

190. What the Respondent did refuse to do was to include the decision about redesignation of Mr Navalny as a POC within the remit of the grievance. The Respondent's position was that the redesignation was a policy decision at a high level and not amenable to be dealt with as part of a grievance. This was set out to the Claimant very clearly in appropriate, professional and politely worded emails sent from Ms Sengo on 29 July 2021 and 20 August 2021.

191. The Respondent explained that they were prepared to investigate the way that the grievance was communicated to the Claimant.

192. While the Tribunal appreciates that the Claimant felt that she was being "shut down", given the position of the Respondent that high level policy decisions were not amenable to be challenged by grievances presented by individuals, we find that the Respondent was entitled to set expectations at the outset by making it clear that the actual redesignation decision itself was not something that could be challenged by grievance.

193. We do not find that the position of the Respondent amounted to a detriment.

Causation

194. *If so was this done on the ground that she made the protected disclosure?*

195. The explanation of forward by the Respondent is that it would be "unworkable" if employees at the Respondent used the grievance procedure to challenge strategic decisions. We have no hesitation in accepting this position. Any organisation we find would find it extraordinarily difficult if high-level policy or strategic decisions were subject to challenge by any employee using a grievance process. This was particularly so we find in an organisation like Amnesty in which there are difficult questions of principle to be resolved and employees who have particularly strongly held views on these points of principle. We find it would have been unworkable and it is entirely for this reason that the redesignation was not dealt with under the grievance procedure. It was, we find, in no sense whatsoever because of the alleged protected disclosure.

Automatic unfair dismissal for making a protected disclosure (Employment Rights Act section 103A)

Dismissal

196. *Was the Claimant dismissed?*

197. It is not in dispute that the Claimant was dismissed.

Reason for dismissal

198. *If so, was the reason or principal reason for dismissal that the Claimant had made a protected disclosure in her grievance of 27 May 2021?*

199. We have found that there was no protected disclosure. In case we are wrong about that we have gone on to consider *in the alternative* causation in respect of the alleged automatic unfair dismissal.

200. The Claimant's Mr Millar explains in his statement, he dismissed the Claimant because 'it was impossible for her to remain in Amnesty's employment' (BM §40). He urgently needed to resource his team and could not continue with the Claimant's absence and refusal to return.

201. He explained at §42 of his statement that he

> 'did not feel at all comfortable making this decision. I like Aisha and we had a good working relationship, but there really was no other viable option.'

202. The Tribunal has no hesitation in accepting the Respondent's case on this point. Mr Millar had been put in a difficult position, not by the specific content of the grievance, but by the position of the Claimant generally who was initially requesting conditions upon a return to work and then ultimately refused to return to work.

203. The principal reason for the dismissal was that the Claimant was refusing to return to work and had been absent for a considerable period time. Even if we were wrong and in fact the grievance dated 27 May 2021 was a protected disclosure we would not have found that the submission of this document was the sole or principal reason for the dismissal.

Direct discrimination because of religion (Equality Act 2010 section 13)

Claimant's status as a Muslim

204. A dispute over the question of the Claimant's status as a Muslim caused a degree of contention in the hearing before us. She was challenged as to whether she was a Muslim at all in cross examination. The Claimant's position (and that of her representative) was that this was offensive and something of an ambush. The Respondent's position was that the Claimant had clearly been put to strict proof in the pleadings as to her religious status.

205. The Tribunal identified that the Respondent had not run a positive case on the Claimant's religion and therefore invited it to set out in a witness statement what was said about the Claimant's religion. This was to enable the Claimant to understand exactly what was being said about her religion and in part to diffuse a point which had become heated.

206. Ultimately the Respondent's witness CM provided a second witness statement in which he provided evidence of the following points, which were substantially agreed by the Claimant:

206.1. The Claimant had described herself to colleagues as a Buddhist.

206.2. The Claimant's family on her father's side is Muslim and many family members are devout Muslims.

206.3. In a joking conversation with a witness she had described herself as an apostate in her family.

206.4. At an earlier preliminary hearing the Claimant chose to take a nonreligious oath rather than swearing on the Koran she did the final hearing.

207. It is notable that in relation to her religion most often in internal contemporaneous correspondence once the question of Mr Navalny's allegedly anti-Muslim pronouncements came up the Claimant described herself as being from a Muslim background rather than saying straightforwardly "I am a Muslim".

208. In her evidence before the Tribunal the Claimant suggested that the picture was more complicated than the Respondent was trying to suggest. She had a mixed cultural heritage. She was raised as a Muslim. Her father is Muslim and originally from India. Her mother is from Ireland and she describes her as a non-practising Catholic. She did not deny describing herself to colleagues as Buddhist. She says she does not pray five times a day but her life is embedded in part in a Muslim community. She celebrates Eid as well as Christmas. She says that being Muslim is part of her identity.

209. We reminded ourselves based on authority that the threshold for religious observance is not a high one, and the role of the Tribunal is not to enter into a detailed enquiry or make an assessment by some objective standard.

210. **The Tribunal accepted, based on the evidence which we received, that being Muslim is part of the Claimant's identity and that she is entitled to call herself a Muslim. In other words she can rely upon being Muslim as a protected characteristic for the purposes of a claim under the Equality Act 2010**.

Alleged less favourable treatment

211. Did the Respondent do, or fail to do, the following things:

Fail to apply to the Claimant its disciplinary and/or grievance procedures from 27 April 2022 to 9 August 2022?

212. The Claimant was unable to articulate a failure under the disciplinary procedure at all. Given that she was not dismissed under a disciplinary process we cannot see how this allegation can succeed.

213. As to the grievance procedure allegation, it seems that the thrust of the Claimant's case was that there had been a failure to offer *mediation*, which is mentioned in the grievance policy document. This was not part of the Claimant's pleaded case but was an amendment proposed by the Claimant's new solicitor shortly before the final hearing and was pursued through questions by Ms Banton with most of the Respondent's witnesses. It is relevant to note that the specific point about mediation developed relatively late, as this

explains why the Respondent's witnesses were dealing with this point substantially through their oral evidence rather than in their witness statements.

214. It was contended on behalf of the Claimant that various options might have come out of mediation, and that better communication with her about the position of the Respondent might have led to the parties been able to resolve the dispute.

215. The grievance policy provides that all employees should attempt an informal resolution of grievances through what is described as the informal process. This requires them to raise a concern informally to be raised and discussed with their line manager and Human Resources at the earliest opportunity. The Claimant did raise that she was upset on 10 May 2021, although this was not by invoking an informal grievance process.

216. By 27 April 2022, a formal grievance had been submitted some 11 months earlier and the Claimant had been off work for a similar period. By this stage the informal resolution opportunity had been lost.

217. Mediation was not suggested by either party. In the case of the Claimant she had previously been through a successful mediation, so she was aware of it as an option.

218. The position of the Respondent, articulated in the oral evidence of Ms Berry was that there was a judgement to be exercised as to whether mediation was appropriate and in this case the judgement made by the HR Department was that the situation was not amenable to mediation given the position adopted by the Claimant i.e. that she would only return to work if the redesignation of Mr Navalny as POC was revoked. There is no written evidence that the question of mediation was given in-depth consideration. We accept however that Ms Berry and her team took the view that mediation was not appropriate this case.

219. We find it was open to the Respondent to take the view that the Claimant's position was such that resolution by mediation was unlikely to be successful. There was also a practical consideration which is that it is unclear to the Tribunal who it is that the Claimant would be mediating with. Her relationship with her direct line manager was not the cause of the problem. The POC reinstatement policy decision had been determined at a higher level by colleagues who did not work directly with the Claimant.

220. Our conclusion is that there was no failure by the Respondent to operate the disciplinary and/or grievance policy in the dates as alleged.

Dismissal

221. It is not in dispute that the Claimant was dismissed.

Less favourable treatment

222. *If so, was this less favourable treatment than would have been afforded to a hypothetical comparator in the same circumstances?*

223. Given that we do not find that there was a failure respect of the disciplinary/grievance processes this cannot amount to less favourable treatment. We do not find the lack of offer of mediation in the circumstances amounted to less favourable treatment.

224. As to the dismissal, we have to consider the circumstances of a hypothetical non-Muslim comparator. We have considered the circumstances of an individual who would not return to work as a point of principle due to a disagreement with a high-level policy. We find that a hypothetical non-Muslim comparator who was refusing to return to work for this length of time because of a high-level policy decision of the employer would be treated in exactly the same way. We do not find that the dismissal was less favourable treatment.

Because of religion

225. Simply asking the question "but for" the Claimant's religion would she have been dismissed is the wrong approach (*James v Eastleigh*). It would be simplistic to conclude that because the Claimant was a Muslim she was in the situation of objecting to the redesignation which led to her dismissal. We must consider Mr Millar's thought process and the reason why.

226. This is a case in which we have not needed to consider the operation of the burden of proof but can make a positive finding as to the reason for the treatment complained about.

227. We accept Mr Millar's evidence that the reason why he dismissed the Claimant was because of a fundamental breakdown in the working relationship and her position that she would not return to work in any capacity until the Prisoner of Conscience decision had been overturned, and additionally her reservations about working with anyone who made that decision.

228. Had the Claimant overcome her reservations about the redesignation of Mr Navalny, we have no doubt that Mr Millar would have allowed her to return to work.

229. It follows that we do not find that the Claimant's religion was the reason why Mr Millar took the decision that he did.

Disability discrimination

230. The Claimant was a disabled person from **7 April 2022** onward by reason of her work-related stress and anxiety.

231. The claim of direct disability discrimination was withdrawn.

REASONABLE ADJUSTMENTS (Equality Act 2010 section 20 & 21)

Respondent's knowledge of disability

232. *Did the Respondent know, or could it reasonably have been expected to know, that the Claimant had the disability? If so, from what date?*

233. This Tribunal has noted that the decision of Employment Judge Havard dated 20 February 2023 relies significantly on the evidence of the Claimant's husband. This was not evidence that was available to the Respondent at the time of material events in 2022. We have approached the question of what the Respondent knew by reference to contemporaneous evidence, not evidence considered in a hearing in February 2023.

234. The Respondent argues that it did not have knowledge of disability given: Occupational Health in a report dated 8 December 2021 had confirmed that the Claimant was well. In that report Dr Cooper wrote "I shall, in my view, does not have a disability, as described in the Equality Act 2010."

235. The Claimant accepts that she told Occupational Health that she was physically fit and able. The Claimant had whilst in receipt of sick pay between June 2021 and January 2022 (including full pay between 9 June and 10 December 2021), continued with her yoga therapy diploma. The Claimant had set up a company pursuant to an idea she had.

236. Considering matters which might have put the Respondent on notice that the Claimant was a disabled person, we note that she was absent from work for a significant period of time, and was submitting sick notes. In the occupational health report dated 8 December 2021 produced by Dr Cooper said that she did feel stressed "at the time" in May 2021.

237. In the return to work meeting on 17 March 2022 the Claimant described her heart racing when she saw an email from Ms Sengo and was requesting adjustments whereby she would work in complete isolation from her team and only have contact with her line manager and limit were interactions with section colleagues and not to attend any meetings or to receive any group emails.

238. We find that the date on which the Respondent had knowledge of the Claimant's disability was **22 June 2022**. That was the date on which the Claimant asserted that she was disabled and highlighted the long-term nature of her symptoms. We find that, based on the matters known by the Respondent cumulatively by this point, in particular the length of the absence and the content of the Claimant's grounds of appeal meant that the Respondent had knowledge of disability from this date onward.

PCPs

239. *Did the Respondent have the following PCP (provision, criterion or practice): its failure to apply their own disciplinary and grievance procedures to the Claimant from 27 April 2022?*

240. There was no disciplinary procedure ongoing from 27 April 2022. That allegation cannot succeed.

241. In relation to the grievance procedure, we have already found (above) that there was no failure.

242. Insofar as the failure to offer mediation allegedly breached or deviation from the grievance procedure, we did not find that this was a failure to follow the grievance process the reasons given above.

243. If we are wrong about that, we cannot see how a failure to offer mediation in the case of the Claimant amounts to a PCP. This is an event which occurred in her case specifically, not a widespread practice (*Ishola v TfL*). In the Claimant's own history that the Respondent did offer mediation in certain circumstances. We do not find that there is evidence of a widespread practice of not offering mediation.

Substantial disadvantage & knowledge of disadvantage

244. *Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability?*

245. The Claimant relies on her termination of employment as the substantial disadvantage. While termination of employment is plainly a substantial disadvantage, we have not found the PCP to be made out and accordingly we do not find that dismissal was as a result of a PCP.

246. Did the Respondent know, or could it reasonably have been expected to know, that the Claimant was likely to be placed at the substantial disadvantage by virtue of her disability? It is not necessary to deal with this.

Reasonable adjustments

247. In view of our findings above it is not necessary to deal with the following questions:

247.1. What steps could have been taken to avoid the disadvantage?

247.2. Was it reasonable for the Respondent to have to take those steps, and when?

247.3. Did the Respondent fail to take those steps?

Victimisation (Equality Act 2010 section 27)

Protected act

248. *Did the Claimant do a protected act by issuing Employment Tribunal proceedings under claim number 2206526/2021 on **7 October 2021***?

249. This was a protected act.

Alleged treatment

250. *Did the Respondent do, or fail to do, the following things*:

251. (**a**) Fail to apply to the Claimant its disciplinary and/or grievance procedures from 27 April 2022 to 9 August 2022?

252. We find that there was no such failure, as per our findings above.

253. (**b**) Dismiss the Claimant?

254. The Claimant was dismissed.

Whether treatment detriment?

255. *If so, was this detrimental treatment*?

256. Dismissal is detrimental treatment.

Because of the protected act

257. *If so, was the Claimant subjected to detriments because she did a protected act*?

258. The Tribunal has examined the chronology following the presentation of a claim in October 2021. We do not detect treatment which suggested an agenda to remove the Claimant from the Respondent's employment. We accept the evidence of Mr Millar as to the reasons for dismissal, that he had a good working relationship with the Claimant, but there was no other viable option given her refusal return to work.

259. We find that the Respondent was genuinely attempting to get the Claimant to return to work and had she agreed to accept the redesignation decision in respect of Mr Navalny's PoC she would have returned to work. We do not find that the presentation of the claim form had any impact on the decision to dismiss.

Harassment related to religion and belief (Equality Act 2010 Section 26)

Muslim

260. *Does the Claimant have a particular religion or belief for the purposes of section 10 of the Equality Act 2010*?

261. The Claimant describes herself as a Muslim, which the Tribunal accepts for reasons set out in more detail above.

Conduct

262. Did the Respondent engage in conduct as follows:

Reinstatement of POC 7.5.21

263. (**a**) *The reinstatement of the Prisoner of Conscience ("POC") status to Mr Navalny on 7 May 2021 (and so the endorsement at the highest level of the organisation of a xenophobe who advocated killing Muslim using grotesquely racist imagery of Muslim men), when this was, in part, the reason the POC status was removed in February 2021*;

264. While this was conduct that was unwanted from the Claimant's perspective, we do not find that the reinstatement was related to the protected characteristic of Muslim belief. The statement issued on 7 May 2021 quite clearly related to the circumstances of the imprisonment of Mr Navalny.

265. There is a reference contained within the reinstatement announcement made by the Respondent to the previous discriminatory statements made by Mr Navalny. The Respondent expressly indicated that they were not endorsing his political programme and identified that the previous discriminatory statements made are reprehensible. That important qualification cannot be the unwanted conduct complained about by the Claimant. Indeed it must follow from her position that the Claimant agrees with criticism of Mr Navalny's previous discriminatory comments.

266. It must be the case that the Claimant's complaint is about the reinstatement itself, not the arguments against reinstatement. The arguments for reinstatement are that Mr Navalny demanded the right to equal participation in public life for himself and his supporters, and demanded a government that is free from corruption, leading to his imprisonment.

267. We have not received evidence which leads us to the conclusion that there is a connection between the reinstatement and the previous comments made by Mr Navalny. We do not conclude that the reinstatement was caused by or related to an anti-Muslim or anti-Islamic agenda. We do not find the reinstatement was related to the Claimant's religion or belief.

268. The Claimant submits that on 16 February 2021, the European Court of Human Rights called on Russia to release Mr Navalny. Thus the Respondent had an option to get behind that ruling and support it. This would have been a way to call for his release without endowing him with the POC status, keeping him as just a political prisoner and not reneging on the organisation's core principles on hatred and violence. It is submitted that the political prisoner status (call for fair trial) plus support for the ECHR ruling (immediate release) is a less elevated stance and consistent with core principles. We do not find in the circumstances of this case that because the Claimant had an alternative way of achieving a particular policy objective that an alternative course of action selected by the Respondent amounts to harassment.

269. We do not find that this announcement was capable of violating the Claimant's dignity, creating an intimidating hostile degrading humiliating or offensive environment for her. It was external announcement. It was related to the fourth occasion on which Mr Navalny had been designated a Prisoner of Conscience. It was carefully worded, providing some of the history and being careful to identify that some of his previous statements were reprehensible and not condoned in the slightest. Furthermore his political programme was not endorsed.

Decision of colleagues

270. (**b**) *That it was the Claimant's colleagues she works with on daily basis involved in the above decision and subsequently promoting the case on an ongoing basis*;

271. In order to find that conduct is related to a protected characteristic, a Tribunal must identify distinctly and with clarity what feature of the evidence or facts which have led us to the conclusion that the conduct is related to the protected characteristic (Tees Esk).

272. We find that the decision was not taken by colleagues that the Claimant works with, daily basis, but rather was taken by the CIMT, with input from the EECARO team. The Claimant has not led evidence nor can we reasonably infer that the advice or input provided by the EECARO team related to the protected characteristic.

273. As to “subsequently promoting the case on an ongoing basis”, the distinction in the circumstances of this case is not between promoting and not promoting Mr Navalny’s case. The distinction between Prisoner of Conscience, which the Respondent redesignated Mr Navalny on 7 May 2021, and political prisoner is a difference in the level of prominence and amount of resources which would be devoted to the case and whether the Respondent would be calling for respectively, immediate release or for a fair trial. The Claimant herself supported Mr Navalny’s release. She has not led evidence nor can we reasonably infer that the promotion of Mr Navalny’s case provided by the EECARO team related to the protected characteristic.

Concealment

274. (**c**) *That management at all levels of the organisation from the Eastern Europe and Central Asia programme to the Senior Leadership Team had deliberately concealed footage and reference to 'advocacy of violence' to internal staff and the public, more broadly colleagues in the decision of 7 May 2021*;

275. In the announcements in February 2021 in which the POC status was rescinded and also later in 7 May 2021 in which the POC status was reinstated, the Respondent specifically criticises Mr Navalny’s previous statements as being reprehensible and discriminatory.

276. Dr Callamard’s oral evidence was that Mr Navalny’s previous statements were widely known and debated within the organisation and externally given the degree of backlash to the announcement in 25 February 2021. We accept her evidence that these matters were in the public domain.

277. We do not find that the Claimant has established the allegation that the Respondent’s management "concealed" footage at all.

278. This allegation of harassment cannot succeed.

Benefit of the doubt

279. (**d**) *That the Regional Programme Director on 7 May 2021 and on other occasions told the Claimant and other staff that she must give Mr Navalny the benefit of the doubt and allow that "people change"*;

280. We find that this was said by Marie Struthers and that from the Claimant's point of view this was unwanted conduct. Ms Struthers was trying to explain and justify the reinstatement announcement made on 7 May 2021. She did this by reference to the Q & A document at page 511 - 514.

281. This was no more than a justification of the decision to reinstate Mr Navalny as POC. The reference to people changing must be a reference to the acknowledgement in the decision to reinstate 7 May 2021 that there were historic statements that the Respondent considered reprehensible. To reiterate, that acknowledgement was not part of the unwanted conduct, since the Claimant agreed with it. Our reasoning here is similar to that for (**a**) above.

282. The justification did not in the assessment of the Tribunal relate to the Claimant's protected characteristic of being a Muslim.

283. We do not find, viewed objectively, that Ms Struthers' comments on this occasion should be regarded as harassment, considering the circumstances generally. Ms Struthers was attempting to justify a decision taken by others. That decision was a finely balanced but carefully worded. Her comments were made in the context of a debate in which she acknowledged points being made by the Claimant.

284. This claim does not succeed.

Ignoring grievance

285. (**e**) *On 29 July 2021, Ms Sengo ignoring the substance of her grievance*; and

286. This was unwanted from the Claimant's point of view.

287. We cannot identify distinctly and with clarity what features of the factual matrix would lead us to the conclusion that the actions of the HR in dealing with the grievance are connected to the Claimant's protected characteristic of being Muslim.

288. This did not amount to harassment relating to the protected characteristic.

Treating grievance as withdrawn

289. (f) *On 20 August 2021, Ms Sengo, treating the Claimant's grievance as withdrawn without any foundation*.

290. This was unwanted from the Claimant's point of view.

291. As to the allegation that this was without foundation, the Respondent clearly explained why they were taking the actions that they did in respect of the

grievance. These reasons were cogent. We do not accept the premise of this allegation that the Claimant's grievance was treated as withdrawn without foundation.

292. We cannot identify distinctly and with clarity what features of the factual matrix leaders to the conclusion that the actions of the HR in dealing with the grievance are connected to the Claimant's protected characteristic of being Muslim.

293. This did not amount to harassment relating to the protected characteristic.

Claimant's perception

294. *Did the conduct have the effect (taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant*?

295. The Tribunal acknowledges that the Claimant did feel stressed, anxious and extremely upset at the position adopted by the Respondent. She perceived that there was an offensive environment.

296. We note that in the meeting on 28 May 2021 several colleagues either expressed written support or alternatively indicated support by clicking "liked" either to the Claimant's own comments or the comments made in support of her. There were colleagues who shared the Claimant's view of the redesignation in the workplace.

297. One of the Respondent's witnesses, CM, gave evidence, which the Tribunal accepted, that the Claimant had wrongly assumed that he had supported the redesignation decision. In other words there was at least one colleague she had wrongly perceived had a contrary view to her own on the difficult topic of Mr Navalny's status. This misunderstanding we find only have added to this being a stressful situation for Ms Jung, given the strength of her belief.

298. The Tribunal does not find that any of the actions above objectively had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. All of the actions of the Respondent complained about by the Claimant are attempts to deal with a complex policy question in which there were competing considerations, which is reflected by the Respondent's changing position on Alexei Navalny's Prisoner of Conscience status and carefully worded policy statements on this topic.

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Employment Judge Adkin

Date 17 May 2023

WRITTEN REASONS SENT TO THE PARTIES ON

18/05/2023

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant (s) and respondent(s) in a case.

APPENDIX

AGREED LIST OF ISSUES

Unfair dismissal (Employment Rights Act section 94)

I. Was the Claimant dismissed?

II. If so, what was the reason or principal reason for dismissal?

a. The Respondent relies on some other substantial reason.

b. The Claimant says that the reason was automatically unfair and/or discriminatory, as set out below.

III. Was the reason or principal reason for dismissal a potentially fair reason?

IV. Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?

Public interest disclosure (PID) (Employment Rights Act section 47B)

V. Did the Claimant make one or more protected disclosures (ERA sections 43B)? The Claimant relies on her grievance 27 May 2021.

VI. Did that grievance amount to a protected disclosure, in particular:-

i. Was it a disclosure of information which in the reasonable belief of the Claimant was made in the public interest and tended to show that the health or safety of any individual has been, is being or is likely to be endangered (s43B(1)(d)).

VII. Did the Respondent subject the Claimant to any detriments, as set out below? (Included within this issue are the questions of what happened as a matter of fact and whether what happened was a detriment to the Claimant as a matter of law).

VIII. The alleged detriments the Claimant relies on are as follows:

i. the refusal by the Respondent, set out in emails from Ms Sengo dated 29 July 2021, and 20 August 2021, to consider the Claimant's grievance.

IX. If so was this done on the ground that she made the protected disclosure?

Automatic unfair dismissal for making a protected disclosure (Employment Rights Act section 103A)

X. Was the Claimant dismissed?

XI. If so, was the reason or principal reason for dismissal that the Claimant had made a protected disclosure in her grievance of 27 May 2021?

Direct religious and disability discrimination (Equality Act 2010 section 13)
[If the Tribunal determines that the Claimant is a disabled person for the purpose of the Equality Act]

XII. Did the Respondent do, or fail to do, the following things:

i. Fail to apply to the Claimant its disciplinary and/or grievance procedures from 27 April 2022 to 9 August 2022?

ii. Dismiss the Claimant.

XIII. If so, was this less favourable treatment than would have been afforded to a hypothetical comparator in the same circumstances?

XIV. If so, was it because of her disability? [*Withdrawn 27.1.22*]

XV. Alternatively, was it because of her religion, namely that she is Muslim?

XVI. Are there facts from which the tribunal could decide, in the absence of any other explanation, that the Respondent discriminated against the Claimant?

Reasonable adjustments (Equality Act 2010 section 20& 21)

XVII. Did the Respondent know, or could it reasonably have been expected to know, that the Claimant had the disability? If so, from what date?

XVIII. Did the Respondent have the following PCPs: its failure to apply their own disciplinary and grievance procedures to the Claimant from 27 April 2022.

XIX. Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability? The Claimant relies on her termination of employment as the substantial disadvantage.

XX. Did the Respondent know, or could it reasonably have been expected to know, that the Claimant was likely to be placed at the substantial disadvantage by virtue of her disability?

XXI. What steps could have been taken to avoid the disadvantage? The Claimant suggests that the Respondent should have applied its disciplinary and/or grievance procedures to her, from 27 April 2022 onwards.

XXII. Was it reasonable for the Respondent to have to take those steps, and when?

XXIII. Did the Respondent fail to take those steps?

Victimisation (Equality Act 2010 section 27)

XXIV. Did the Claimant do a protected act by issuing Employment Tribunal proceedings under claim number 2206526/2021 on 7 October 2021?

XXV. Did the Respondent do, or fail to do, the following things:

a) Fail to apply to the Claimant its disciplinary and/or grievance procedures from 27 April 2022 to 9 August 2022?

b) Dismiss the Claimant.

XXVI. If so, was this detrimental treatment?

XXVII. If so, was the Claimant subjected to detriments because she did a protected act?

Harassment related to religion and belief (Equality Act 2010 Section 26)

XXVIII. Does the Claimant have a particular religion or belief for the purposes of section 10 Equality Act 2010? The Claimant describes herself as a Muslim.

XXIX. Did the Respondent engage in conduct as follows:

i. The reinstatement of the Prisoner of Conscience ("POC") status to Mr Navalny on 7 May 2021 (and so the endorsement at the highest level of the organisation of a xenophobe who advocated killing Muslim using grotesquely racist imagery of Muslim men), when this was, in part, the reason the POC status was removed in February 2021;

ii. That it was the Claimant's colleagues she works with on daily basis involved in the above decision and subsequently promoting the case on an ongoing basis;

iii. That management at all levels of the organisation from the Eastern Europe and Central Asia programme to the Senior Leadership Team had deliberately concealed footage and reference to 'advocacy of violence' to internal staff and the public, more broadly colleagues in the decision of 7 May 2021;

iv. That the Regional Programme Director on 7 May 2021 and on other occasions told the Claimant and other staff that she must give Mr Navalny the benefit of the doubt and allow that "people change"; and

v. On 29 July 2021, Ms Sengo ignoring the substance of her grievance; and

vi. On 20 August 2021, Ms Sengo, treating the Claimant's grievance as withdrawn without any foundation.

XXX. If so was that conduct unwanted?

XXXI. If so, did it relate to the protected characteristic of religion and belief?

XXXII. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

XXXIII. Did the conduct have the effect (taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

Remedy

XXXIV. Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

XXXV. What basic award is payable to the Claimant, if any? Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

XXXVI. What financial losses has the dismissal / detrimental treatment / discrimination caused the Claimant?

XXXVII. Has the Claimant taken reasonable steps to replace her lost earnings, for example by looking for another job? If not, for what period of loss should the Claimant be compensated?

XXXVIII. Is there a chance that the Claimant would have been dismissed / subject to the detrimental treatment anyway? If so, should the Claimant's compensation be reduced? By how much?

XXXIX. What injury to feelings has the discrimination / detrimental treatment caused the Claimant and how much compensation should be awarded for that? The Claimant confirmed that she does not bring a separate claim for personal injury.

XL. Is it just and equitable to award the Claimant other compensation?

XLI. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? Did the Respondent or the Claimant unreasonably fail to comply with it? If so, is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?

XLII. Did the Claimant cause or contribute to her dismissal / discrimination / detrimental treatment? If so, would it be just and equitable to reduce the Claimant's compensation? By what proportion?

XLIII. Does the statutory cap for ordinary unfair dismissal claims apply?

XLIV. Was the protected disclosure made in good faith? If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?

XLV. Should interest be awarded? If so, how much?