



EMPLOYMENT TRIBUNALS

Claimant: Mr P Easton

Respondent: Secretary of State for The Home Department (Border Force)

Heard at: Manchester Employment Tribunal

On: 22-26 May 2023

Before: Employment Judge M. Butler
Mr D Mockford
Dr H Vahramian

Representation

Claimant: In person

Respondent: Mr N Flanagan (of Counsel)

JUDGMENT

1. The claim of indirect age discrimination is dismissed on withdrawal.
2. The claimant did not have a disability pursuant to s.6 of the Equality Act 2010.
3. The claim of direct disability discrimination fails and is dismissed.
4. The claimant has been found not have been unfairly dismissed, and this claim fails.
5. For the avoidance of doubt, all claims in this case are dismissed.

REASONS

INTRODUCTION

6. Oral reasons for the decision were handed down to the parties at the end of the hearing on 26 May 2023. However, the claimant subsequently requested written reasons for the decision. These are those written reasons.
7. The claimant presented his claim form in this case on 04 January 2021. The claims were considered by Employment Judge (EJ) Warren at a Case Management Preliminary Hearing on 05 August 2021. EJ Warren recorded a list of the complaints and issues that were to be determined in this case, these are contained

in the annex to his Case Management Order (see p.63).

8. A further Preliminary Hearing, this time in Public, was held before EJ Robinson on 21 March 2023. At that hearing the claimant's complaints of victimisation and unfair dismissal for the principal reason of having made a protected disclosure were struck out.
9. On the third day of these proceedings, the claimant withdrew his allegation of age discrimination. This was therefore dismissed on withdrawal. This decision makes no findings or conclusions in respect of the age discrimination complaint considering this withdrawal.
10. The tribunal was assisted by having an evidence bundle that ran to some 1238 electronic pages.
11. The respondent had exchanged witness evidence for Mr Finch, Mr Slevin and Ms Hickman. However, Mr Flanagan informed the tribunal that the respondent would not be calling Mr Slevin. It was explained to the parties that the tribunal could only give limited weight to Mr Slevin's evidence in those circumstances.
12. The claimant gave evidence on his own behalf and did not call any additional witnesses.

LIST OF ISSUES

13. The list of issues following the decisions made at the Preliminary Hearing on 21 March 2023, and following the claimant having withdrawn his age discrimination complaint on day 3 of this hearing were left as follows:

1. Unfair dismissal

Dismissal

- 1.1 Can the claimant prove that there was a dismissal?

Reason

- 1.2 Has the respondent shown the reason or principal reason for dismissal?

- 1.3 Was it a potentially fair reason under section 98 Employment Rights Act 1996?

Fairness

Misconduct dismissal

- 1.6 If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:

- 1.6.1 The respondent genuinely believed the claimant had committed misconduct

- 1.6.2 there were reasonable grounds for that belief;

- 1.6.3 at the time the belief was formed the respondent had carried out a reasonable investigation;

- 1.6.4 the respondent followed a reasonably fair procedure;

- 1.6.5 dismissal was within the band of reasonable responses.

1.7 Did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant?

4. Disability

4.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about specify the relevant period? The Tribunal will decide:

4.1.1 Did he have a physical or mental impairment?

4.1.2 Did it have a substantial adverse effect on his/her ability to carry out day-to-day activities?

4.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

4.1.4 If so, would the impairment have had a substantial adverse effect on his ability to carry out day-to-day activities without the treatment or other measures?

4.1.5 Were the effects of the impairment long-term? The Tribunal will decide:

4.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?

4.1.5.2 if not, were they likely to recur?

5. Direct disability discrimination (Equality Act 2010 section 13)

5.1 The claimant asserts that he is disabled by reason of Mild Cognitive Impairment (Early Onset Dementia) and he compares himself with people who do not have that condition.

5.2 What are the facts in relation to the following allegations:

5.2.1 He asserts that he was dismissed by the respondent as a direct result of not having completed every entry in his CV (having omitted details which the respondent would have wished to see).

5.3 If so, has the claimant proven facts from which the Tribunal could conclude that in any of those respects the claimant was treated less favourably than someone in the same material circumstances of a person without a disability was or would have been treated? was or would have been treated. The claimant relies on a hypothetical comparison.

5.4 If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of disability?

5.5 If so, has the respondent shown that there was no less favourable treatment because of disability?

LAW

Disability

14. Section 6 of the Equality Act (2010) ("EqA (2010)") states:

(1) A person (P) has a disability if—

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

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

...

Direct disability discrimination

15. Protection against direct discrimination is provided for at s.13 of the Equality Act 2010:

A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

16. We reminded ourselves of the burden of proof in discrimination cases, with reference to section 136 of the Equality Act 2010:

(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.

Unfair dismissal

17. The burden of proof rests on the employer to establish that the claimant was dismissed for a potentially fair reason, in this case the respondents says it was for misconduct.

18. The Court of Appeal in **Abernethy v Mott [1974] ICR 323**, per Cairns LJ, laid out the correct approach to identifying the reason for the dismissal (although this must now be read against Jhuti, see above):

"A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."

19. Where the employer satisfies this burden in respect of establishing a potentially fair reason, the tribunal must then apply the statutory test contained within s.98(4) so as to consider whether the dismissal was fair or unfair, which is expressed in the following way:

(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

20. Where the reason for dismissal is conduct the Tribunal will take into account the guidance of the EAT in *BHS v Burchell* [1978] IRLR 379 and must be satisfied:

- a. that the respondent had a genuine belief that the Claimant was guilty of the misconduct;
- b. that such belief was based on reasonable grounds;
- c. that such belief was reached after a reasonable investigation.

21. The test requires that the tribunal reviews the reasonableness of the employer's decision, rather than substituting its own view. The question the tribunal must ask itself is whether the decision to dismiss the claimant fell within the band of reasonable responses: ***Iceland Frozen Foods v Jones* [1983] IRLR 439 EAT**.

22. **According to the Court of Appeal in *Sainsbury's Supermarkets v Hitt* [2003] IRLR 23**, the range of reasonable responses test applies equally to the Burchell criteria as it does to whether the misconduct was sufficiently serious to justify dismissal.

23. The range of reasonable responses also applies to procedure. And part of this is considering the nature of the disciplinary charge: ***Strouthos v London Underground* (2004) EWCA Civ 402**.

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

“46. [...] In our view, it would be quite inappropriate for an ET to attempt such categorisation. What matters is not whether the internal appeal was technically a rehearing or a review but whether the disciplinary process as a whole was fair.

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

CLOSING SUBMISSIONS

25. We received closing submissions from both the respondent and the claimant. These are not repeated here but have been considered in reaching this decision.

FINDINGS OF FACT

We make the following findings of fact based on the balance of probability from the evidence we have read, seen, and heard. Where there is reference to certain aspects of the evidence that have assisted us in making our findings of fact this is not indicative that no other evidence has been considered. Our findings were based on all of the evidence, and these are merely indicators of some of the evidence considered in order to try to assist the parties understand why we made the findings that we did.

We do not make findings in relation to all matters in dispute but only on matters that we consider relevant to deciding on the issues currently before us.

Findings of fact on disability/knowledge of disability

26. On 11 March 2014, the claimant was examined by Dr Langheinrich (pp.476-478), a Consultant Neurologist. Dr Langheinrich concluded that the claimant did not present as having progressive degenerative or vascular brain disease. And that he appeared to be inefficient, most likely due to lack of concentration.
27. The claimant was assessed by an Occupational Health Team, with a report produced on 27 January 2015 (pp.453-456). This does not highlight anything of significance in relation to an impairment of Mild Cognitive Impairment.
28. On 19 March 2016, when assessed by Dr Kerrigan, a Consultant Neurologist (see pp.479-480), the claimant was described as not having an underlying organic abnormality and that his physical neurological examination was unremarkable. And that the symptoms he describes are related to underlying depression.
29. On 31 May 2019, when completing a Health Questionnaire with respect the role with the Border Force, the claimant ticked the box to indicate that he did not consider himself to be disabled and that he did not require reasonable adjustments (p.145). Likewise, when the claimant completed the application form for the role (starts at p.85), he answered 'no' to the questions whether he thought he met the criteria for the Guaranteed Interview Scheme and would like to be considered for the scheme, and as to whether he would require reasonable adjustments during the selection stage.
30. When the claimant was interviewed by Mr Finch as part of the investigation process (the notes start at p.156), he was asked questions about his health. The claimant explained to Mr Finch that his condition has gotten a lot better, and that 'a lot of it was due to the environment I was working in. As soon as the investigation went away, I was a lot better' (at p.159). The claimant also explained that he did not see his doctor regularly and he '...hadn't had any issues for three or four years...' (see p.160).
31. In advance of the disciplinary meeting, there was discussion around whether the claimant would benefit from an up-to-date Occupational Health Report. On 03 September 2020, on behalf of the claimant, the claimant's trade union representative wrote to Mr Slevin to explain that they were accepting the proposal of a further Occupational Health report (see p.739). Mr Slevin replied to this email on 04 September 2020 to explain that there had been some confusion and that this was only suggested if the claimant wished to raise points around medical issues and that he did not consider there was merit in referring the claimant to

Occupational Health at this point (p.741, and para 86 Mr Slevin's witness statement). Mr Slevin also explained that if, in the course of the hearing, the claimant raised points that required independent medical advice then Occupational Health would be considered at that stage. The claimant did not raise any further medical issues in response to this email.

32. When interviewed by Mr Slevin during the discipline hearing (notes start at p.211), the claimant was again asked questions concerning his health position. He explained that the only medical condition he had at this time was tinnitus. When asked directly about the mental health issues that he had at the time of dismissal in 2016, the claimant answered that 'those mental health issues were caused by the job role and disciplinary investigations I was going through at the time' (see p.211).
33. When discussing his mental health issues in the grievance that he raised, the claimant refers to them as being 'past mental health issues' (see p.302).
34. The claimant, during the appeal hearing on 22 January 2021, described that his 'mental health has improved' (see p.425).
35. The material time for the disability discrimination complaint is 19 May 2020 (the date on which the investigation into the claimant was commissioned) to 03 February 2021 (the date of the claimant's appeal outcome letter).
36. The claimant produced a witness impact statement dated 12 March 2023. In this statement the claimant presents several significant effects that he says the impairment of Mild Cognitive Impairment has been having on his normal day-to-day activities since 2013 (when he says the impairment was identified). This includes:
 - a. Not being able to read a book effectively. He had short-term memory loss meaning he would forget previous pages read.
 - b. That he forgets what has happened in films.
 - c. Has difficulty cooking, as he forgets whether he has turned an appliance on. This includes the grill or the microwave.
 - d. He forgets when he has turned the iron on so has to physically disconnect it when it is out of use.
 - e. Has difficulty getting dressed.
 - f. Forgets to have showers or shave.
 - g. Can no longer multitask, which has impacted on his chess-playing.
 - h. Struggles to retain and recall dates and names.
 - i. Has difficulty retaining information. This can affect his understanding of directions and recognising streets that he should be familiar with.

Conclusions on disability/knowledge of disability

37. The claimant's disability impact statement presents the claimant as having an impairment that is having a significant impact on his ability to undertake everyday normal tasks. Impacting upon his reading, his cooking, his dressing and his ability to recognise places and people that should be familiar to him.
38. However, the contemporaneous notes, that were made around the material time for this claim, paint a different picture. The claimant throughout the investigation process, the disciplinary process and the appeal process does not refer to a current impairment but refers to it in the past tense. He is asked direct questions about his health on numerous occasions, and more specifically in relation to his mental health. The claimant at no point replies to express that he was struggling to complete any normal day to day activities. Instead, he presents a picture of no

longer having an impairment (other than a reference to having tinnitus) and that things had improved since the matters in 2016 had come to an end.

39. It is against the contemporaneous accounts of the claimant's alleged disability that this tribunal considers that the disability impact statement is not an accurate document in respect of the effects of a mental impairment at the material time. The claimant has not satisfied the burden that rests on him to establish that he satisfies the legal definition of disability pursuant to s.6 of the Equality Act 2010.
40. The claimant appears to solely rely on medical documents that go back to 2016. This tribunal is not determining whether the claimant had a disability in 2016. It is determining whether the claimant had a disability through 2019 and 2020. And the claimant brings no evidence in respect this period, save for the disability impact statement that the tribunal does not accept as accurate, for the reasons explained above.
41. Further, even if the tribunal was wrong on that. The responses that the claimant gave to Mr Finch, Mr Slevin and Ms Hickman when asked direct questions about his health position, were such that this tribunal has no difficulty in finding that the respondent would have had no knowledge, either actual or constructive, of any such impairment. The respondent made enquiries, when it became aware of a potential impairment through documents relating to previous tribunal proceedings, and the claimant presented that the effects of that previous impairment had gotten better since the 2016 investigation/dismissal. Even explaining to Mr Finch that he had not had any issues for 3 or 4 years.
42. In those circumstances, even had the tribunal found that the claimant satisfied the definition of disability, it would have found that it had no knowledge of that disability.
43. Given that we have concluded that the claimant did not have a disability pursuant to s.6 of the Equality Act 2010, his disability discrimination complaint in its entirety is dismissed. But further, even had he satisfied that definition, his claim would have failed given that, as explained above, the respondent has been found to have no knowledge (actual or constructive) of a disability or of any effects of the pleaded impairment. In those circumstances, the claimant would not have satisfied a causal link between it and the treatment complained of. And the disability discrimination complaints would still have failed.

Findings of fact that relate to complaint of unfair dismissal/reasons for dismissal

44. Claimant was dismissed from Home Office for gross misconduct in 2016. As a result of this dismissal, the claimant brought employment tribunal claims. Those proceedings were resolved between the parties by means of a settlement agreement. This did not include an agreement between the parties to alter the reason for having left the employ of the Home Office from the then recorded reason of 'gross misconduct'.
45. The claimant started working with the Department of Work and Pensions ('DWP') on 04 September 2016.
46. The Border Force, which forms part of the Home Office, was involved in bulk recruitment processes around 2017- 2019. One such exercise included an advertisement for applicants that involved some 126 roles.
47. On 30 November 2017 (p.1046), the claimant contacted the Shared Services team to enquire as to whether his previous dismissal from the Home Office precluded him from applying for further roles with the Home Office. He received no reply to

this enquiry. However, he made two further enquiries by phone to HR in 2019, in which it was explained to him that a dismissal is not an automatic bar to being re-employed at the home office.

48. The claimant applied to an external role as an internal candidate for the Border Force, a part of the Home Office, in or around May 2019 (see p.197). He completed his application form (pp.85-89) and submitted it.
49. The claimant understood that any dismissals from the Home Office and periods of unemployment in the previous 3 years would be relevant and material information that the Home Office would require from him when applying for a role with it. This was the claimant's evidence when cross examined.
50. The claimant when completing the 'Employment History' part of the application form, filled it in using years only. This presented that the claimant worked from the Home Office from 2002-2016, and the DWP from 2016 to current. There was no reference to the claimant having been dismissed. Nor was there any indication of an employment gap between employment with the Home Office and DWP, despite him having an employment gap between June 2016 and September 2016.
51. The Government Recruitment Service (GRS) were responsible for assessing application forms, undertaking vetting, ensuring that security clearance was undertaken and reviewed, and for interviewing candidates. GRS would be responsible for raising any concerns with the vacancy holder on completion of these processes.
52. The claimant was interviewed. On balance, the tribunal finds that the claimant did not raise the fact of his dismissal from the Home Office in the interview nor the employment gap that he had had as a result. Although the claimant gave evidence that he did raise this matter, the tribunal did not accept the claimant's evidence as accurate on this. Given the claimant accepted that a previous dismissal and employment gap would be relevant and material information. If such an important issue that would go to the heart of employment had been raised, then it is implausible that further enquiries or checks would not be made. In those circumstances, the tribunal did not accept that the claimant raised it in interview. And further, given that the claimant presented his employment history in years, which did not divulge any issues with employment history, this would unlikely be something that would be picked up and queried by an interviewer.
53. The Government Recruitment Service ('GRS'), when assessing candidates against this role, assessed candidates against their previous three years of employment service (see section 6.15 on p.132, which is part of Mr Finch's investigation report, which is consistent with Mr Finch's Witness Statement, which went unchallenged by the claimant).
54. When completing his application form, the claimant ticked the box to agree with the declaration which includes: "I understand my application may be rejected or I may be subject to disciplinary action if I've given false information or withheld relevant details".
55. The claimant based on his applicant form and his interview, was offered one of the roles. On being offered the role, the claimant was at that point invited to complete a security vetting form. Security clearance was not part of the application process but followed that decision.

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56. On the vetting form the claimant presented his employment details using months and years which was not consistent with the approach adopted in the application form. The security form was for that purpose only and was never considered by the vacancy holder as part of recruitment. The vacancy holder would never see the vetting form.
57. The claimant re-joined the Home Office (as part of Border Force) in January 2020.
58. On 19 May 2020, Ms Louise Deakin commissioned a disciplinary investigation into the claimant. The details of this are contained on the Disciplinary Investigation Notification Form (HIN01, see pp.92-96). The reasons for this investigation are recorded as follows:

“On 06/01/2020 Senior Management at Manchester Airport received anonymous information by telephone concerning Officer Philip Easton. It was alleged that he was apparently previously dismissed by the Home Office in 2016 for gross misconduct involving inappropriate behaviour towards females and temper issues. Senior Management contacted his previous Senior Manager who confirmed that he had been dismissed sometime in 2016. The Senior Manager also advised that there was a occupational health service case relating to his dismissal which was linked to him declaring that he had early onset dementia which accounted for his unacceptable behaviours. After he was dismissed, he took the Home Office to an ET and received a significant sum, not because the decision to dismiss was wrong but because his managers had not followed the DDA procedure. The current concern surrounding Officer Easton’s employment are as follows:

- Did he make all the required declarations/disclosures when applying for employment in the Home Office?”

AND

“It has been alleged that Officer Easton knowingly made false declarations or failed to disclose information, which had it been known, is likely to have precluded Officer Easton being employed by the Home Office. Specifically, that he failed to disclose he had previously been dismissed from the Home Office and that he has a serious underlying medical condition which could impact on his ability to carry out the position for which he applied.”

59. It was Irene Hall that raised these concerns. Irene Hall had no further involvement in the investigation, disciplinary or appeal process. She was not contacted further in relation to those. Nor did she place any influence of those persons involved in it.
60. Mr Finch was appointed to undertake the investigation of the claimant on 03 June 2020 (see pp.103-104).
61. The terms of reference for the investigation were recorded in the letter of 03 June 2020. These were:

“Whether during the recruitment process, BFO Easton

- disclosed a previous dismissal, or
- disclosed an underlying medical condition; and

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- If BFO Easton was found not to have disclosed these matters, whether he has breached Civil Service recruitment policy, the Personal Conduct Policy or the Civil Service Code.”
62. On 16 June 2020, Mr Finch met with members of the Decision Making and Operations team within Personnel Security (see p.130). It is recorded that during this meeting, Mr Finch was told that the claimant’s security clearance application was submitted as a new clearance request and not as a transfer of previous clearance. And that adverse disciplinary records or previous dismissal were not the subject of any of the questions on the online form. However, this was something that might be covered by the Government Resourcing Service (GRS) as part of pre-employment check process.
63. As part of investigating this matter, Mr Finch on 17 June 2020 contacted Ms Fisher of HR and requested the following:
- a. Documents relating to his dismissal in 2016, including dismissal letter.
 - b. Documents relating to his health assessment (prior to dismissal) and diagnosis.
 - c. Any policy / guidance relating to being dismissed and then re-applying to the Home Office / Civil service.
64. Mr Finch received a response from Ms Fisher on 17 June 2020. This informed him that HR does not hold such material. And that he should make enquiry of the claimant’s previous line manager (concerning dismissal letters and Occupational Health reports) and the recruitment team, for information concerning re-engagement.
65. Mr Finch had made contact with the vetting team who confirmed to him that a dismissal would not necessarily preclude further employment with the respondent, but that would depend on the reason behind the dismissal.
66. On 23 June 2020, Mr Finch received information concerning the claimant’s 2016 dismissal. These were provided by Ms Deborah Lowden to Kishver Zafar, who forwarded the information to him. It was recorded that the claimant only disclosed that he had been working for DWP from September 2018 to date (at which point was 19 November 2019). And that the claimant did not disclose any further employers (see p.699).
67. On 24 June 2020, Mr Finch had a meeting with Border Force Recruitment Human Resources. It was explained to Mr Finch by BFHO Zafar that the claimant had been treated as a transfer from another government department, and that pre-employment checks were outsourced to GRS. When Border Force Recruitment received the New Entrant Notification for the claimant, the notification identified no issues in recruiting the claimant. BFHO Zafar confirmed that employment history was recorded in years on the claimant’s application, using 2009-2016 when working at the Home Office, and 2016 onwards with the DWP. And further, BFHO Zafar explained that the claimant had not declared any medical conditions on his health questionnaire that was sent to GRS, nor was there any reference to a disciplinary issue on the claimant’s Transfer of Data Form (this is unchallenged evidence from Mr Finch, see para 23 of Mr Finch’s witness statement).
68. On 25 June 2020, Mr Finch interviewed Higher Officer Deborah Lowden, who was the Home Office Pre-employment Checking Higher Operations Manager. In that

meeting Ms Lowden confirmed that the claimant's application suggested that there were no employment gaps between 2002 and 2016. And that the respondent would only look at previous three years employment, which would have been satisfied by the claimant's description of 'DWP Case Manager, 2016 to current'. Ms Lowden explained to Mr Finch that there were no records available regarding the claimant's recruitment to DWP in 2016.

69. On 25 June 2020, Mr Finch received a copy of the letter dated 16 June 2016 sent to the claimant recording the outcome of the 2016 disciplinary (pp.941-944). This letter concluded that the claimant was being dismissed for gross misconduct and that his misconduct had rendered him unsuitable for continued employment (first paragraph on p.944).
70. On 29 June 2020, Mr Finch received a statement from Mr Nick Wood (see p.153). The claimant did not inform Mr Wood of a previous dismissal from the Home Office.
71. On 07 July 2020, Mr Finch received a statement from Mr David Breheny, the claimant's line manager at DWP (p.151). Mr Breheny explained that his understanding was that the claimant joined DWP as an external applicant, and that this was because the claimant had left a previous role from the Home Office on a voluntary exit package. Although the claimant explained under cross examination that he cannot recall whether he said this or not. He did not challenge Mr Finch on the accuracy of this when cross examining him
72. On 08 July 2020, Mr Finch interviewed the claimant (pp.156-160). These notes are an accurate record of what was said at that interview. The claimant never challenged the accuracy of those notes, nor does he give evidence that they are not accurate.
73. The claimant was accompanied at the meeting of 08 July 2020 by his Trade Union Representative.
74. At this meeting, the following was discussed:
 - a. The claimant confirmed to Mr Finch that he had been dismissed for conduct reasons from his previous role as a Chief Investigation Officer with the Home Office. This included for not keeping accurate flexi-time records, a driving offence and a data protection breach.
 - b. The claimant explained that there had been a settlement in a consequent tribunal case, and that that was 'basically' the tribunal finding in his favour.
75. Mr Finch received the claimant's 2016 disciplinary outcome letter on 10 July 2020 (pp.941-944).
76. On 21 July 2020, M Finch was informed by GRS that they could not locate any assessor/interview notes relevant to the 2020 recruitment of the claimant to the Home Office.
77. On 28 July 2020, Mr Finch received a copy of the outcome of the claimant's appeal against dismissal in 2016 (see pp.710-711).
78. Having assessed all the evidence, Mr Finch finalised his report and sent it to the commissioning officer, that being Ms Deakin on 25 August 2020 (see p.126). The report starts at p.127.

79. The concluding findings of Mr Finch (recorded at p.141) were as follows:

“8.1 FINDINGS

8.2 In regards to the allegation that whether during the recruitment process, BFO Easton disclosed a previous dismissal it is found that on the balance of probability that there is a case to answer regards to the allegation that whether during the recruitment process, BFO Easton disclosed an underlying medical condition it is found that on the balance of probability that there is a case to answer.

8.3 In regards to the allegation that if BFO Easton was found not to have disclosed these matters, whether he has breached Civil Service recruitment policy, the Personal Conduct Policy or the Civil Service Code it is found that on the balance of probability that there is a partial case to answer.

80. As a result of Mr Finch concluding that there was a case to answer, on 25 August 2020, Mr Slevin was appointed to decide on the claimant’s case (see pp.173-174).

81. The claimant, nor his trade union representative has no concerns about Mr Slevin being appointed as the decision maker. Nor do either raise any concerns about his involvement at the time. Although the claimant appeared to raise some concerns he had about Mr Slevin when he was cross-examined, this is not supported by his witness statement nor from any other evidence.

82. Mr Slevin was sent Mr Finch’s report on 25 August 2020.

83. Mr Slevin, after having taken advice from HR, made a decision to suspend the claimant. This was on the basis that If the allegations were proven they may amount to gross misconduct (see p.166).

84. The claimant was suspended on full pay pending disciplinary proceedings from 27 August 2020 (see letter at p.168). This letter made it clear that suspension was a neutral act.

85. On 15 September 2020- p.781- Mr Slevin raised with the respondent’s Security Team, concerns around the claimant’s security clearance. This was on the basis that since the claimant’s re-appointment to the Home Office, he had been given access to the same systems that he had previously been found to have abused leading to dismissal (see p.781-783, but particularly para 14 and 15).

86. On 16 September 2020, Mr Slevin held a disciplinary hearing with the claimant. The claimant’s Trade Union representative was present. The hearing notes start at p.211 of the bundle.

87. In the disciplinary hearing, the claimant was able to present his case. In respect of the missing/misleading employment dates, the claimant explained to Mr Slevin that he simply cut and paste the information from a previous application form. This is the first time the claimant raises this as an explanation. However, he does not produce that evidence.

88. The claimant explained that he did not record the period from being dismissed with the Home Office up until taking employment with the DWP in his employment history as he did not consider it to be relevant information (see p.212).

89. The claimant at this hearing raises allegations concerning Irene Hall. In short, he was raising allegations of being subject to detriments by Ms Hall as a result of

having raised protected disclosures.

90. Considering the information given by the claimant at this hearing, Mr Slevin took the decision to adjourn the hearing to allow the claimant's concerns to be raised further with the Regional Director. The claimant was informed that his suspension would continue and was aware that the disciplinary hearing would not resume until his grievances had been determined.
91. The claimant raises his grievance against Ms Hall on 22 September 2020 (see p.224).
92. By 06 November 2020, a decision had been reached on the claimant's grievance (see p.317). The disciplinary hearing was paused for that duration to allow that independent process to be completed.
93. The Disciplinary Hearing was reconvened on 19 November 2020 (p.352). At that hearing, the claimant again does not bring any evidence to support why he says he used years for continuous service, rather than more precise dates that would have identified an employment gap and/or the dismissal he had had from the Home Office previously. In short, the claimant produces no additional evidence in respect of anything at this hearing.
94. Again, the claimant is given a full opportunity to present his case. This is not disputed by the claimant.
95. Mr Slevin's decision was handed down at the end of that reconvened hearing. Mr Slevin's decision is explained to the claimant (p.354).
96. Mr Slevin decides that the issue about failing to disclose medical impairment on his application does not succeed. He accepts the claimant's case in respect of this particular charge and finds in the claimant's favour with that.
97. However, Mr Slevin concludes that the remaining 3 charges were proven. He explains the following:

"1st charge – dishonestly failing to disclose the fact and circumstances of your previous dismissal. I find the case proven as I don't accept it to be a credible argument put forward for the none pertinence of none disclosure of the previous dismissal. I am not persuaded by your argument that you disclosed this in the interview. The civil service jobs declaration also requires you to acknowledge that you have disclosed all relevant facts in respect of your application, and you did not.

2nd charge – dishonestly failing to disclose a period of unemployment – this is also proven. I am not persuaded by your argument that a period of unemployment following dismissal from the department you were applying to re-join is not relevant to your application.

3rd charge – dishonestly failing to disclose underlying medical conditions. I am persuaded by your argument that your underlying health issues were linked to the index events around your previous dismissal. This charge therefore falls.

4th charge – breach of the civil service code, personal conduct policy and Border Force values – I am satisfied that this charge is proven. Your conduct was dishonest and this calls into question your integrity. On the basis of 3 of 4 charges proven, I do consider this is potentially gross misconduct and am going to consider all penalties up to and including dismissal.

98. Mr Slevin at this hearing, having made his decision, invited the claimant to put forward any mitigating circumstances that he considered ought to be taken into account, in advance of making a decision on sanction.
99. In response to this invitation, the claimant refers to the decision being incompatible with employment law, without giving any further explanation as to in what way the decision was incompatible with it. The claimant refers to what he perceives as being victimisation by Iren Hall. The claimant raises that 2016 was too long ago to look at. And he raises that the respondent should have known about his dismissal/employment gap anyways.
100. After a short adjournment to consider what sanction to apply, in light of the mitigating circumstances raised by the claimant, Mr Slevin made the decision to dismiss the claimant for gross misconduct (see p.357).
101. A letter confirming Mr Slevin's decision to dismiss the claimant for gross misconduct was sent to the claimant on 20 November 2020 (see p.343).
102. For the avoidance of any doubt, the reason why the claimant was dismissed was for having failed to disclose relevant information in respect of the fact and circumstances of his dismissal from the Home Office in 2016 and sought to conceal a period of unemployment following that dismissal, in his application for a role with the Border Force in 2019. And that that conduct had been considered serious enough to be a breach of the respondent's discipline policy, and which was serious enough to destroy the relationship of trust and confidence between the parties. The decision to dismiss had no connection to the claimant's alleged disability.
103. The claimant appealed the decision to dismiss him, by letter dated 02 December 2020 (see p.393).
104. Ms Hickman was appointed as the officer responsible for deciding the appeal. The claimant does not make any suggestion that Ms Hickman had any connection to Ms Hall nor that Ms Hall had any influence over her. The claimant did not raise any concerns with the appeal process in his evidence.
105. The claimant did not provide any further documents concerning mitigation to be considered by Ms Hickman.
106. Ms Hickman upheld decision to terminate the claimant's contract for gross misconduct on 03 February 2021. However, Ms Hickman did agree with the claimant that he should be removed from the fraud register. And this was subsequently actioned.

Conclusions on unfair dismissal claim/reasons for the dismissal

107. It is not entirely clear what the claimant's case is in respect of the unfair dismissal part of his claim. The way that he explained his case to the tribunal, the witness evidence that he brings and the way that he presented his case, left it unclear as to what part of the process or the decision making itself, he was saying fell outside of the band of reasonable responses.
108. Irrespective of that, the tribunal has considered carefully the approach taken by the respondent in this case and have reviewed the actions and decisions taken by Mr Finch, Mr Slevin and Ms Hickman, with a particular focus on where we could identify any allegations of unfairness made by the claimant. Throughout this process, the tribunal has been careful not to substitute its decision into the process

but to apply the band of reasonable responses.

109. Having considered the approach adopted by Mr Finch, the tribunal were satisfied that he undertook as reasonable an investigation as necessary in the circumstances. Indeed, Mr Finch undertook an extremely thorough investigation.
110. Mr Finch considered the claimant's application form. And this was necessary as part of Mr Finch's task was to establish whether the claimant had failed to disclose information that was material and relevant to his application. This inevitably required Mr Finch to interrogate the application form itself, but also would require him to understand the circumstances around the claimant's dismissal in 2016, as it is only on understanding this that Mr Finch could conclude whether this was information that was relevant and material.
111. It appears that the claimant's focus in this case was around Mr Finch seeking and receiving information about his dismissal in 2016. However, the tribunal considered this to be a reasonably necessary part of Mr Finch's investigation and would have been more critical of Mr Finch had he not sought out this investigation. Especially given that this is information that relates to whether there had been a dismissal and/or employment gap.
112. Mr Finch interviewed all the necessary individuals. The claimant does not present a case that inappropriate persons were interviewed, nor that individuals who should have been interviewed were not. These interviews took place during a pandemic, which inevitably slowed down the process.
113. The claimant was invited to a hearing with Mr Finch and was able to present his case and to provide any relevant documents. The claimant played an active role in participating in this hearing.
114. Mr Finch made the decision that the claimant had a case to answer based on all the information he had before him. This was a decision open to Mr Finch based on all the information he had. The decision by Mr Finch that there was a case to answer and to effectively progress this to a disciplinary hearing was a decision that falls within the band of reasonable responses that was available to him.
115. All the evidence points to and supports that the investigation and the decision to dismiss the claimant was on the grounds of misconduct. The respondent has satisfied the burden that rests on it that this dismissal was for the potentially fair reason of misconduct. And for the avoidance of any doubt, this is a dismissal for misconduct that took place in 2019. And which relates to a failing to disclose relevant and material information on the claimant's application form. This is not dismissal for misconduct that took place in 2016, which is what the claimant appeared to believe.
116. In terms of the investigation undertaken by Mr Finch. This was more than reasonable. The approach adopted and the decision made clearly falls within the Band of Reasonable Responses.
117. Mr Slevin made a decision to dismiss in circumstances of misconduct. This was upheld on appeal. This was the honest belief of both the decision maker and the appeals officer, supported by reasonable grounds underpinned by that reasonable investigation.
118. Having concluded that the claimant had engaged in such misconduct, given the nature of his role, the nature of the organisation and nature of the misconduct concerned, given the mitigation put forward by the claimant, dismissing him for that reason in those circumstances in the view of this tribunal fell within the Band of

Reasonable Responses.

119. Part of the claimant's case was that dismissing him in circumstances where he had been employed in the role for around 5 months from the time the investigation begun until suspension is unfair. However, allowing an investigation to take place, and waiting until there is a conclusion that there is a case to answer, before considering steps such as suspension, and then taking swift action, in this tribunal's perspective is a reasonable approach open to the respondent.
120. From a procedural perspective the process likewise falls within the Band of Reasonable Responses. It was a thorough process. It was paused, to allow a grievance to be considered and assessed, which we say was a reasonable action to take. The individuals involved acted objectively and independently. None had influence exerted on them by Ms Hall, whose involvement in his wrongdoing being identified appeared to be a focus of the claimant as a source of unfairness. The length of time that the whole process took is reasonable, considering the thoroughness of the process, the fact that the process largely played out in circumstances of a global pandemic and in circumstances where it was paused for some time to allow the grievance process to be completed. The claimant has not made any allegations of procedural unfairness nor brought evidence in that respect.
121. In these circumstances, the claimant is found not to have been unfairly dismissed.
122. Given our findings above and given our clear finding in respect of the reason behind why the claimant was dismissed, the claimant's allegations of disability discrimination, had they remained a live issue at this point, would have failed on the basis of there being no causal connection between the claimant's disability and the dismissal/detriment that he brings that complaint on. In other words, we concluded that his dismissal was not because of the impairment he brings that complaint on, but for reasons unconnected to any alleged disability.
123. All claims brought by the claimant are dismissed.

Employment Judge Mark Butler

Date: 14 July 2023

JUDGMENT SENT TO THE PARTIES ON

24 July 2023

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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.