# EMPLOYMENT TRIBUNALS

**Claimant:** **Mr M Kemp**

**Respondent:** **Birmingham City Council**

**Heard at:** **Birmingham**

**On:** **5, 6, 7, 8, 9, 12, 13, 14, 15, 19, 20, 21, 23, 26, 27, 28 June & (in chambers) 31 July & 1 August 2023**

**Before:** **Employment Judge Flood**
**Mr J Sharma**
**Mr S Woodall**

**Representation**
Claimant: In person (assisted by Mr Francis, friend)
Respondent: Mr Starcevic (Counsel)

# RESERVED JUDGMENT

The unanimous judgment of the Tribunal is:

1. The complaints against the respondent of unlawful detriment on the grounds of having made a protected disclosure (contrary to s 47B of the Employment Rights Act 1996 ("ERA")) are dismissed:

    a. The complaints listed at paragraphs 4 (f), (g) (1) and (i) of the List of Issues below are dismissed because the Tribunal has no jurisdiction to hear the same by virtue of section 48 (3) ERA (having been otherwise made out). These complaints were presented after the expiry of the statutory time limit. That time limit cannot be extended because it was reasonably practicable for the claimant to present his claim within that time limit.
    b. The complaints listed at paragraphs 4 (b), (d), (e), (g) (2) and (h) of the List of Issues below are not well founded and so dismissed.
    c. The complaints listed at paragraphs 4 (a) and (c) of the List of Issues below were dismissed upon withdrawal.

2. The complaints of failure to make reasonable adjustments, disability related harassment and victimisation (contrary to ss 20, 21, 26 and 27 of the Equality Act 2010 ("EQA")) are not well founded and are dismissed.

# REASONS

## The Complaints and preliminary matters

1. The claimant presented his first claim form ('Claim 1') on 30 April 2019 (page 34-52), having completed a period of early conciliation between 25 February and 8 April 2019. Claim 1 included a complaint of disability discrimination and a complaint identified as 'Public Interest Disclosure – Under the Employment Rights Act 1996' against the respondent. In the details of claim appended to Claim 1, the claimant set out a narrative of events alleging he had made protected disclosures and had been subject to detrimental treatment because of this which had made him ill. It went on to set out a further lengthy narrative of events dating from November 2015 until 27 March 2019. The respondent defended Claim 1 and its ET3 and grounds of resistance were shown at pages 55-68.

2. There was a preliminary hearing in private for case management before Employment Judge Reed on 5 November ('1st PH') where particulars of the complaints the claimant wished to bring (which were not clear from the claim form) were discussed. The claimant had provided particulars of the disclosures he wished to rely upon, and the detriments claim in advance of the 1st PH. The complaints were identified in summary form and the respondent ordered to serve an amended response. The claimant was also ordered to provide a disability impact statement and medical evidence and a further preliminary hearing was listed. That came before Employment Judge Cookson on 14 February 2020 ('2nd PH') who determined that during the relevant period, from early in 2018 to 30 April 2019, the claimant was disabled within the meaning of section 6 EQA (page 145). It was later clarified that this finding of disability related to both the claimant's impairments of diverticulitis and anxiety/depression (page 499).

3. The claimant entered a second period of EC on 26 January 2021 with an EC certificate being issued on 3 March 2021 (page 164). He presented a second claim form on 15 March 2021 ('Claim 2') making further complaints of disability discrimination and making complaints of victimisation and harassment (pages 166-185). The attached particulars of claim again included a lengthy narrative of events. The respondent defended Claim 2 and its ET3 and grounds of resistance were at pages 194-219.

4. The matter came before Employment Judge Harding for a preliminary hearing in public on 15 & 27 October 2021 ('3rd PH'). At the 3rd PH Employment Judge Harding refused the respondent's application to strike out some of the complaints in Claim 1 (see judgment at page 245) determining that whether or not any of the claimant's complaints formed

part of a continuing act and/or are part of a series of similar acts with an in time complaint would be determined at the final hearing. The judge went on and went on to identify, clarify and record the complaints made in both Claim 1 and Claim 2. The claimant was ordered to provide specific limited further information and the matter was listed for a further case management hearing. The claimant subsequently provided those particulars and applied to amend Claim 2 to add further complaints of whistleblowing detriment. The matter came before Employment Judge Harding again for a preliminary hearing in private on 28 March 2022 ('4th PH'). An order was made that Claim 1 and Claim 2 be consolidated and the issues were further discussed and recorded. The matter was listed for a final hearing with a time estimate of 18 days. The respondent was ordered to and subsequently filed an amended response ('AGOR') (page 322-359), and the parties were ordered to agree a list of issues by 30 May 2022.

5. The final list of issues agreed between the parties ('List of Issues') was then submitted (page 360-394). This included a schedule of disclosures originally served on 14 November 2019 and re-served on 18 April 2022 with upper case alphabet labelling ('Disclosures Schedule') which identified the 30 specific disclosures relied upon by the claimant. The Disclosures Schedule had 5 columns and set out what alleged disclosure was made when and to whom. In relation to each alleged disclosure, it identified which of the sections of section 43B(1)(a) to (f) that disclosure tended in the reasonable belief of the claimant to show. This was in the main that a criminal offence had been committed (section 43B (1) (a)); that there was failure to comply with a legal obligation (section 43B (1) (b)) and/or that the health and safety of any individual had been or was likely to be endangered (section 43B (1) (d). The fifth column then went on to identify the alleged criminal offence said to have been committed or the legal obligation breached or to provide further notes. The List of Issues is set out in abbreviated form below and was referred to throughout the hearing.

6. At a further preliminary hearing in private for case management before Employment Judge Britton on 24 April 2023 final case management matters were addressed and applications to adduce witness evidence late and for specific disclosure were dealt with. The claimant's application for specific disclosure of documents identified as the Project Stockholm report and the Voids Report was refused.

7. The respondent indicated in September 2022 that it intended to call 25 witnesses in support of its defence. The respondent applied for witness orders to be made in respect of Mrs J Kennedy ('JK'); Mrs Hewins ('DH') and Mrs J Gilford-Smith (formerly Ms Griffin) ('JG'). Witness orders were made and sent to JK on 6 January 2023; to DH on 23 February 2023 and to JG on 25 May 2023. On 5 June 2023, JG made an application to have the witness order made in respect of her attendance set aside on health

grounds. On 12 June 2023, DH made an application to have her witness order set aside on health grounds which was supported with a letter from her doctor. The tribunal considered these applications but determined in accordance with rule 29 of the ET Rules that it was not in the interests of justice for the previous orders made to be set aside. The Tribunal wrote to DH and JG on 16 June 2023 to inform them of this decision and both witnesses attended to give evidence in accordance with the terms of the witness orders issued.

8. The final hearing commenced on 5 June 2023 before an Employment Tribunal consisting of Employment Judge Meichen, Mr Sharma and Mr Woodall. Preliminary matters were addressed which included converting the hearing to a fully remote hearing to be heard by CVP video link at the claimant requests due to his ill-health. The Tribunal began its reading (which was scheduled to take 2 days) but it subsequently became apparent that Employment Judge Meichen had been the judge allocated to a previous unsuccessful judicial mediation in the proceedings in February 2022. Given the Presidential Guidance on Alternative Dispute Resolution first issued on 22 January 2018, which states: "*The judge who conducts the mediation will not hear the case if the mediation fails*", Employment Judge Meichen took the decision to recuse himself. The parties were informed on 7 June 2023 that a different judge had been allocated and that the hearing would be restarted before an employment Tribunal consisting of Employment Judge Flood, Mr Sharma and Mr Woodall. The was some additional reading in time for this Tribunal and the hearing restarted with the parties attending on 12 June 2023 at 2 PM.

9. An agreed bundle of documents ('Main Bundle') was produced for the hearing and where page numbers are referred to below, these are references to page numbers in the Main Bundle, unless otherwise specified. In addition to the Main Bundle, we had before us a additional bundle containing medical evidence pertaining to the claimant ('Medical Bundle') and a further file submitted by the respondent containing the following documents: chronology; cast list, respondents outline opening submissions; a document headed Annex a summarising the respondent's position on each disclosure relied on; and copies of 21 authorities relied on by the respondent.

10. There was another bundle which contained the witness statements of the claimant and 25 of the respondent's witnesses. A separate witness statement was submitted from JG. The witnesses this tribunal heard from in person are set out below. The Tribunal has used the initials of various individuals as they are defined above or in the findings of fact below and replicated this in the List of Issues set out at paragraph 15 below.

11. During the hearing a number of matters arose that are worthy of comment in this written judgment and reasons. The claimant suffers from poor health and during the hearing at time became distressed and reported that he was feeling unwell. Having completed his evidence over

3 days by lunchtime on 15 June 2018, the claimant applied for an adjournment which was agreed to and there was a non sitting day on 16 June 2023. It also emerged that JK who was attending to give evidence under a witness order had some difficulties with attending as during the hearing, her mother was gravely ill and in fact passed away on 17 June 2023. JK did in fact attend on 19 June 2023 to give her evidence, but the claimant suggested that he had not felt able to question JK in the manner he would have otherwise done had she not been recently bereaved. However, the Tribunal was satisfied that in the circumstances there had been sufficient opportunity to cross examine JK on the contents of her witness statement during the 45 minutes of cross examination that did take place.

12. Several of the respondent's witnesses had difficulties accessing the electronic bundle (which in the case of GN delayed his evidence by several hours) and there were issues with page numbers and the claimant made complaints about this during the hearing. The claimant was concerned that he felt assurances had been made by the respondent's representative that all its witnesses would be able to give their evidence from a room set aside in the respondent's premises. As it was, most of those witnesses gave evidence from their homes. The claimant indicated that the issues around this were causing him distress and making him ill. The claimant also complained that the way in which some witnesses were answering questions (MT and GN) which he felt was aggressive and abusive to him was causing his health to be impacted. The Tribunal was satisfied that there was no disruption to the hearing outside the usual difficulties that can sometimes arise during a remote video hearing around connection and processing speed. With the assistance of the Tribunal and the parties, it was possible for arrangements to be made all witnesses to have access to the documents in the Bundle that were required for them to answer questions effectively. The Tribunal was also sympathetic to the concerns raised by the claimant about his health and the impact the process was having on him. Steps were taken by the Tribunal to try and assist the claimant by allowing regular breaks to be taken and for appropriate assistance to be provided during cross examination. Some witnesses were hostile to the claimant during questioning, but the Tribunal is aware that several witnesses had also been involved in their own Tribunal complaints against the respondent and felt some antipathy towards the respondent and the claimant. The Tribunal always tried to keep the questions and responses on all sides to the relevant issues in dispute and as appropriate.

13. On 20 June 2023, the respondent applied for a late witness order to be issued in respect of Mr M Tolley ('MT'). This witness had been co-operating with the respondent but had become uncontactable and the respondent was concerned that he would not attend. This was considered by the Tribunal, and it was determined that MT had evidence

that was relevant, and it was necessary for the fair disposal of the proceedings for a witness order to be made requiring his attendance by CVP on 26 June 2023. This was issued and served on MT on 21 June 2023. There was a further non sitting day on 22 June 2023 due to a pre arranged commitment of the Judge. MT had not been in touch with the respondent or the Tribunal and initially did not attend as instructed on the morning of 26 June 2023. He did then contact the respondent's legal representative to ask for a private consultation with the Tribunal which as we explained was not possible. He subsequently applied for the witness order made in his name to be set aside on the basis that he was involved in concurrent Tribunal proceedings against the Respondent, and he felt that attending as a witness could damage his case. He also cited health grounds. The Tribunal considered this application but decided that the previous witness order made would not be set aside under rule 29 of the ET Rules. MT was a highly relevant witness, and it was necessary for the fair disposal of the proceedings for him to attend and there had been no change of circumstances which meant that the previous decision to make a witness order should be set aside. It was noted that this Tribunal panel would not sit on any future hearing in the claim brought by GN.

14. The parties provided their written submissions in advance and gave oral submissions on the morning of 28 June 2023. The Tribunal adjourned the hearing for a reserved decision to be made and met again on 31 July, 1, 2 & 3 August 2023. Whilst the substantive deliberations were completed during this period, the written decision and reasons had not been finalised. The Tribunal wrote to the parties to explain that there would be a delay and completed the process of writing its detailed judgment and reasons during the weeks commencing 14 August 2023 and then 21 August 2023. This was an extensive exercise given the number of disclosures relied upon, detriments claimed and the complexity of some of the issues upon which the Tribunal needed to determine. The Tribunal apologises for the delay in the completion of the written judgment and reasons.

## The Issues

15. The issues to be determined by the Tribunal ('the List of Issues') were as follows:

### (1) Complaints of detriments on ground of protected disclosures

1. In relation to the disclosures identified in the 3rd column of the Schedule of Disclosures (originally served on 14/11/19 and re-served on 18/4/22 with upper case alphabet labelling), it is admitted and averred that they were made to the Respondent, being the Claimant's employer for the purpose of s. 43(C)(1)(a) ERA 1996.

Qualifying disclosures

2. The following disclosures are admitted by the Respondent to be qualifying disclosures for the purpose of s. 43B ERA 1996 on the following specific basis or bases, in some cases subject to the Claimant evidencing the factual basis of the allegation. If in relation to any such disclosure the Claimant still relies on any other basis set out in the Schedule, are these disclosures also qualifying disclosures on the other bases advanced by the Claimant?

2.1. PID A: It is admitted that the Claimant had a reasonable belief that the disclosures in relation to both properties tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column of the Schedule, and that the disclosure in relation to property 2 tended to show a matter within s. 43B(1)(d). It is admitted that the Claimant had a reasonable belief that the disclosures were in the public interest.

(a) Did the Claimant have a reasonable belief that the disclosure in relation to property (1) tended to show a matter within s. 43B(1)(d)?

2.2. PID B: It is not admitted that the Claimant made a disclosure that work was not being completed but charged for. It is admitted that the Claimant had a reasonable belief that the disclosures in fact made tended to show a matter within s. 43B(1)(a) and s. 43B(1)(b) of the type stated in the 5th column. It is admitted that the Claimant had a reasonable belief that the disclosures were in the public interest.

(b) Did the Claimant make a disclosure that work was being completed but not charged for?

2.3. PID C: It is admitted that the Claimant had a reasonable belief that the disclosures tended to show a matter within s. 43B(1)(a) and s. 43B(1)(b) of the type stated in the 5th column. It is admitted that the Claimant had a reasonable belief that the disclosures were in the public interest.

2.4. PID D: It is not admitted that the Claimant made the disclosures relied upon. It is admitted that the Claimant had a reasonable belief that the disclosures in fact made tended to show a matter within s. 43B(1)(a) and s. 43B(1)(b) of the type stated in the 5th column. It is admitted that the Claimant had a reasonable belief that the disclosures made were in the public interest.

(c) Did the Claimant make the disclosures relied upon?

2.5. PID E: It is not admitted that the Claimant made the first disclosure relied upon. It is admitted that the Claimant had a reasonable belief that the disclosures in fact made tended to show a matter within s. 43B(1)(a). It is not admitted that the Claimant had a reasonable belief that the disclosures in fact made tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column. It is admitted that the Claimant had a reasonable belief that the disclosures were in the public interest.

(d) Did the Claimant make the first disclosure relied upon?

(e) Did the Claimant's suggestion that the contractor would argue that it was a legacy job, constitute a disclosure of information?

(f) Did the Claimant have a reasonable belief that the disclosures in fact made tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column?

2.6. PID F: It is not admitted that the Claimant made the first and second disclosures relied upon. It is admitted that the Claimant had a reasonable belief that the second disclosure in fact made, tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column. Subject to the Claimant evidencing the factual basis of the fourth disclosure, it is admitted that the Claimant had a reasonable belief that the second to fourth disclosures tended to show a matter within s. 43B(1)(a). It is admitted that the Claimant had a reasonable belief that the disclosures were in the public interest.

(g) Did the Claimant make the first and second disclosures relied upon?

(h) Has the Claimant evidenced the factual basis of the fourth disclosure?

(i) Did the Claimant have a reasonable belief that the first disclosure tended to show a matter within s. 43B(1)(a)?

(j) Did the Claimant have a reasonable belief that the other disclosures other than the second disclosure in fact made, tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column?

2.7. PID I: It is not admitted that the Claimant made the first and second disclosures relied upon. It is admitted that the Claimant had a reasonable belief that the second disclosure in fact made, tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column. Subject to the Claimant evidencing the factual basis of the fourth disclosure, it is admitted that the Claimant had a reasonable belief that the second to fourth disclosures tended to show a matter within s. 43B(1)(a). It is admitted that the Claimant had a reasonable belief that the disclosures were in the public interest.

(k) Did the Claimant make the first and second disclosures relied upon?

(l) Has the Claimant evidenced the factual basis of the fourth disclosure?

(m) Did the Claimant have a reasonable belief that the first disclosure tended to show a matter within s. 43B(1)(a)?

(n) Did the Claimant have a reasonable belief that the other disclosures other than the second disclosure in fact made, tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column?

2.8. PID J: It is not admitted that the Claimant made the first disclosure relied upon. It is admitted that the Claimant had a reasonable belief that the first disclosure in fact made tended to show a matter within s. 43B(1)(a). It is not currently admitted that the Claimant had a reasonable belief that the second disclosure tended to show a matter within s. 43B(1)(d). Subject to the Claimant proving reasonable belief in the relevant failure relied upon, it is admitted that the Claimant had a reasonable belief that these disclosures were in the public interest.

(o) Did the Claimant make the first disclosure relied upon?

(p) Did the Claimant have a reasonable belief that the second disclosure tended to show a matter within s. 43B(1)(d)?

2.9. PID L: It is not admitted that the Claimant's suggestion in his own email of possible exposure constituted a disclosure of information. It is admitted that the tenant's own letter contained two categories of disclosure. It is admitted that the Claimant had a reasonable belief that the second category of disclosures tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column and s. 43B(1)(d). It is not admitted that the Claimant had a reasonable belief that the first category of disclosures tended to show a matter within s. 43B(1)(b) or (d). Subject to reasonable belief in the failure relied upon, it is admitted the Claimant had a reasonable belief that these disclosures were in the public interest.

(q) Did the Claimant's suggestion of possible exposure to asbestos constitute a disclosure of information?

(r) Did the Claimant have a reasonable belief that the first category of disclosures tended to show a matter within s. 43B(1)(b)?

(s) Did the Claimant have a reasonable belief that the first category of disclosures tended to show a matter within s. 43B(1)(d)?

2.10. PID O: It is not admitted that the Claimant made the disclosure relied upon. It is admitted that the Claimant had a reasonable belief that the disclosure in fact made tended to show a matter within s. 43B(1)(a). It is admitted that the Claimant had a reasonable belief that the disclosure was in the public interest.

(t) Did the Claimant make the disclosure relied upon?

2.11. PID P: It is admitted that the Claimant had a reasonable belief that the disclosures tended to show a matter within s. 43B(1)(a). It is admitted that the Claimant had a reasonable belief that the second and third disclosures tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column. It is admitted that the Claimant had a reasonable belief that the disclosures were in the public interest.

(u) Did the Claimant have a reasonable belief that the first and fourth to sixth disclosures tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column?

2.12. PID Q: It is not admitted that the Claimant made the disclosure relied upon. It is admitted that the Claimant had a reasonable belief that the disclosure in fact made tended to show a matter within s. 43B(1)(a). It is admitted that the Claimant had a reasonable belief that the disclosure made was in the public interest.

2.13. PID R: It is admitted that the Claimant had a reasonable belief that the disclosure tended to show a matter within s. 43B(1)(a). It is admitted that the Claimant had a reasonable belief that the disclosure was in the public interest.

2.14. PID S: It is admitted that the Claimant had a reasonable belief that the first disclosure tended to show a matter within s. 43B(1)(a). Subject to the Claimant evidencing the factual basis of the allegation, it is admitted that the Claimant had a reasonable belief that the second disclosure tended to show a matter within s. 43B(1)(d). It is admitted that the Claimant had a reasonable belief that these disclosures were in the public interest.

(v) Has the Claimant evidenced the factual basis of the second disclosure?

2.15. PID T: It is admitted that the Claimant had a reasonable belief that the 1st and 2nd disclosures tended to show a matter within s. 43B(1)(a). It is admitted that the Claimant had a reasonable belief that the 1st, 2nd, 3rd and 8th disclosures tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column. It is not admitted that the Claimant had a reasonable belief that the disclosures tended to show a matter within s. 43B(1)(d). It is not admitted that the Claimant had a reasonable belief that the disclosures tended to show a matter within s. 43B(1)(f). It is not admitted that the Claimant made the additional disclosures relied upon. Subject to reasonable belief in the failures relied upon, it is admitted that the Claimant had a reasonable belief that the disclosures were in the public interest.

(w) Did the Claimant make the additional disclosures relied upon?

(x) Did the Claimant have a reasonable belief that the 3rd - 8th disclosures tended to show a matter within s. 43B(1)(a)?

(y) Did the Claimant have a reasonable belief that the 4th - 7th disclosures tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column?

(z) Did the Claimant have a reasonable belief that the disclosures tended to show a matter within s. 43B(1)(d)?

(aa) Did the Claimant have a reasonable belief that the disclosures tended to show a matter within s. 43B(1)(f)?

2.16. PID V1: It is admitted that the Claimant had a reasonable belief that the second disclosure tended to show a matter within s. 43B(1)(d). It is not admitted that the Claimant had a reasonable belief that the first disclosure tended to show a matter within s. 43B(1)(d). Subject to the Claimant proving reasonable belief in the failure relied upon, it is admitted that the Claimant had a reasonable belief that the disclosures were in the public interest.

(bb) Did the Claimant have a reasonable belief that the first disclosure tended to show a matter within s. 43B(1)(d)?

2.17. PID V2: It is admitted that the Claimant had a reasonable belief that the second disclosure tended to show a matter within s. 43B(1)(d). It is not admitted that the Claimant had a reasonable belief that the first disclosure tended to show a matter within s. 43B(1)(d). Subject to the Claimant proving reasonable belief in the failure relied upon, it is admitted that the Claimant had a reasonable belief that the disclosures were in the public interest.

(cc) Did the Claimant have a reasonable belief that the first disclosure tended to show a matter within s. 43B(1)(d)?

2.18. PID W: It is not admitted that there was a disclosure of information that the cost increase was without explanation. It is admitted that the Claimant had a reasonable belief that the disclosure in fact made tended to show a matter within s. 43B(1)(a). It is admitted that the Claimant had a reasonable belief that the disclosure was in the public interest.

(dd)Did the Claimant make a disclosure of information that the cost increase was without explanation?

2.19. PID X: It is admitted that the Claimant had a reasonable belief that the disclosures tended to show a matter within s. 43B(1)(a) and s. 43B(1)(b) of the type stated in the 5th column. It is admitted that the Claimant had a reasonable belief that the disclosures were in the public interest.

2.20. PID Y: It is admitted that the Claimant had a reasonable belief that the first disclosure tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column. It is admitted that the Claimant had a reasonable belief that the disclosure was in the public interest. It is not admitted that there was a disclosure that there had been possible damage to property and nuisance to neighbours.

(ee) Did the Claimant make an additional disclosure that there had been possible damage to property and nuisance to neighbours?

(ff) Did the second disclosure in fact made, constitute a disclosure of information?

2.21. PID Z: It is admitted that the Claimant had a reasonable belief that the first disclosure tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column and s. 43B(1)(d). It is not admitted that the Claimant had a reasonable belief that the second disclosure tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column, or s. 43B(1)(d) (if the latter is alleged). It is admitted that the Claimant had a reasonable belief that the disclosures were in the public interest.

(gg) Did the Claimant have a reasonable belief that the second disclosure tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column?

(hh) Did the Claimant have a reasonable belief that the second disclosure tended to show a matter within s. 43B(1)(d) (if the latter is alleged)?

2.22. PID AA: It is not admitted that in the email dated 21/6/18 identified as AA, the Claimant made a disclosure of information either that there had been a faulty repair to a bathroom floor, or anything related to damp jobs, or that there had been a failure to act on previous disclosures. It is admitted that as of 21/6/18 the Claimant had a reasonable belief that any disclosure relating to damp jobs tended to show a matter within s. 43B (1) (b) of the type stated in the 5th column, and s. 43B(1)(d). It is not admitted that as of 21/6/18 the Claimant had a reasonable belief that any disclosure relating to the 38 Rushlake Green bathroom/toilet floor tended to show a matter within s. 43B (1) (b) of the type stated in the 5th column, and s. 43B(1)(d). Subject to reasonable belief in the relevant failure, it is admitted that as of 21/6/18 the Claimant had a reasonable belief that the disclosure was in the public interest.

(ii) Has the Claimant proved that he made a disclosure relating to damp jobs or 38 Rushlake Green bathroom floor?

(jj) Did the Claimant have a reasonable belief that any disclosure relating to the 38 Rushlake Green bathroom/toilet floor tended to show a matter within s. 43B (1) (b) of the type stated in the 5th column?

(kk) Did the Claimant have a reasonable belief that any disclosure relating to the 38 Rushlake Green bathroom/toilet floor tended to show a matter within s. 43B(1)(d)?

2.23. PID AB: It is admitted, if pursued, that the Claimant had a reasonable belief that the additional disclosure made tended to show a matter within s. 43B(1)(a), s. 43B(1)(b) of the type stated in the 5th column and s. 43B(1)(d). It is not admitted that as of 20/9/18 the Claimant had a reasonable belief that the disclosure currently relied upon tended to show a matter within s. 43B(1)(a); or s. 43B(1)(b) of the type stated in the 5th column; or s. 43B(1)(d). It is admitted that the Claimant had a reasonable belief that the disclosure was in the public interest.

(ll) Does the Claimant rely upon the additional disclosure made?

(mm)Did the Claimant have a reasonable belief that the disclosure currently relied upon tended to show a matter within s. 43B (1) (a)?

(nn)Did the Claimant have a reasonable belief that the disclosure currently relied upon tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column?

(oo)Did the Claimant have a reasonable belief that the disclosure currently relied upon tended to show a matter within s. 43B(1)(d)?

2.24. PID AC: It is admitted that as of 2/1/19 the Claimant had a reasonable belief that the second disclosure (only) tended to show a matter within s. 43B(1)(a), s. 43B(1)(b) of the type identified in the 5th column and s. 43B(1)(d). It is not admitted that the Claimant had a reasonable belief that the disclosures tended to show a matter within s. 43B(1)(f). It is admitted that as of 2/1/19 the Claimant had a reasonable belief that the second disclosure was in the public interest. It is not admitted that the Claimant had a reasonable belief that the other disclosures were in the public interest.

(pp)Did the Claimant have a reasonable belief that the disclosures other than the second disclosure tended to show a matter within s. 43B(1)(a)?

(qq)Did the Claimant have a reasonable belief that the disclosures other than the second disclosure tended to show a matter within s. 43B(1)(b) of the type identified in the 5th column?

(rr) Did the Claimant have a reasonable belief that the disclosures other than the second disclosure tended to show a matter within s. 43B(1)(d)?

(ss) Did the Claimant had a reasonable belief that the disclosures tended to show a matter within s. 43B(1)(f)?

(tt) Did the Claimant have a reasonable belief that the disclosures other than the second disclosure were in the public interest?

2.25. PID AD: It is admitted that as of 7/2/19 the Claimant had a reasonable belief that the second disclosure relied upon (only) tended to show a matter within s. 43B(1)(a), s. 43B(1)(b) of the type identified in the 5th column and s. 43B(1)(d). It is not admitted that the Claimant had a reasonable belief that the disclosures tended to show a matter within s. 43B(1)(f). It is admitted that as of 2/1/19 the Claimant had a reasonable belief that the second disclosure was in the public interest. It is not admitted that the Claimant had a reasonable belief that the other disclosures were in the public interest.

(uu)Did the Claimant have a reasonable belief that the disclosures other than the second disclosure tended to show a matter within s. 43B(1)(a)?

(vv)Did the Claimant have a reasonable belief that the disclosures other than the second disclosure tended to show a matter within s. 43B(1)(b) of the type identified in the 5th column?

(ww)Did the Claimant have a reasonable belief that the disclosures other than the second disclosure tended to show a matter within s. 43B(1)(d)?

(xx)Did the Claimant had a reasonable belief that the disclosures tended to show a matter within s. 43B(1)(f)?

(yy)Did the Claimant have a reasonable belief that the disclosures other than the second disclosure were in the public interest?

3. The following disclosures are not admitted to be qualifying disclosures. Are the following qualifying disclosures on the basis or bases advanced by the Claimant?

3.1. PID G: It is not admitted that in email G there was any disclosure of information to the effect that there was possible exposure to asbestos and other contaminants. It is not admitted that the Claimant had a reasonable belief that the disclosure made tended to show a matter within s. 43B(1)(d). It is not admitted that the Claimant had a reasonable belief that this disclosure was in the public interest.

(a) Did the disclosure relied upon contain any disclosure of information to the effect that there was possible exposure to asbestos and other contaminants?

(b) Did the Claimant have a reasonable belief that the disclosure tended to show a matter within s. 43B(1)(d)?

(c) Did the Claimant have a reasonable belief that the disclosure was in the public interest?

3.2. PID H: If pursued, it is not admitted that the Claimant's suggestion that there had been possible exposure to asbestos and other contaminants constituted a disclosure of information. It is not admitted that the Claimant had a reasonable belief that the first disclosure tended to show a matter within s. 43B(1)(d). Subject to the Claimant's evidencing the factual basis of the second disclosure, it is admitted that the Claimant had a reasonable belief that the second disclosure tended to show a matter within s. 43B(1)(d). It is not admitted that the Claimant had a reasonable belief that the disclosure was in the public interest.

(d) If pursued, did the suggestion that there had been possible exposure to asbestos and other contaminants constitute a disclosure of information?

(e) Did the Claimant have a reasonable belief that the first disclosure tended to show a matter within s. 43B(1)(d)?

(f) Has the Claimant evidenced the factual basis of the second disclosure?

(g) Did the Claimant have a reasonable belief that the disclosures were in the public interest?

3.3. PID K: (The Claimant does not apparently rely on the disclosure relating to destabilisation of the structure by the rain.) It is admitted that the Claimant had a reasonable belief that the disclosure relied upon tended to show a matter within s. 43B(1)(d). It is not admitted that there was a disclosure of information [or an allegation] that the contractor had failed in its duty of care. It is not admitted that the Claimant had a reasonable belief that the disclosure relied upon was in the public interest.

(h) Did the Claimant make an allegation that the contractor had failed in its duty of care?

(i) If so, did this constitute a disclosure of information?

(j) Did the Claimant have a reasonable belief that the disclosure relied upon was in the public interest?

3.4. PID M: It is admitted that as of 8/6/17, the Claimant had a reasonable belief that the disclosure tended to show a matter within s. 43B(1)(d). It is not admitted that the Claimant had a reasonable belief that this disclosure was in the public interest.

(k) Did the Claimant have a reasonable belief that the disclosure was in the public interest?

3.5. PID N: It is admitted that the Claimant had a reasonable belief that the disclosure tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column and s.43B(1)(d). It is not admitted that the Claimant had a reasonable belief that this disclosure was in the public interest.

(l) Did the Claimant have a reasonable belief that the disclosure was in the public interest?

3.6. PID U: It is not admitted that the second disclosure constituted a disclosure of information. It is not admitted that the Claimant had a reasonable belief that the second disclosure tended to show a matter within s. 43B(1)(d). It is not admitted that the Claimant had a reasonable belief that the second disclosure was in the public interest.

(m) Did the second disclosure constitute a disclosure of information?

(n) Did the Claimant have a reasonable belief that the second disclosure tended to show a matter within s. 43B(1)(d)?

(o) Did the Claimant have a reasonable belief that the second disclosure was in the public interest?

3.7. PID V3: It is admitted that the Claimant had a reasonable belief that the disclosure tended to show a matter within s. 43B(1)(d). It is not admitted that the Claimant had a reasonable belief that this disclosure was in the public interest.

(p) Did the Claimant have a reasonable belief that the disclosure was in the public interest?

Detriments

4. Did the Respondent carry out the following acts or omissions?

(a) As recorded in the Order dated 28/3/22, the Claimant is not pursuing this allegation;

(b) From March 2016 to the date of presentation of the Claim, did the following alleged perpetrators (i) fail to record and investigate the following disclosures appropriately and (ii) fail to provide regular and meaningful progress reports on whistleblowing disclosures? The Claimant confirmed on 27/10/21 that the disclosures which he alleges were not recorded and investigated appropriately for the purpose of this allegation, and the alleged perpetrators, are as follows:

- PID A (19/2/16): SH
- PIDs B - H, J - L, O, V3, X (last disclosure 3/4/18): JK
- PIDs M - N (last disclosure 8/6/17): RJ
- PIDs Q - U (last disclosure 20/10/17): NF
- PID V1 (9/11/17): SN
- PID V2 (16/11/17): WC

(c) As is recorded in the Order dated 28/3/22, the Claimant is not pursuing this allegation;

(d) In June 2016, did GN (i) notify the Claimant of a transfer of duties to voids, and (ii) threaten him with disciplinary action?

(e) On 11/4/17, did GN and MT disclose the Claimant's email to a contractor?

(f) On 26/6/17, did MT (i) instruct the Claimant to stop contacting the executive director (JK), and (ii) accuse the Claimant of staring him down?

(g) (1) On [or after] 4/5/17, did GN conduct the disciplinary investigation in an improper manner?

(g) (2) On or before 15/3/18, did LA conclude in relation to the disciplinary proceedings' outcome, 'no further action' instead of 'no case to answer'?

(h) On 6/12/17, did the Monitoring Officer [clarified to mean MD] fail to investigate claims of bullying and intimidation?

(i) On 15/3/18, did MT instruct the Claimant to take garden/ing leave?

(j) From 20/4/18, was there a failure to hear the Claimant's grievance in a timely manner?

(k) From 20/9/18, was there a failure to hear the Claimant's grievance in a timely manner?

(l) On or after 6/11/18 [16/11/18?], was there a failure by the Assistant [Deputy] CE (JT) to investigate the Claimant's concerns?

(m)On or after 21/11/18, was there a failure by the Head [Director] of HR (DH) to investigate the Claimant's concerns?

(n) On or after 2/1/19 and 7/2/19, was there a failure by the CEO (DB) to respond to the Claimant's correspondence?

5. If so, was any such act or omission done because the Claimant had made any protected disclosure?

Jurisdiction

6. Is the complaint out of time in respect to any acts/omissions predating 26/11/18?

(a) Were alleged acts or omissions (b) [(a) is not being pursued] - (m) part of a series of similar acts or failures as alleged act or omission (n)?

(b) Were alleged acts or omissions (b) - (i) an act or acts extending over a period until after 26/11/18?

7. If so, should time be extended?

(a) If any act or omission predated 26/11/18, has the Claimant demonstrated that it was not reasonably practicable for him to present a complaint about that act within 3 months of that act?

(b) If so, has the Claimant demonstrated that he has presented his complaint about that act within such further period as is reasonable?

**(2) Complaint of failure to make reasonable adjustments**

PCPs

8.

8.1 It is admitted that the Respondent had a PCP of:

(a) Expecting employees to carry out a full workload (interpreting this to mean, a workload commensurate with their contracted working hours).

8.2 Did the Respondent also have the following PCPs?

(b) Requiring CWOs to work at the Respondent's premises;

(c) Progressing whistleblowing allegations slowly;

(d) Progressing disciplinary proceedings slowly.

Comparative substantial disadvantage from early 2018 to date of presentation of 1st Claim

9. Was the Claimant relevantly substantially disadvantaged during the relevant period?

Knowledge

10. If the PCPs are proved, it is admitted that the Respondent had relevant knowledge that PCP (d) would cause relevant substantial disadvantage.

(a) Did the Respondent have knowledge from early 2018 that PCP (a) would cause relevant substantial disadvantage?

(b) Did the Respondent have knowledge from early 2018 that PCP (b) would cause relevant substantial disadvantage?

(c) Did the Respondent have knowledge from early 2018 that PCP (c) would cause relevant substantial disadvantage?

Adjustments contended for

11. Are the following steps, steps which it was reasonable for the Respondent to have to take from early 2018, in order to reduce the putative disadvantage?

(a) Accelerating the investigation of the disclosures;

(b) Accelerating the disciplinary proceedings;

(c) Reducing the Claimant's workload;

(d) Guaranteeing that the Claimant could work at home.

Jurisdiction

12. Is the complaint out of time in respect to any acts/omissions predating 26/11/18?

    (a) When was the failure to accelerate the investigation of the disclosures decided upon, or to be regarded as having been decided upon?

    (b) When was the failure to accelerate the disciplinary proceedings decided upon, or to be regarded as having been decided upon?

    (c) When was the failure to reduce the Claimant's workload decided upon, or to be regarded as having been decided upon?

    (d) When was the failure to guarantee that the Claimant could work at home decided upon, or to be regarded as having been decided upon?

13. If so, should time be extended?

**CLAIM 13300820/2021**

**(1) Complaint of failure to make reasonable adjustments**

PCP

14. It is admitted that the Respondent had a PCP of requiring the Claimant to work as an agile worker, with no guarantee of working from home.

Substantial disadvantage from December 2019 to date of presentation of Claim

15. Was the Claimant relevantly substantially disadvantaged by the PCP during the relevant period?

Knowledge

16. The Respondent admits knowledge from 11/12/19.

    (a) Does the Claimant assert that there was knowledge before this date?

    (b) If so, was there knowledge before that date, and if so, from when?

Adjustments contended for

17. Was guaranteeing the Claimant homeworking from December 2019 a step which it was reasonable for the Respondent to have to take, in order to reduce the putative disadvantage?

Jurisdiction

18. Day A was 26/1/21 and Day B was 3/3/21. This Claim was presented on 15/3/21. Is the complaint out of time in respect of the failure to guarantee home-working?

    (a) When was the failure to guarantee the Claimant homeworking decided upon, or to be regarded as having been decided upon?

19. If so, should time be extended?

**(2) Complaint of harassment related to disability**

Unwanted conduct

20. Did the following take place as alleged:

    (a) From 17/9/20, JG's failing to implement recommendations that two of the grievance allegations against MT and GN should be proceeded with under capability or disciplinary procedures ("the grievance recommendations");

    (b) On 21/11/19, MT making comments about the Claimant in the grievance investigation interview [provided to the Claimant on 1/9/20];

    (c) On 21/11/19, GN making comments about the Claimant in the grievance investigation interview [provided to the Claimant on 1/9/20];

    (d) On 3/2/20, JG refusing the Claimant's special leave request;

    (e) On 3/2/20, JG refusing the Claimant's request to work permanently at home;

    (f) On 15/1/21, MB's making a referral to OH stating that she had spoken to the Claimant on 17/1/21 when she had not done so and making it without the Claimant's consent.

21. If so, did the following constitute unwanted acts which were related to the Claimant's disability:

    (a) From 17/9/20, JG's failing to implement the grievance recommendations;

    (b) On 21/11/19, MT's making comments about the Claimant in the grievance investigation interview [provided to the Claimant on 1/9/20];

    (c) On 21/11/19, GN making comments about the Claimant in the grievance investigation interview [provided to the Claimant on 1/9/20];

    (d) On 3/2/20, JG refusing the Claimant's special leave request;

    (e) On 3/2/20, JG refusing the Claimant's request to work permanently at home;

(f) On 15/1/21, MB making a referral to OH stating that she had spoken to the Claimant on 17/1/21 when she had not done so and making it without the Claimant's consent.

Purpose or effect

22. If so, did each have the purpose of (i) violating the Claimant's dignity or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

23. Alternatively, did each have the effect of (i) violating the Claimant's dignity or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, having regard to the Claimant's perception, the other circumstances of the case, and whether it is reasonable for the conduct to have that effect?

Jurisdiction

24. Day A was 26/1/21 and Day B was 3/3/21. This Claim was presented on 15/3/21. Is the complaint out of time in respect of:

(a) From 17/9/20, JG failing to implement the grievance recommendations;

(b) On 21/11/19, MT making comments about the Claimant in the grievance investigation interview [provided to the Claimant on 1/9/20];

(c) On 21/11/19, GN making comments about the Claimant in the grievance investigation interview [provided to the Claimant on 1/9/20];

(d) On 3/2/20, JG refusing the Claimant's special leave request;

(e) On 3/2/20, JG refusing the Claimant's request to work permanently at home;

(f) On 15/1/21, MB making a referral to OH stating that she had spoken to the Claimant on 17/1/21 when she had not done so and making it without the Claimant's consent.

25. If so, should time be extended?

**(3) Victimisation**

Protected act

26. It is admitted that the Claimant's Claim No. 1302217/2019 presented on 30/4/19 constituted a protected act.

27. Were the following done as alleged:

(a) On [or from?] 14/9/20, JG failing to provide the Claimant with audits reports on the housing maintenance and repairs contract following finalisation of the audit investigation in November 2020;

(b) On 1/7/20, PL delaying the outcome to the first part of the Claimant's grievance until September 2020;

(c) On 1/7/20, PL failing to attach appendices to the outcome to the first part of the Claimant's grievance provided on 1/7/20;

(d) PL delaying the outcome to the second part of the Claimant's grievance;

(e) On 17/9/20, JG failing to implement the grievance recommendations.

28. If so, were the following done because the Claimant had done that protected act?

(a) On [or from?] 14/9/20, JG failing to provide the Claimant with audits reports on the housing maintenance and repairs contract following finalisation of the audit investigation in November 2020;

(b) On 1/7/20, PL delaying the outcome to the first part of the Claimant's grievance until September 2020;

(c) On 1/7/20, PL failing to attach appendices to the outcome to the first part of the Claimant's grievance provided on 1/7/20;

(d) PL delaying the outcome to the second part of the Claimant's grievance;

(e) On 17/9/20, JG failing to implement the grievance recommendations.

Jurisdiction

29. Day A was 26/1/21 and Day B was 3/3/21. This Claim was presented on 15/3/21. Is the complaint out of time in respect of:

(a) On [or from?] 14/9/20, JG failing to provide the Claimant with audits reports on the housing maintenance and repairs contract following finalisation of the audit investigation in November 2020;

(b) On 1/7/20, PL delaying the outcome to the first part of the Claimant's grievance until September 2020;

(c) On 1/7/20, PL failing to attach appendices to the outcome to the first part of the Claimant's grievance provided on 1/7/20;

(d) PL delaying the outcome to the second part of the Claimant's grievance;

(e) On 17/9/20, JG failing to implement the grievance recommendations.

30. If so, should time be extended?

Loss

31. If any complaint is upheld, has the Claimant sustained any loss or damage properly attributable to the act or acts in question?

32. If so, what is the appropriate award of compensation?

## Findings of Fact

16. The claimant attended to give evidence. The respondent called the following witnesses who attended to give evidence: Ms L Ariss ('LA'), Head of Business Improvement & Support, Neighbourhoods Directorate at the relevant time and chair of disciplinary hearing December 2017; Mr C Barber ('CB'), Principal Auditor in September 2017; Ms D Baxendale ('DB'), Chief Executive Officer ('CEO') of respondent from 2 April 2018 until 9 October 2019; Ms M Brason,('MB'),Senior Service Manager Capital Investment & Repairs, Place Directorate; Ms W Carroll ('WC'), Housing Manager, Health and Safety; Ms L Cockburn ('LC'), Deputy HR Business Partner; Mr S Coombs ('SC'), Operations Director, Wates; Mr M Day ('MD'), Solicitor, Legal Services; Mr N Farquharson ('NF') Group Auditor, April 1982 – July 2021, Corporate Fraud Team; Ms J Griffin ('JG'), Acting Service Director of Housing until May 2021, Ms D Hewins ('DH') HR Director; Ms C Hodkinson ('CH'), Principal Auditor Corporate Fraud Team; Mr S Hollingworth ('SH'), Assistant Director, Sports & Events; Mr P Humpherston ('PH'), Place Manager, Housing; Mr R James ('RJ'), Director of Housing until March 2018, then Acting Strategic Director, Place Directorate; Ms J Kennedy ('JK'), Strategic Director for the Place Directorate; Mr P Lankester ('PL'), Interim Assistant Director Regulation & Enforcement; Ms P Mc William ('PM'); Senior Service Manager, Place Directorate; Mr J Murphy ('JM'), Legal Services; Mr S Naish ('SN'), Head of Health & Safety and Wellbeing; Mr G Nicholls ('GN'),Senior Service Manager (grade 6); Mr F Tabrizi ('FT'), Service Coordinator, Capital Investment & Repairs division of Housing and claimant's line manager from mid 2016; Mr J Tew ('JT'), Assistant Chief Executive; Mr M Tolley ('MT'), Head of Capital Investment & Repairs, Housing (grade 8); and Mr P Walls ('PW'), Senior Sports Manager. The respondent also admitted a written statement from Mr R Johnston ('RuJ') HR Business Partner, who was unable to attend for health reasons.

17. We considered the evidence given both in written statements and oral evidence given in cross examination, re-examination and in answer to questioning from the Tribunal. We considered the ET1 and the ET3

together with relevant numbered documents referred to below that were pointed out to us in the Main Bundle and the Medical Bundle.

18. To determine the issues set out above, it was not necessary to make detailed findings on all the matters heard in evidence. We have made findings though not only on allegations made as specific complaints but on other relevant matters raised as background. These findings may have been relevant to drawing inferences and conclusions. We made the following findings of fact:

18.1 The claimant is a disabled person for the purposes of section 6 EQA as a result of both Diverticulitis and Anxiety and Depression (see pages 145 and 321). The claimant has a background in the building industry within the public and private sector and started work with the respondent on 15 April 2013. He is currently employed as a Contract Works Officer ('CWO') in the Capital Investment and Repairs Division, City Housing Directorate, which is based at its Kings Road Depot in Birmingham, although the claimant is classed as an agile worker and carries out his duties largely from various sites and from home.

18.2 The respondent council is the biggest local authority in the United Kingdom and is responsible for the provision of various services in the city including the provision and maintenance of public housing. The Housing Directorate (which at the time we were concerned with was headed by RJ as Director of Housing), is responsible for the delivery of this function and at the time was split into two main services, repairs and maintenance and capital investment. The repairs and maintenance service was managed at the time by MT as Head of Service. The next level of management below this was the Senior Service Manager (a role performed by GN and subsequently MB), and then below that was the Supervisor/Service Coordinator (performed by FT) with CWOs such as the claimant reporting to that role.

18.3 The Housing repairs and maintenance services for the respondent has been contracted out through a tendering arrangement for some years. Up to 31 March 2016 the contractor was Mears Group ('Mears') and was subsequently Wates Living Space ('Wates'). The delivery of services under the contract for services are broken down various elements. The contractor is paid a fixed price for the type of work undertaken, e.g., a price per property ('PPP') for tenanted properties or a price per void ('PPV') for works to vacant properties. In addition, contractors can charge additionally for improvement works which fall outside those fixed costs specifications and require ad hoc work order to be raised and approved. Contractors are required to maintain certain service standards which are set out Birmingham Repairs Service Standards (pages 568-572) and the Empty Property Repairs Standards (page 573-574).

18.4 The respondent as the landlord for a large portfolio of tenanted properties is under various statutory duties including under section 11 of the

Landlord and Tenant Act 1985 ('LTA') to keep in repair the structure and exterior of the dwelling and installations the supply of water gas and electricity sanitation heating and hot water. The Defective Premises Act 1972 ('DPA') also employed poses a duty of care on landlords and builders to carry out work safely and properly. Landlords and contractors also owe a duty of care the tenants and visitors to the property to keep them reasonably safe from harm.

Contract, job description and relevant policies

18.5 The claimant's contract of employment was shown at pages 500-523. The claimant's job description as CWO was shown at pages 654-656. The CWO is responsible for ensuring the effective delivery of housing maintenance and repair services. This involves visiting properties to monitor the performance contractors, ensuring contractual obligations are met and the requirements of the tenant are satisfied. We were referred various policies and procedures of relevance to the issues in dispute throughout the hearing. This included the respondent's Code of Conduct (version as at 2017 shown at pages 524- 532 and version as at September 2019 shown at pages 533-542); Whistleblowing Code (in place prior to April 2016) shown at pages 551-559; the Disciplinary Procedure and Policies (shown at pages 611-619); the Grievance Policy and Procedure (shown at pages 627-633); the Harassment and Bullying (Managers Guide) shown at pages 634-635 and the Whistleblowing and Serious Misconduct Policy (in force from 4 April 2016) '(Whistleblowing Policy') shown at pages 636-653.

Whistleblowing Policy and Process

18.6 The Whistleblowing Policy provided detailed information about what matters constituted whistleblowing, how employees should report their concerns and what matters were exempt from the policy (including matters which would be a reconsideration of matters falling within other existing internal procedures such as the disciplinary and grievance procedure. It also went on to set out the protections offered to those who made protected disclosures including the following provision:

"*Any employee who makes a 'protected disclosure' which meets the definition in PIDA is legally protected against victimisation and shall not be subject to any other detriment for whistleblowing. The Council has adopted this policy in order to encourage early internal whistleblowing and demonstrate its commitment to preventing victimisation. If an employee claims that, despite that commitment, he or she has been victimised for making a disclosure, he or she should make a further complaint under this whistleblowing procedure directly to the City Solicitor."*

It stated that employees who wanted to make a disclosure should contact the council by e mailing its central whistleblowing e mail address or if they felt it was possible through their line manager. The policy went on to state

that the respondent would acknowledge receipt of a disclosure under the policy within 2 working days; would then go on to decide whether the disclosure fell within the criteria to be covered by the Whistleblowing Policy. It went on to state that if designated as coming under the Whistleblowing Procedure that it would "*appoint an investigator at the earliest opportunity"* and that investigator would contact the whistleblower no later than 10 working days after being appointed to give them required information about the next steps to be taken. It went on to state that the respondent would *"arrange to keep the whistleblower updated throughout the process and, wherever possible, will seek to advise the whistleblower of the outcome of the investigation".* It went on to offer reassurance about confidentiality and set out what it would do to record and monitor complaints. At page 653 there was a flow chart outlining this process.

18.7 Responsibility for recording and investigating whistleblowing lay with the respondent's Legal team. MD was initially appointed to take responsibility for this function in 2014. Following the implementation of the Whistleblowing Policy in 2016, he acted as a gateway for assessing whether complaints received would fall under the Whistleblowing Policy. If they did, he would not investigate the complaint themselves put then pass on to the relevant department for investigation to take place. MD set up a spreadsheet to record the whistleblowing complaints being managed by the respondent which at any one time would contain up to 100 entries. MD left this position in November 2017 and JM took over the function with effect from January 2018. JM again had the role of triaging complaints received by the respondent and he categorised disclosures received into three categories: bronze, being those he could not substantiate as they were too vague or being outside the scope of the policy for some reason; silver which he assessed as being serious but not serious enough as passing the threshold to be a whistleblowing disclosure (which he then passed to the relevant department to investigate in accordance with their normal procedures); and gold which were categorised by him as being the most serious and within the auspices of the Whistleblowing Policy (which merited an investigation the outcome of which was reported back to him). For gold disclosures, he would identify a trained senior officer in another department which might be in the respondent's Audit team (or exceptionally externally) to investigate which would be reported back to him to report to the respondent's Monitoring Officer (the most senior solicitor in the respondent's legal department). He said that in the year 2018, he dealt with around 100-120 separate disclosures and that the claimant was the person who sent in the most e mails alleging whistleblowing disclosures.

<u>FT Whistleblowing October 2015</u>

18.8 In 2015 the claimant's line manager FT blew the whistle over the management of the Mears contract by reporting his concerns to CH. CH

was appointed to investigate FT's reports of financial mismanagement and prepare a report for management (see page 680). FT was aware that the claimant had similar concerns to him at the time, FT mentioned the claimant to CH in order that the Claimant's concerns could also be recorded and included in the report. On 3 November 2015, the claimant was informed by FT that having spoken to CH, he had agreed that the claimant could contact him to discuss the concerns he was having (page 657). The claimant subsequently spoke with CH by telephone and the notes taken by CH of that discussion were at pages 658-659. The notes recorded that the claimant made a complaint about the way Mears were overcharging for kitchen and fire jobs at properties, making specific reference to a property at Ralph Road. The claimant subsequently met with CH on 17 December 2015 and following that meeting the claimant sent CH some emails with examples relevant to the issues raised (pages 685-701). CH investigated the matters raised by FT and the claimant and as part of this process on 27 January 2016 sent FT and the claimant extracts from a draft report he had been preparing to check that their concerns had been accurately recorded (see page 735). The claimant acknowledged that in doing so, CH was treating him and FT in the same way in informing him of the steps being taken. CH met with JK to discuss the matters raised by the claimant and a meeting was arranged between the claimant and JK.

18.9 The claimant also provided CH with further emails about properties he was dealing with about which he had concerns around this time, albeit these are not specifically pleaded as disclosures for the purposes of these proceedings. We were referred to emails forwarded by the claimant on 28 January 2016 about Wetherfield Rd (page 738, 739 and 743). The claimant had emailed the site manager at Mears group, S Edwards ('SE'), who was responsible for repairs at this property on 28 January 2016 at 7:20 AM asking for a list of various "*essential/health and safety repairs*" to be carried out that day. SE responded at 7:35 AM that same day confirming that various actions had been agreed with D Crackett, the respondent's Service Co-ordinator and the claimant's line manager at the time ('DC') the previous day to be carried out at the property (page 739). The claimant challenged SE on 29 January 2016 to confirm all the items he had requested had been carried out with SE responding that he had discussed the matter with DC who had advised how he wanted Mears Group to proceed and further stated "*I will not be responding to your requests*" suggesting that the claimant take up any concerns he had with DC. The claimant forwarded all these e mails to CH. This exchange of emails appeared to follow on from a discussion the claimant said he had with the on 26 January 2016 where SE had been aggressive with him which was reported to FT (see page 732). The claimant acknowledged that relations between himself and the contractor's staff and other council officers "*had become strained*" as he challenged orders for ad hoc work.

18.10 The claimant also sent a further email to CH regarding cancellation of visits by Mears at Brook Croft (page 740 and 742). The claimant provided further information about the three named properties he had raised with CH in an email to him of 29 January 2016 (page 744). CH responded to the claimant suggesting that when he met with JK, she should focus her attention on the three examples to explain how he felt these were *"indicative of the whole approach"* (page 745)

18.11 The claimant met with JK on 1 February 2016. The claimant said that issues covered by the audit investigation were discussed and that she mentioned to JK that he felt isolated and that some of his colleagues and managers thought he was "*overstepping the mark and causing unnecessary difficulties*." The claimant said JK appeared to take his concerns seriously and was going to take action to resolve them. He emailed JK's PA on 5 February 2016 thanking her and asking her to let JK know he was "*very grateful for the support*" JK had given him (page 752). The claimant sent a further email to CH on 9 February 2016 setting out a list of concerns he was aware of (page 755).

PID A

18.12 On 19 February 2016, the claimant sent an e mail to CH about a missing kitchen wall at Rose Dale Grove ('Property 1') and a bathroom/kitchen at 12 Brook Croft ('Property 2'), together ('PID A') (pages 395 and 756). The claimant had previously raised this matter with CH on 18 January 2016 (page 709) and CH had informed him that whilst he could deal with the concerns/issues the claimant had raised as part of his audit report, the claimant should also raise his immediate and specific concerns re-safeguarding/health and safety with his line management to enable them to take action (page 711). The claimant responded by stating he did pass issued to senior management and that "*nothing happens*" but that he would discuss with FT on his arrival at work (page 711). PID A raised concerns about a failure to complete the schedule works to rebuild the wall at Property 1 stating:

*"Basically there is no reason other than Mears placing profit above the health and safety of the customer."*

Secondly it raised concerns about the customer being without bathroom for seven weeks and the kitchen being *"dangerous."* He mentioned that he had the support of FT in raising such concerns and offered to assist CH in his investigations. We accepted the claimant's evidence that in both cases he believed the contractor was failing in its legal obligations under the LTA and possibly the DPA and that such matters were in the public interest. We also accepted that the claimant believed that the matters were issues which posed a health and safety risk. CH asked the claimant for permission to forward this email to JK to which the claimant agreed (page 759-60).

18.13 Having received a council wide communication from the respondent's corporate communications team about the respondent's values and the importance of putting them into action, the claimant wrote to CH stating he was at his "*wit's end*" referring to hypocrisy.

18.14 On 22 February 2016 JK emailed the claimant informing him that she had arranged for an independent investigator within Legal Services to be appointed and for the information the claimant had been provided to her to be treated as whistleblowing (page 761). She informed the claimant that she was taking his concerns seriously.

18.15 The claimants told us about a meeting he had with DC on 1 March 2016 where he was reprimanded for carrying out repairs to a property and that Mears had made a complaint about the amount of work being raised by the claimant. The claimant was also informed by DC that he should not send emails to anyone but to raise matters directly with DC. He emailed CH and FT reporting this conversation on 2 March 2016 (page 764). CH responded informing the claimant that he could not get involved in advising the claimant and that the claimant had to think carefully about what he considered to be the right thing in the circumstances (page 765). He asked for the claimant's permission to forward the email to JK and suggested that any future concerns of this nature should be raised directly with JK. He informed the claimant that his draft discussion report was with JK and when the report was issued it would bring his involvement in the matter to an end. He thanked the claimant for his help in flagging up the issues during the investigation.

CH Audit Report

18.16 CH investigated all the matters raised and produced an audit report which was issued to JK on 15 March 2016 (page 779-794). CH informed the claimant and F2 of this on the same day by email (page 777). CH did not find any evidence of fraudulent practice, instead he considered the concerns are highlighted to be examples of "*sharp practices, delaying tactics and non-compliance as with the contract*." He acknowledged a "*lack of robust contract management and an unwillingness or inability by management to challenge Mears and enforce the conditions of the contract*." CH's report included lessons to be learned for the future and made recommendations to ensure that the issues were addressed appropriately, when the new contract for a more services started. The claimant admitted in examination that the CH had done his best to resolve the claimant's concerns and that CH had not to investigate his concerns or treated him detrimentally. The claimant stated that he felt that the respondent should have recovered monies due from Mears as an outcome.

18.17 The contract with Mears came to an end on 31 March 2016 with a contract with the new contractor, Wates taking effect on 1 April 2016.

18.18 The claimant continued to raise issues with CH including reporting concerns about the forthcoming end of the Mears contract (page 766); asking for an update from CH on 29 March 2016 (page 801) and asking CH whether monies wrongly paid would be recovered from Mears (page 802). CH responded to these e mails informing the claimant on 29 March 2016 that JK had the final audit report and that she had the matters in hand and was taking further action but that he could not go into details (page 801) and forwarding his email on to JK (page 802). CH arranged a meeting between the claimant, himself, and J McKenna ('JMcK'), an employee of Acivio, the organisation commissioned by JK to investigate the issues raised by the claimant which took place around the middle of April 2016. The claimant also sent further e mails to JMcK and CH reporting issues with the new Wates contract during April 2016 (pages 816 and 818 for example). CH responded to the claimant informing him that he was no longer involved but that he would forward his email to JK if the claimant wished.

Incident of poor health caused by Diverticulitis.

18.19 On 24 May 2016 the claimant was admitted to hospital and diagnosed with inflammation of the sigmoid colon caused by Diverticulitis. He was signed off work and remained off until 6 June 2016. On his return to work a return to work interview was carried out by FT (pages 821-823). There was no discussion during this meeting about any allowances being made to the claimant's duties, although it does not appear that any such request was made by the claimant to adjust his duties at this time.

18.20 On 13 June 2016, the claimant emailed FT and CH expressing his disappointment with the results of the audit investigation, stating that he felt nothing had been done or achieved (page 824). He clarified that his comments were aimed at the audit investigation and complaining about never having received feedback, having comments ignored and that the investigation was unprofessional (page 825). CH responded stating he was sorry that the claimant was dissatisfied but that many of the concerns were included in the audit report and mentioning the actions taken in raising with JK and the further investigation that was being carried out by JMcK. He stated that he felt he always taken time to listen to the claimant's concern, provide advice and feed his concerns into the process or forward them to the appropriate person and at the claimant had expressed his appreciation very recently. Therefore, CH was surprised the claimant was now suggesting that the investigation was unprofessional. The claimant subsequently apologised for his comments and claimed that they were with reference to the way the contract had been managed and stated he had the "*highest regard*" for CH and his team, and that CH had been a "*very supportive friend*" (page 826).

Move to Voids (alleged PID detriment (a))

18.21 On 15 June 2016 the claimant told us that was informed by GN by telephone that he was being moved to a new CWO role dealing with void properties. The claimant alleges that he was told that this was because of his "*behaviour towards the contractor*". He also alleged that GN informed him that she would like claimant to accept the move willingly, if he refused, he would be disciplined. GN's evidence was that the claimant's move had been previously agreed in a management team meeting between himself, DC and FT that more technical resources were required on voids (which the claimant agreed in cross examination was the case at the time) and that GN's predecessor had already suggested that the claimant should be moved there as they felt his eye for detail would be appropriate to the role. GN subsequently agreed during cross examination that this decision was layered and for more than one reason, mentioning an incident where he felt that the claimant had become involved personally with a tenant to resolve their issues. GN alleged that he instructed FT to inform the claimant of the move, but appeared to acknowledge in cross examination that he communicated the decision to claimant. He also agreed it was likely that he also indicated that disciplinary action could follow if the claimant failed to follow this management instruction. FT's evidence was that the claimant was moved from repairs to voids and at this point he became the claimant line manager and that his view was that the claimant was moved because he was "*getting complaints on repairs*" and that he was "*rather emotional"* about tenants' issues, so it was felt for him to mainly work on void (vacant) properties with FT. We find that GN informed the claimant by telephone of his move and indicated to him that if the claimant was not prepared to move this may be a disciplinary matter. We accept that there were prior operational reasons why it was felt useful for the claimant to move, and this was related to his perceived tendency to get emotionally involved with tenant's problems, but also find that the claimant was informed on this day that the move was related to difficulties with the contractor.

18.23 The claimant informed JK by email (copying CH) on 15 June 2016 that he had been instructed to take up the new role (page 828). She responded by asking the claimant to come and see her following day (page 827). JK and the claimant met on 16 June 2016 where the claimant expressed his view that the issues raised in the previous contract starting to appear the new Wates contract. Following that meeting the claimant emailed JK thanking her for her "*time and support*". JK subsequently contacted GN instructing him not to move the claimant to voids until she had investigated the matter further, as the claimant had objected to the move as he felt he was being punished. JK subsequently informed GN that she was satisfied the move could take place, as he has provided reassurance to her that there was no ulterior motive in moving the claimant and so the claimant transferred to work as a CWO in the Voids team with FT becoming his line manager. GN was unhappy with JK's intervention in this decision as he felt he had the authority to assign

resources in his team as he saw fit and saw this as an example of the claimant circumventing chains of command whenever he disagreed with a local management decision. The claimant continued to send e mails to CH and JMcK during June complaining about matters including cancelled jobs and failure to carry out or complete jobs.

PID B

18.24 On 11 July 2016 the claimant e mailed JK copying CH and JMcK raising concerns that issues that had arisen under the old contract were now arising with the Wates contract. He raised issues of contractors not booking appointments, not complying with timescales and rebooking jobs that should have been completed. There was no explicit suggestion in this e mail that work was not being completed but still charged for. We accepted the claimant's evidence that he made these disclosures because he believed that the contractor was failing with to comply with its legal obligations and that he believed that there may have been fraud as payment was being made for work not undertaken and KPIs were being manipulated. We also accepted his evidence that he felt that these were examples of persistent and deliberate failings and he felt these were matters of public interest.

18.25 Further e mails were sent to CH on 13 and July 2016 (page 848, 849 & 890) complaining about various matters. On 18 July 2016 the claimant was emailed by GN inviting him to a meeting to discuss the area of work that GN would like him to undertake (page 852). The claimant forwarded this email to JK on 19 July 2016 asking what he should do and complaining about being moved to an area where you would have less involvement with the client. The claimant and GN met on 19 July 2016 and the claimant said this was the difficult meeting where he was instructed not to contact JK but to raise any concerns with MT instead. The claimant also said that GN asked him twice whether he was refusing to move to Voids. JK subsequently responded to the claimant's email of 19 July 2016 asking him whether the meeting with GN had been positive. The claimant responded that it hadn't and that he has been instructed not to contact her and felt isolated and "*under the microscope*" (page 854). JK replied to the claimant on 21 July 2016, stating: *"You can always contact me"* and informing the claimant that the report of J McK would be available soon and that CH and JK would meet with them to discuss it. She encouraged the claimant to utilise staff support service and asked whether there was anything practically she could do to support him.

JMcK Investigation report

18.26 JMcK completed his investigations into the matters raised by the claimant about maladministration of the Mears contract and produced a report in July 2016 (pages 834-846). This report detailed the concerns raised by the claimant and FT (although not identifying them by name) and acknowledging that both were acting in the interests of the respondent. It

acknowledged that there were issues with communication between managers and that data used to calculate KPI payments had been incorrect. It concluded that any decision to pursue a contractual claim against Mears would have to consider the value as against the costs of recovery and associated risks. It identified potential issues with bringing such a claim, including the large number of different heads of claim, differences in understanding of the terms of the contract within management, lack of support from management and lack of records to support the eight year contract period. It also recommended that managers should review the new Wates contract to ensure that lessons were learned.

18.27 The claimant continued to raise issues by e mail with JK and CH during early August 2016 (pages 860-865). JK agreed to meet with the claimant and CH advised him to take his e mails with him when he met with her as an example of what the claimant believed was taking place under the new contract (page 865). The claimant met with JK and informed her about the shortfall in the repair and maintenance contract which was not being addressed and JK told him that she would investigate further. There was a further exchange of correspondence between JK and the claimant where he expressed his worry about things that were taking place. JK told the claimant she had asked RJ to contact him and suggested the claimant completely stress risk assessment with FT to put the plan of action in place (page 870). The claimant and RJ spoke on 12 August 2016 and RJ offered the claimant ongoing support (page 871). The claimant continued to send e mails of a similar nature during September.

18.28 On 4 October 2016 the claimant met with Mr S Evans, the respondent's Interim City Solicitor ('SEv'), for coffee in Birmingham city centre. SEv told him that now the report of CH and J McK had been completed, he was now able to say that the claimant was right about many things but "*would never win*" as senior managers were unwilling to listen. This meeting appears to have been set up by CH (see email at page 876) and he advised the claimant to take some of the emails to that meeting so that he could discuss some of his more recent concerns. We accept that this meeting took place but did not accept that SEv as the Senior Legal Officer at the respondent at the time made comments along the lines suggested about the claimant not winning. Given later e mails sent by SEv about the content of the report, this is implausible, and it is more likely that this is the assumption made by the claimant following this conversation, rather than a specific statement made.

18.29 On 10 October 2016 the claimant attended a one-to-one meeting with FT (see notes completed by FT on page 892). The claimant's feeling of being isolated and scrutinised was discussed and the claimant agreed with FT that any further disputes with Wates contractor staff should be raised initially with FT to resolve. The claimant was informed by FT that

an anonymous complaint accusing him of abusing the clocking in system had been received about him on 4 October 2016 (page 886). The claimant reported this to JK and suggested to her that GN had "*hawked*" round the office, suggesting that the writer of the letter and GN had something to hide. JK replied stating she was sorry that happened and that it would be escalated to RJ to investigate. She also offered the claimant her support (page 887). The claimant was contacted by RJ on 11 October 2016 stating that he had asked LA to investigate (page 890). LA contacted and subsequently met the claimant on 19 October 2016. The notes taken by LA of this meeting were shown at pages 895-897. During this meeting the claimant retracted the allegation that GN had "*hawked*" the letter around the office and stated his view that GN was not vindictive, apologising for this allegation. The claimant suggested that the anonymous letter had been sent in response to his involvement in the audit investigation.

18.30 On 20 October 2016 SEv emailed FT informing him that the audit investigations started by CH were complete (page 902-903). The email apologised for the delay explaining that as the allegations dated back several years, and the council had worked with own auditors and external partners to conduct a proper review investigate this had taken time. It stated that it would not be appropriate for the respondent to share details of the findings, as these may be "*commercially sensitive*". It went on to state the general outcome was that:

*"There has been no finding of any unlawful activity. Although, a number of areas have been identified by best practice, or procedure, will need to be reviewed and there are a number of practical learning outcomes for the council to reflect on and be acted upon in the future".*

The email confirmed that the investigation into the matter was now closed and thanked FT for these concerns to the respondent's attention.

18.31 FT forwarded this email to CH stating that he was hoping to have received more specific feedback in particular as to whether overpayments were able to be retrieved before the end of the contract (page 902). CH responded on 29 October 2016 (page 901-2) that although he was unable to provide FT with a copy of the report, he may wish to request it from JK's office. He clarified that most if not all the concerns and issues raised by FT were included in the report along with appropriate recommendations. CH also summarised the key issues for management that were identified including that management were not robust enough in challenging Mears and enforcing the contract and there was a lack of communication. CH also referred to J McK's further report which concurred with many of the concerns raised by FT and made recommendations. FT responded that he was "*feeling a lot better*" after reading CH's email and was happy with his comprehensive feedback. FT thanked CH for his efforts and guidance in progressing the matter to

conclusion (page 900-901). FT forwarded CH's email to GN and (separately) to MK (page 900).

18.32 The claimant contacted CH on 21 October 2016 stressing his concern that the audit report would not reflect well on him, and FT and they would be vulnerable. CH responded stating that both NF and CH would continue to vouch for the claimant's integrity and that concerns were raised with the best intentions and in good faith. He clarified that many of the concerns raised about the Mears contract and its management were valid which was reflected in the audit report and JMcK's subsequent report. It went on to state that if the claimant felt that he was being treated unfairly because of having brought the various concerns to the respondent's attention and he needed to raise this with senior management, namely JK (page 898). On 27 October 2016 the claimant was sent the same email from SEv's office that FT had received a week earlier reporting on the outcome of the audit investigation (page 904).

18.33 The claimant emailed JK on 7 November 2016 thanking her and stating that he did not know what he would have done without her support he further stated:

*"Take care and I will never forget the kindness you have shown me, please pass on my thanks to [CH NF and SEv] have also been very supportive, kind and have always been there when I need them. I am so proud of you all and I will miss you."*

18.34 The claimant was subsequently sent a letter dated 17 January 2017 from RJ confirming the outcome of LA's investigation into the complaint he made to JK about the anonymous letter and associated events (page 908-910). On 18 January 2017 the claimant emailed JK asking whether it was okay for him to contact her to which she replied, "*Of course Mark*" (page 912) and further stated that the claimant should "*Please keep helping*" and that he would see some changes over future months as the respondent reviewed its operating model (page 911). During the hearing, the claimant on numerous occasions referred to being "instructed" by JK that he must report his concerns to her, and this is the instruction he followed irrespective of what other less senior managers told him. Whilst it was clear that JK told the claimant on this and other occasions (see paragraph 18.25) that he could contact JK, we did not find that this amounted to an instruction that he must contact JK rather than raising concerns elsewhere.

PID C

18.35 On 6 February 2017 the claimant emailed JK raising concerns with reference to the operation of the Wates contract alleging that "*all of the same mistakes are being made*" (page 398). He detailed alleged issues with four properties (including a property at Bordesley Green East) and provided estimated loss of income figures for them. He also raised a

complaint about the 65 jobs being stated as complete and authorised by DC which were not. He alleged damp jobs were not being surveyed correctly as the contractor did not have the correct equipment or training. We accepted that the claimant made these disclosures because he believed that the contractor was failing with to comply with its legal obligations and that he believed that there may have been fraud as payment was being made for work not undertaken and KPIs were being manipulated to achieve bonus payments. We also accepted that he felt that these were matters of public interest.

PID D

18.36 On 23 February 2017 the claimant sent an email to JK (page 400). This email forwarded an email that has been sent by K Sadler (another respondent employee) ('KS') to GN and FT on 21 February 2017. In his email KS raised issues about a property that had been subject to fire damage. It set out a number of concerns detailing the history to the particular job and asking for input from GN and FT as to how he should proceed. The claimant was copied into this email along with a number of the respondent employees. He forwarded it to JK asking to see her urgently and describing the contents of KS this email as the "*straw that has broken the camel's back*" and that he was very worried. He also suggested that this property had been hidden from him. The claimant suggested that this disclosure alleged that repairs were being converted to voids by the contractor to attract additional payments and legacy jobs were not being completed resulting in payments to a previous contractor having been made being claimed again by the new contractor. We have found that this allegation does not appear in either the email from KS or in the claimant's forwarding email. Whilst this may have been what the claimant was trying to suggest, it is not said in a sufficiently clear as KS's e mail simply details problems with the repairs and issues around the raising of purchasing orders. The claimant does not in his e mail point out what the alleged problem is at all. We accepted that he made these disclosures because he believed that the contractor was failing with to comply with its legal obligations and that he believed that there may have been a criminal offence of fraud as double payment was being made for the same work and KPIs were being manipulated. We also accepted that he felt these were matters of public interest.

PID E

18.37 On 6 March 2017 the claimant sent an email to JK (page 403). This raised issues with a property at Bordesley Green East. It was alleged that the contractor was being permitted to treat this repair as a void to attract an additional payment and suggested that the contractor would argue that this was a legacy job. The was also a reference to legacy repairs with Mears having been settled. It stated that the claimant would be disappointed if the taxpayer had to fund/compensate for the way in which that this had been managed. The email finished by the claimant

suggesting he was feeling isolated and was questioning himself. He asked JK whether she still wanted him to pass on the information. JK responded on 6 March 2013 stating, "*Thank you and please keep sending me the information through*". We find that the claimant did not allege that legacy jobs were not being completed resulting in duplicate payments to both old and new contractors, but he did allege that the new contractor was converting repairs to voids to attract additional payments. We accepted that the claimant made these disclosures because he believed that the contractor was failing with to comply with its legal obligations and that he believed that there may have been fraud as payment was being made for work not undertaken and KPIs were being manipulated to achieve bonus payments. We also accepted that he felt these were matters of public interest.

18.38 There was an exchange of correspondence between the claimant and CH where the issues raised in PIDs C, D and E with specific reference to Bordesley Green East were discussed (see pages 934 to 940). The claimant acknowledged during this exchange that RJ had informed him that this matter would be referred to Audit (page 939). CH informed the claimant on 30 March 2017 that he had not had chance to look at the documents sent over, but that this would be done (page 937) and on 28 March 2017, CH emailed the claimant stating that he was "*unable to advise him*" whether this was covered by the new contract. CH further stated:

*"You will need to clarify this with your line manager and if they are not able to help you should escalate the query upwards until you receive the appropriate advice. If this is still not forthcoming then you should raise the issue with JK."*

PID F

18.39 On 4 April 2017, the claimant emailed JK about how Wates were operating the contract. He reported a conversation he had with SC where he says that SC told him that that Wates were paying operatives a £10 bonus to close jobs down. He went on to allege that Wates operatives were attending sites without knocking the door or just 'carding' the property; attending at no pre-agreed time with the customer: carrying out work but not booking follow-on work so that jobs could be closed down leaving working incomplete; thus allowing the achievement of KPIs. The claimant also made an allegation about tender arrangements not being followed and citing an example of a contractor completing work at a cost of £21,000, with Wates charging the respondent over £30,000. We did not find that the allegation being made here by the claimant was that the contractor was "*awarding operatives to close jobs prematurely falsely recording them as complete*". That may have been what the claimant thought or was trying to imply but we did not find that this information was imparted in what was said in this e mail. We also do not find that this e mail contained an allegation that the contractor was "*reopening*

*incomplete jobs as new jobs to increase payments and KPIs*". That allegation simply does not appear. The claimant does make an allegation about tendering arrangements not being followed and that the contractor was overcharging the respondent. Whilst JK could not recall this matter, she felt that she was likely to have referred this to RJ to investigate. JK did forward this e mail to RJ on 5 April 2017 who replied the next day stating that he had no knowledge of the matter and informed JK he would pick it up with a colleague, also querying why the claimant had not raised it directly with MT (see page 943).

Meeting MT, GN, SC and SR to discuss C's complaint.

18.40 MT was subsequently asked by RJ to investigate the claimant's complaint raised on 4 April 2017 (PID F) regarding overcharging and the incentive scheme operated by Wates. He called a meeting with SC and Mr S Reed ('SR') from Wates together with GN on 11 April 2017. During the meeting MT referred to the contents of the email sent by the claimant and asked SC to provide his explanation. MT, SC and GN had similar recollections of the meeting, with a few differences. MT could not remember whether he read from the claimant's email or showed it to him but believed he did not share the email. SC said that he recalled discussing the contents of an email, but the claimant's name was not mentioned. GN told us that MT was sitting behind his desk in his office with his screen in front of him and that GN, SC and SR were sitting around the other side of the desk. He said MT read from the screen what was in the email and asked SC about it. All three of MT, GN and SC agreed that SC then said, "*This is Mr Kemp isn't it*?". SC told us that he recalled having a conversation with the claimant where the incentive scheme was mentioned the previous week so made a deduction that it was the claimant's complaint. He also recalled MT saying he could not say who the complaint was from. We accepted that this is what took place, and that neither MT nor GN expressly named the claimant as the author of the email, but SC correctly guessed that it was the claimant.

18.41 Following this meeting MT e mailed RJ confirming that he had interviewed Wates senior management and attaching notes of the interview (pages 946-7). These notes stated the view of SC that the claimant had misunderstood the conversation SC had with the claimant about the Wates incentive scheme. It also stated that SC had confirmed that no incentive was paid for simply 'carding' a property; that if a job was carded due to an operative turning up early, this would count as a failure against the Wates KPIs and that whilst operatives had closed down jobs in error from time to time, these are picked up by customers services and the operative would then lose any incentive payment made. The notes also contained the following comment:

*"For your information, [SC] who is Wates Operations Director has expressed a concern regarding why a Contracts Works officer from Birmingham City Council has chosen to misrepresent his words to a*

*corporate director instead of seeking to clarify with [SC] himself. [SC] was particularly disappointed as he had simply been trying to assist [the claimant]."*

PID G

18.42 On 11 April 2017 the claimant forwarded an email to JK that he had received the same day from FT. This email referred to Collingbourne Avenue. FT stated in his email that it was "*clear that our tenants were allowed into their properties after this major fire*". FT also mentioned that the claimant had discussed with fire officer in the past the risk of allowing residents into fire damaged properties without appropriate protective masks. The claimant added a comment: *"can I speak to you urgently about the above, we have some serious issues"* when forwarding this email on (page 410). We find that this disclosure did not contain information that there was a risk of possible exposure to asbestos and other contaminants. It refers to tenants being allowed into properties without protective masks being a risk. We were satisfied that this implied some sort of risk from exposure (requiring the use of masks) albeit not specifically asbestos. We find that the claimant did make a disclosure to the effect that there was a health and safety risk to allowing tenants into properties without protective equipment and that this had occurred in this case. We also accept that he reasonably believed there was a health and safety risk and that it was in the public interest.

18.43 Upon receipt of this email JK replied asking the claimant to discuss with RJ as she was occupied, and the claimant responded that he would prefer to wait (page 3109). JK sent a further email on 13 April 2017 apologising and asking whether she could ask RJ to call the claimant as she was very busy (page 956).

PID H

18.44 On 28 April 2017 the claimant responded to JK's email and set out further information about the risks involved in tenants being allowed entry after fire to remove items without air reassurance test or structural survey, including the risk of exposure to contaminants including asbestos (page 407). He suggested that allowing tenants backing in the circumstances where an air reassurance test had not been carried out was a serious material breach of health and safety regulations. He also referred to the risk of allowing tenants in when the structure was not safe. We find this email clearly suggested possible exposure to asbestos and other contaminants at this property and accept that the claimant had a reasonable belief that the this tended to show a potential health and safety issue. We were also satisfied that the claimant reasonably believed this to be in the public interest. JK replied to the claimant sending a follow up e mail on this matter on 5 May 2017 informing the claimant that she needed to pass the matter on to RJ to look at (page 970). The claimant replied and informed JK that he had "*already got into*

*trouble"* over this one (this referred to an e mail sent by FT to the claimant 2 May 2017 expressing FT's unhappiness with the way the claimant has corresponded with Wates about this matter (page 967) suggesting that the claimant had sent an e mail without allowing FT to discuss this with Wates and that he should have let FT had his comments first). JK replied as follows:

"*I have to let [RJ] help us to address these issues please, i have trust in you and you need to help me to support you and respond positively to the service improvements you are helping us to bring about".*

Incident at Braithwaite Road involving J Titchen ('JT')

18.45 On 4 May 2017 the claimant was in attendance on site at a property on Braithwaite Road together with FT. Works were being carried out on the property and a site meeting was taking place between the claimant and FT and members of the Wates contract team working there, including a supervisor, JT. As the attendees progressed around the property inspecting the works, there was a discussion about the necessity of mould treatment where the claimant asked JT to identify the type of mould seen on being told that mould treatment would be carried out as a matter of course. The claimant when told by JT he could not, he said *"I am the client, you are the contractor, you will do what I say"*. JT then walked away and FT intervened and spoke to the claimant. The inspection continued and when JT was standing under some cracked plaster, the claimant made a comment about the plaster coming down any moment and that they had been trying to get rid of JT for months.

18.46 On 4 May 2017, JT made a complaint to his line manager at Wates Mr D Dean ('DD') (page 974). This is referred to him wanting to place a formal complaint alleging that the claimant's behaviour was aggressive and unprofessional. It recounted what took place, stating that the claimant had been aggressive and derogatory and that whilst he would have taken the comment around the loose plaster as a throwaway comment at any other time, given what had already taken place he felt that this was a threat and the claimant was "*openly implying he was trying to get me dismissed from my position*". JT asked for his complaint to be forwarded to the relevant person finishing that he did not expect to "*come to work and be abused as I felt was the case today*". DD raised this with FT and forwarded the email from JT to him on 8 May 2017, who responded by stating he would discuss the matter with GN before responding formally (page 973).

18.47 GN met with the claimant and FT on 9 May 2017 to discuss the complaint and the notes of the meeting were shown at page 975-976. The details of the complaint were put to the claimant and GN asked him whether he agreed with JT that he had been aggressive and unprofessional to which the claimant responded that he was just being "*robust*". FT stated that he felt the claimant was "*over the top*" in the way he spoke to JT and had to

pull the claimant to one side to calm things down. It was noted that FT said he found it embarrassing to have to intervene. GN asked the claimant and FT to provide brief statements and reminded the claimant about the employee support service.

18.48 GN sent a response by email to DD on 9 May 2017 (page 972). He confirmed that he was dealing with the complaint. He said he met with the claimant and FT briefly today to go through the complaint and asked that both provide a statement confirming their version of events. He went on to ask DD to arrange for the other two Wates employees that were in attendance to also provide statements confirming what was witnessed. He went on to state that once he had all statements, he would take HR advice before getting back to DD. He finished by saying "*please be assured that I will investigate this complaint ".*

18.49 The claimant emailed GN on 10 May 2017 with his version of events (page 982). His statement was brief stating that he had responded in a "*firm and robust manner*" about the need for mould treatment. He accepted that he asked JT what type of mould it was and informed him that it was likely to be Aspergillus or Penicillium which could be sanded off. The claimant made no reference to any further comments. FT provided his statement on 11 May 2017 (page 978). He stated that there had been a degree of friction as the claimant had been disappointed with JT's response to the claimant's enquiries about lack of progress. He stated that the claimant "*did overreact*" to JT's statement about mould treatment and that he then cross questioned JT about the type of mould, knowing that JT would not be able to answer this. He went on to state:

*"I would describe Mark's behaviour as being argumentative rather than aggressive or unprofessional. This is partly linked to the response to his earlier query about the general lack of progress."*

In relation to the plaster comment FT said he would describe the remark as nothing more than a humorous comment made in the wrong place and time following the earlier incidents. He suggested that the claimant's overreaction was not premeditated. FT also added that the claimant had "*already accepted that his behaviour was not acceptable and that none of these allegations would have been made had expressed his opinion calmly and handled the situation level headed".*

He noted that he felt the situation could be resolved by the claimant giving a sincere apology to JT and an assurance that there was no malice behind his comment around the plaster.

18.50 On 11 May 2017 DD emailed GN with statements from other employees present during the incident. G Egginton ('GE') stated that the claimant became unhappy and agitated when reference was made to a revised schedule of works. He stated that the claimant launched a tirade directed at JT in relation to the mould and was shouting. GE said he was ignored

by the claimant and shouted over when he tried to explain the position. He described the claimant's behaviours as verbally aggressive, upsetting to all, unprofessional and unacceptable. He also stated that FT acted professionally throughout and tried to calm the claimant down during his "outbursts". P Martin ('PM') who was also present provided his statement on 10 May 2017 (page 981). He provided a similar account of events stating that the claimant was aggressive/confrontational, and that FT spent a lot of time calming the claimant down.

PID I

18.51 On 10 May 2017 the claimant emailed CH forwarding the email he had sent to JK on 4 April 2017 (PID F) referred to at paragraph 18.39 above (page 411). The claimant added a comment that his email had been sent to RJ and he had passed it on to GN and MT to investigate and so he already "*knew*" what would happen.

PID J

18.52 The claimant sent a further e mail to JK on 10 May 2017 about the formal complaint that had been made against him (page 411) alleging that he had told the contractor firmly and robustly what was required and that the job had an additional schedule of works with increased costs. The claimant alleges this was an allegation of overcharging, but we did not find that this was what was contained in the email which was simply stating that additional costs were being charged. He also raised the issue of the housing team taking tenants into a fire damaged property (Collingbourne Avenue) despite a structural report saying it was unsafe. He expressed his concern that "*someone will get seriously hurt or even lose their life*". We accepted that the claimant had a reasonable belief that this information tended to show a potential health and safety risk. JK replied that same day informing the claimant that she had passed this to RJ to liaise with him directly (page 983). P Hobbs, a Service Head at the respondent's Place Directorate ('PH') e mailed DC on 12 May 2017 for an update about the property as "*RJ has asked me to get him a quick briefing"* (page 988) and on 12 May 2017 FT e mailed PH with the information requested (page 986-7). On 13 May 2017, RJ e mailed JK with an update (page 3112-3) and informing her that the course of action that the claimant had recommended had been "*discounted for good reason in getting the job done in a speedy manner"*. RJ also informed JK that he would arrange to see the claimant.

PID K

18.53 On 18 May 2017 claimant emailed JK again about Collingbourne Avenue, alleging that 2 contractors working on site inappropriately dressed and without safety helmets (page 414). The claimant did not as alleged suggest that the contractor had failed in its duty of care, but we were satisfied that the claimant reasonably believed that this disclosure

was in the public interest. The claimant reported that he had heard nothing from RJ and having visited the site the day before that rain had destroyed the property and destabilised the structure but sent a later e mail to confirm that RJ had since contacted him with a view to arranging a meeting (page 991).

PID L

18.54 On 23 May 2017 the claimant emailed JK including a letter from a tenant regarding Kendrick Avenue (page 415-421). His email stated that it looked as if there was a possible exposure of the customer to asbestos and that the council was at risk of action being taken by the HSE. The attached letter from the tenant's daughter was addressed to the claimant and to dated 22 May 2017. This set out detailed issues around problems at the property including that they had been informed that ceilings need to be removed due to asbestos content. It also suggested that on numerous occasions the tenant had been '*carded* 'or a contractor had turned up to carry out repairs without prior notification. It's alleged that work had been left incomplete, specifically mentioning an issue with an external light. It alleged that the respondent failed in its duty of care to the tenant. We were satisfied that this implied some sort of risk from exposure (requiring the use of masks) albeit not specifically asbestos. We find that the claimant did make a disclosure to the effect that there was a health and safety risk to allowing tenants into properties without protective equipment and that this had occurred in this case. We also accept that he reasonably believed there was a health and safety risk and that it was in the public interest. JK responded on the same day and informed the claimant that she had escalated the matter to RJ for a *"full independent investigation to this case and full system review" (page 1003)*.

PID M

18.55 On 8 June 2017 the claimant emailed RJ and JK making an allegation that Wates operatives at Collingbourne Avenue were working without safety helmets and outside the safety zone of the protective scaffolding (page 422-3). He alleged this was a "*gross breach of the health and safety act*". He also suggested that SE, FT and someone called John had all been on site and failed to spot the danger. The claimant suggested that his managers would suggest he was exaggerating. We were satisfied that the claimant reasonably believed that this was being raised in the public interest, particularly as he made references to the HSE and a possible RIDDOR report. RJ e mailed the claimant the same day to thank him for the information and stated, "*As indicated yesterday this is being urgently reviewed" (page 3117)*.

PID N

18.56 On 8 June 2017 claimant emailed RJ and JK regarding the decanting (temporarily rehousing) of a family to temporary accommodation following a fire. He complained that a vulnerable family had been moved to a house with no central heating and hot water (page 424). We were satisfied, given the content of the email, that the claimant had a reasonable belief that it was in the public interest for this to be disclosed. RJ e mailed the claimant on 9 June 2017 thanking him for the information and stated that he was "*pleased that [GN] was picking this up and I am sure we will address the situation*". The claimant replied just after stating: *"he is, and we have had a good chat on the phone. I wish we could sort things, me and [GN] could take on the world, we would make such a good partnership and the contractor would be guided into our ways of how to treat the customers and the core values" (page 3119*). RJ then forwarded this correspondence to JK to update her and stating that he was still independently reviewing issues.

18.57 On 14 June 2017 the claimant sent an email to JK and RJ referencing the Grenfell Tower fire that had occurred the previous night and raising concerns about the safety of tower blocks in the Birmingham council region (page 1022-3). RJ responded the same morning asking the claimant to talk to MT about his email as he was already putting together information. MT was copied into this email and RJ suggested that this could be discussed with the claimant. The claimant contacted RJ later that day to state that he had been stopped from sending emails about Collingbourne Avenue and that MT had not contacted him. RJ responded that they had been engaged with elected members all day on the matter of the fire and MT would be speaking to the claimant (page 1024). It appears that the matters raised by the claimant were passed to the respondent fire risk assessor for comment and at pages 1025-1026 a document containing his responses to the various points raised was shown.

PID O

18.58 On 16 June 2017 the claimant emailed JK and RJ complaining about a quotation he had received from Wates to install an access ramp. The explained that an additional quotation had been reduced and accepted by the respondent, but when the claimant asked the sub contractor carrying out the works for a quotation, he was given a much reduced sum. There was a clear implication of overcharging in this email (page 426). We accepted the evidence of JK that as this e mail was sent to her and RJ, that she left this for RJ to deal with as an operational matter.

18.59 The independent review that RJ had commissioned into the events at Collingbourne Avenue was carried out by Keepmoat who were a different contractor engaged by the respondent, but not in respect of this particular case. On 20 June 2017, MT e mailed RJ with the results of the review that Keepmoat had carried out. This concluded that Keepmoat felt that

Wates had dealt with the situation correctly and that they as contractor would not have done things differently. MT then informed RJ that he was planning to meet with the claimant the following Friday and that he was planning to "*give him the floor*" and go through all his concerns. He suggested that if the claimant contact RJ or JK in the meantime, that he should be redirected to MT and to the meeting that was planned (page 3124-5).

18.60 On 20 June 2017 the claimant emailed RJ and JK informing them that GN had just contacted him with reference to the Wates complaint. He suggested that MT was showing "*unusual behaviour*" and suggested that both managers had been "*constantly picking away*" at him (page 1032). He emailed them again on 21 June 2017 to inform them that GN had told him he would be formally investigated, and an investigation officer had been appointed. The claimant sent several emails to RJ and JK asking for their assistance and met with RJ on 23 June 2017 to inform him of his distress at facing a disciplinary investigation. RJ acknowledged his concerns and suggested the claimant needed to let the investigation run its course.

Meeting between MT and the Claimant

18.61 On 26 June 2017 the claimant attended a meeting with MT. The account of what took place at that meeting differ. The claimant believed he was supposed to meet with MT to discuss the Grenfell Tower fire and its impact on housing matters in the respondent. The claimant said MT started by informing him he must not contact JK or RJ any more. He alleged that halfway through a sentence, MT suddenly said "*Are you staring at me, I've had people do this before are you staring me down?".* The claimant alleged that he then told MT about a problem with his eye, which had necessitated a visit to A&E the previous evening. The claimant alleged he then told MT he felt ill and asked to be excused, shook his hand and left as quickly as he could. The claimant's suggested during the hearing that MT had jumped up across the table and tried to strangle him. This was not an allegation pursued as part of this claim, so we have not felt it necessary to determine this further.

18.62 MT's account of the meeting was that RJ had asked MT to meet with the claimant to ask him to report any concerns he had by using the usual available channels of communications and to escalate his complaints through his line manager. MT told us that at this time that there was a "*growing view that the claimant's approach was excessive and time-consuming, and often his complaints were spurious or exaggerated*." MT said that he "*delivered [RJ]'s message*" and that the claimant's body language was closed throughout the meeting, and he stared intensely at him. He admitted that he asked the claimant why he was staring at him, and the claimant told him he had an issue with his eye, and he needed to leave. We find that MT did instruct the claimant during this meeting not to escalate his concerns to JK or RJ. We also find that the claimant was

staring intensely at MT during the meeting which then led to MT asking the claimant why he was staring at him. The claimant complained to JK about this meeting on 26 June 2017 (page 1038-9) and she replied asking him whether he was okay and apologising that she had been in back-to-back meetings. She suggested that RJ was best placed to respond as he knew what had been discussed with colleagues in what direction given. She asked claimant was okay for her to forward this email to RJ. The claimant responded by saying he did not want this to be forwarded and that other than JK he did not know who to trust.

18.63 There was a further meeting on 3 July 2017 between the claimant, MT and RJ. The claimant told us that this meeting had been arranged by RJ and he started the meeting by asking the claimant and Mt to stop "*taking chunks out of each other*" and then MT started to criticise the claimant. The claimant then said he suggested that if MT continued the way he was that he (the claimant) would expose MT. The claimant said the meeting ended without conclusion and with RJ suggesting that they stay away from each other. MT could not recall the precise date of the meeting but said he did recall a meeting where he was required to attend a meeting with the claimant and RJ where the claimant was allowed the opportunity to have his say and the claimant was disparaging and threatened to raise a grievance. He acknowledged that he responded in a "*forthright manner*". RJ's recollection of the meeting was that there had been a breakdown in communication between the claimant and MT and the meeting was to bring them together to find out why. He denied instructing the claimant and MT to keep away from each other. We find that this was a difficult meeting in which RJ's attempt to resolve difficulties that had arisen in the working relationship was not successful. The working relationship between the claimant and MT was very poor by this time.

18.64 The claimant became preoccupied with how his disclosures were being addressed and doubted whether all had been logged correctly. He sent an e mail to the respondent's Whistleblowing e mail address on 3 July 2017 (page 1054) stating that he had been raising concerns about the repairs contract and that such concerns had been raised with "*Audit and the Directors*". The claimant went on to allege that he was being bullied and was worried about the detrimental treatment he was receiving from managers. A response was sent to the claimant on 10 July 2017 (page 1053) asking him to provide further information and suggesting that the claimant raise complaints regarding bullying via the respondent's grievance and/or dignity at work policies.

PID P

18.65 On 10 July 2017 the claimant sent an e mail to the respondent's Whistleblowing e mail address (page 1052) replying to this request for further information. He set out the background to his previous complaints around Mears stating that money was wrongly being claimed and this

was allowed by the respondent's manager going on to set out the outcome of the investigations and recommendations made at the time. He stated that during the time this was taking place that JK had "*looked after*" him and stated:

"*once JK came on board she has been wonderful, she has supported me and when things got tough she would call me in and talk to me and that was a great help because I felt valued, supported and cared for*"

He went on to make allegations about Wates alleging that things were not right. He cited examples such as cancelling jobs, booking jobs as complete when works were not carried out, not keeping appointments and not carrying out damp jobs. He went on to allege that the contractor was obtaining monies from the council which were not in keeping with the contract or the policies and procedures. He again cited cancelling jobs, providing excessively high quotations, claiming for works which were covered under PPP but charged as an ad hoc job and inflating works outside the contract. It went on to state that JK had not been able to help as much as she did before as she was too busy and that although RJ had been supportive in a meeting, that the same issues were still taking place. He also alleged that MT had tried to bully him in a meeting.

PID Q

18.66 On 17 July 2017 the claimant sent an email to NF & CH making allegations about Wates (page 433). This made specific reference to garden work not being completed for several years and the resulting loss of income and housing provision. It went on to ask a series of questions about the way that garden works had been arranged and carried out. This included questioning why the works on three properties had been tendered and then cancelled; why work which had now started had only been sent out to 3 contractors to tender and asking what measures were in place to ensure that the tendering of additional works was fair, robust and best value for taxpayer and rent payer. This was one of three e mails sent to NF on this day by the claimant. That evening, NF e mailed the claimant stating that:

*"It's probably best for us to wait until the new Contracts Auditor is in post and then we can all sit down together with the contract to go through your concerns."*

By this time the respondent (through JK and another senior manager, C Price ('CP') in Audit) had decided that CB would be appointed to a new post within the respondent's Audit team to provide assurance to JK on the management of the housing repairs and maintenance contracts. This was part of the lessons learnt approach that JK adopted following the Mears investigations that had been carried out. CB was to report directly to CP sitting outside the Corporate Fraud team within which NF and CH had worked.

18.67 The claimant sent further emails reporting issues to CH and NF during July (pages 1078-1082) naming specific properties. These are not relied upon as disclosures for the purposes of this claim so have not been considered further. On 21 July 2017 in one such e mail the claimant stated:

*"This is why I have blew the whistle, this is why I am prepared to suffer the abuse I have received and I will not stop until thing are put right, I love my council and both of you are a true reflection of what all officers should be, stopping the misuse of tax payers money, looking after people who need us and making sure we do the very best we can."*

Sickness absence

18.68 The claimant was admitted to hospital on 31 July 2017 and was treated for Sepsis related to his Diverticulitis. He was signed off work until 14 August 2017. He subsequently contracted Norovirus during his time at hospital and became very unwell as a result (along with other family members).

Decision to commence a Stage 2 disciplinary investigation.

18.69 GN decided along with MT that a Stage 2 Disciplinary investigation was necessary because "*there appeared to be an on-going pattern of erratic, rude and aggressive* behaviour *by [the claimant] towards contractors.".* He believed that a complaint from a contractor was *"very unusual and almost unprecedented".* During cross examination GN suggested that he had also consulted with MT and RJ before making his decision. He asked HR whether it could be considered detrimental treatment before making his decision and said he had done an "*awful lot of soul searching*" before doing so.

18.70 On 5 August 2017, whilst still off work, the claimant received a letter dated 3 August 2017 from V Burgess at the respondent informing him that a disciplinary investigation into the events of 4 May 2017 would be undertaken (page 1086). The letter stated that there were four allegations against the claimant that would be investigated, namely:

*"1. On 4 May 2017 you were rude and aggressive towards JT, Voids Project Supervisor for Wates Group throughout a site meeting at Braithwaite Road, a BCC void property.*

*2. Your behaviour at the meeting on 4 May 2017 demonstrates an on-going pattern of inappropriate and unacceptable behaviour.*

*3. By your actions you have bought the Council into disrepute.*

4. By your actions you have breached the Council's Code of Conduct".

The letter went on to state that this was being seen as "*potential gross misconduct*" and if proven may lead to dismissal. It included a Terms or Reference for the investigation which contained further information on the first allegation, but no detail was provided on the others.

18.71 The claimant emailed JK that day informing her of what had happened and stating this had: "*sadly brought be right down and makes me feel that everyone is out to get me*". He went on to ask for help as he did not know which way to turn. JK replied that she was unaware the claimant was in this process and encouraged him to concentrate on getting better and to seek trade union representation if he needed it (page 1091). In his response to JK the claimant stated that the "*constant bullying over many year*s" had made his diverticulitis worse.

18.72 The claimant spoke to FT on 5 August 2017 at page 1094 of that conversation was included in an email sent by F2 on 7 August 2017 to a recipient whose name is redacted, possibly a colleague in HR given the context. FT recorded that the claimant "*appeared to be extremely depressed, feeling totally helpless and I dread to say, very suicidal*". FT also referred to the claimant having received the letter about the disciplinary investigation and suggested that this could have been "*better timed*" and that he thought "*HR should be mindful of circumstances like this try to make sure that they avoid impacting more stress and worry our employees health and well-being whilst they are sick*". He suggested that it would have been better if HR could have checked with him as line manager before sending the letter. On 7 August 2017 the claimant emailed NF and CH asking for their help and stating that he was very ill could not sleep and could not stop worrying (page 1100). CH telephoned the claimant and NF replied the same day expressing concern at the claimant's email and stating that whilst it was their job to investigate allegations of fraud, they were not experts on issues of health and well-being. The email suggested that advice had been sought from HR who had suggested the claimant seek help from OH which could be arranged through FT. NF encouraged the claimant to pursue this option to obtain professional help. NF went on to confirm that they had sought HR advice who had suggested that the claimant seek OH assistance to be arranged through FT (page 1099). On 8 August 2017 FT completed an OH referral (page 1096-1099) asking for an urgent consultation with an OH officer. On 8 August 2017 the claimant emailed the whistleblowing email address to complain about having been sent a notice of disciplinary investigation and asking why he was "*not being protected under the whistleblowers act*" and asking for an urgent response (page 1101).

<u>PID R</u>

18.73 On 12 August 2017 the claimant sent an email to NF, CH & JK headed "Fraud" making an allegation that he had been informed from the subcontractor that this individual was willing to make a statement that he heard SC instructing JT to carry out the minimum of works to the mould tr

eatment at Braithwaite Road and charge the council the most expensive (page 434). His email alleged that this demonstrated "*fraud and corruption*". We were satisfied that the claimant believed that a criminal offence was taking place. This was one in a series of many e mails that the claimant sent to NF and CH during August (pages 1102-1114 & 1121-1133 & 1137-1140)). Some of these emails attached photographs of properties the claimant had been referring to. We accepted NF's evidence that the claimant was in constant contact during this period by telephone and e mail and that at times on the phone he became very emotional and was crying. NF and CH were then instructed to refer the claimant's concerns to JM in Legal Services as he was responsible for overseeing the respondent's whistleblowing register (see e mail from NF to MD of 11 August 2017 (page 1112). The claimant had a conversation with MD around this time as he refers to this in an e mail sent to him on 14 August 2017 where the claimant thanks MD for his support and kindness (page 1117) In this e mail the claimant stated:

*"I will however continue to work hard with [NF] and [CH] to determine an outcome for all of the things I have handed over to audit and I shall try and have faith in the system and my strategic director."*

18.74 On 14 August 2017 the claimant returned to work and a return to work interview was conducted by FT (page 1115-1116). The claimant contended that no offer of a phased return to work was offered but it does not appear that this was requested. The return to work interview notes records by way of a tick box checklist that the discussion had included considering "*appropriate support including any reasonable adjustments*" although no details provided. It also noted that a referral had been made to OH to "*discuss the implication of future treatment on his day-to-day*".

18.75 On 22 August 2017, PH wrote to the claimant to confirm that he had been appointed to investigate and invited the claimant to a disciplinary investigation meeting (page 1141). PH interviewed GN on 24 August 2017 as part of his investigation and the notes of that meeting were at pages 1144-1148. He was asked about the expectations for working relationship between the respondent's employees and Wates contractors and any documents to record this. GN referred to the respondent's code of conduct and agreed values and behaviours. He confirmed that in his view the claimant was trained to undertake this role. When asked by PH whether he was aware of any medical concerns influencing the claimant's behaviour, GN referred to the recent health issues with sepsis and stated:

*"I was particularly concerned about the allegations that [claimant] was aggressive because staff have told me previously that he comes across as being very anxious to get angry and upset quite quickly. I also witnessed [the claimant]'s apparent anxiety and have expressed concerns previously".*

GN was also asked about whether there were any other ongoing patterns of unacceptable behaviour other than the incident on 4 May 2017. He stated that he had written to the claimant about concerns by way of management style advice and that FT had also written to the claimant several times about the claimant sending *"inappropriately worded emails*" to the contractor.

18.76 PH asked GN whether he could suggest anyone who PH might interview regarding historic incidents. DN suggested a number of individuals at Wates. GN further stated that the claimant:

"*does have a habit of escalating his concerns if he doesn't get the answer he immediately once, whereas he should use the supervisory hierarchy set out in the structures to raise concerns. I believe [FT] will have written to [claimant] several times about his behaviour.*

*There is a pattern of escalating issues to [RJ] and [JK] which has a significant cost to BCC every case [the claimant] escalates has to be fully investigated"*

GN made specific reference to a job at Collingbourne Avenue stating that this ended up being the subject of an independent report from a third party contractor which supported all the actions taken by Wates. He suggested that the claimant's approach was something that *"undermines the management structure and distracts us from the important task of delivering services to tenants".* He went on to state that he had done some *"soul-searching"* when doing his initial fact find into the allegations because of the claimant's tendency to escalate issues but that *"after discussing this with my line manager and taking HR advice I felt I had no choice but to request an investigation".*

When asked anything he wanted to add, GN stated that he was pleased that the claimant was being seen by OH because he needed support but that he was concerned that "*the claimant could be damaging the respondent reputationally if his alleged behaviour is not challenged and changed*".

18.77 PH met with JT on 25 August 2017 as part of investing the investigation. JT was asked for the had any cause for concern with any contact with the claimant and JT described the claimant as a "*strange character, a bit of a Jekyll and Hyde*". When asked about the incident on 4 May 2017 itself JT said that the claimant was "*very aggressive*" and "*got a bit red-faced and shouting*". JT said that FT had a word with the claimant and he said nothing more about the mould was being discussed and when they were inspecting plastering there was a piece of plaster which looked like it before down, and the claimant said he hoped it would fall down on JT as they'd "*been trying to get rid of JT for a few months now*". JT told PH that although he laughed at the time, he did not find it funny and that nobody else laughed. He was asked about the claimant making the comment "*I*

*am the client, you are a contractor, you will do as I say"* and how this made him feel. He said he felt the claimant "*likes to make you feel small*" and during the discussions he felt wound up. When asked whether he has anything to add, JT queried why it had taken so long to investigate this as he thought the matter had been dealt with. PH noted that he was the second investigating officer but stated that he did not know the reason for the initial delay between May and August.

18.78 PH interviewed SC on 29 August 2017 (notes at pages 1155-1158). During this interview SC stated that he would not normally encounter the claimant (having only had a couple of interactions with him) and stated that if the claimant had any concerns, she tended to try to find the most senior person to complain to and had a "*tendency to ignore agreed line management arrangements"*. He stated that he had had numerous conversations with GN about issues raised by the claimant with senior respondent officers. He referred to a conversation he had with the claimant in April where the claimant had produced a document related to a repair job being incorrectly completed or cancelled. SC said he mentioned to the claimant that it could be an" "*unintended consequence of the operative incentive scheme*" recently introduced by Wates, or it could have been a result of an admin processing error. SC said he then explained the incentive scheme to the claimant. He then gave his account of the meeting held on 11 April 2017 between himself, SR, MT and GN. S said that during this meeting NT "*read out an email from the claimant*" which included allegations that Wates were incentivising its operatives to close down incomplete jobs and overcharging avoids. SC told pH that he was surprised and concerned about the allegations and was left "*scratching his head*" as to how the allegations could have arisen from the conversation he had with the claimant.

18.79 SC also told PH that he felt the claimant's behaviour had a "*negative impacts on our working environment because staff know that he will complain direct to very senior officers if he doesn't get his own way"* and that "*staff would rather not have anything to do with him because there is a risk to even the most innocent of conversations. This frustrating because he refuses to use his supervisor or any of his BCC line management to resolve issues like he should*" . PH interviewed P Timms a health and safety adviser at Wates on the same date who confirmed that he had conducted two site visits in relation to the complaint about Collingbourne Avenue together with a representative from the respondent, both reaching the conclusion that it was safe.

PID S

18.80 On 8 September 2017 the claimant emailed CH & NF regarding works at Stafford House which he had been involved with in 2015, making allegations that Mears had booked jobs as complete when the work had not been carried out and that Wates had left discarded sections of window and materials on the roof when they eventually carried out the

works, which he had discovered a recent inspection. He alleged that leaving the materials was a breach of health and safety regulations and could lead to items being blown off and causing death or serious injury and we were satisfied that he believed this to be the case. (page 435).

Disciplinary investigation meeting

18.81 On 21 September 2017 the claimant attended a disciplinary investigation meeting with PH (accompanied by BG) and the notes taken of this meeting were shown at pages 1226- 1230. Following some initial introductions BG raised the question as to why this investigation was going ahead given that the claimant had already been spoken to and the matter dealt with by his manager, with PH confirming that he was unaware of any disciplinary action and was investigating having been asked to do so. The claimant clarified that he had already received a corrective instruction from FT on site on the date of the incident and back at the office. When asked about the delay the HR representative present confirmed that there had been changes with the commissioning and moving and investigating of the officers and annual leave on all sides had caused delay. She then apologised. BG then stated that as the claimant had put forward a whistleblowing complaint, that the action against him was malicious and that the investigation should not be happening. The claimant was asked about the incident on 4 May 2017 and said his behaviour on that date was normal, that he was not rude or aggressive, did not swear or invade JT's private space. He described his behaviour as firm and robust and that he was trying to protect public funds as he felt Wates were trying to claim monies that were not on the first tendered schedule. He suggested that the comment relating to the ceiling falling on JT's had would have been made in a jovial way but that he was primarily thinking of JT's safety.

18.82 On 27 September 2017 PH met with FT as part of his investigation and the notes of the meeting were shown at pages 1272- 1276. He confirmed during this interview that following the incident on 4 May 2017, whilst he would say he gave corrective instruction, he did "*tell him off*" on site immediately after the meeting informing the claimant that he was "*totally out of order".* He described the claimant's behaviour as typical in that he tended to challenge contractors, but on that day, he overreacted which was not normal for the claimant. He informed PH that he thought the claimant had behaved this way because his initial schedule of costs had increased dramatically. FT also stated that the claimant had accepted he was wrong admitting to FT that he had been "*over the top*". FT mentioned that there had been one or two previous incidents where the claimant's comments in emails had caused friction. He also commented that the claimant did not "*do himself any favours*" and that whilst it was important to challenge the contractor, employees had to be mindful about the way challenges were conducted, trying to be calm.

PID T

18.83 On 10 October 2017 the claimant attended a meeting with NF, CH and CB (notes taken by CB of this meeting at pages 1295-1299). The claimant disclosed various information relating to the repair contracts. The meeting had been called to enable the claimant to raise the various concerns about the Wates contract with the Birmingham audit team which he had been e mailing to NH and CH during July, August and September. The claimant went through various matters reflecting the concerns he had been raising including (1) incomplete jobs being booked as complete; (2) jobs being cancelled and booked as complete; (3) poor workmanship; (4) double payments for legacy work; (5) failure to conduct asbestos testing after a fire and allowing access to a building after the fire; (6) failure to conduct structural integrity checks after a recent fire and allowing tenants to re-enter; (7) lack of asbestos awareness training; and (8) leaving a particular property in a dangerous state of repair. During the meeting the matter raised by the claimant with regards to Braithwaite Road (PID Q); Stafford House (PID S) was discussed and recorded in the minutes. The claimant alleged that he was being told not to continue raising concerns and that this had become "*bullying, attempted physical assault, character assassination, joint undertakings by both the managers, management and the contract to remove me from the service leaving serious charges of misconduct open to make me and my family ill and much more*". There was no allegation that any matters in relation to the disclosures had been 'covered up' but was recorded that the claimant had a suspicion of fraud and corruption. The claimant stated that under the previous Mears contract he had regularly refused ad hoc work orders to the contractors on the basis that this work should be part of PPP/PPV. He also alleged that some work was being paid at national housing Federation rates which he believed were inflated as they related to emergency work.

PID U

18.84 On 20 October 2017 the claimant sent an email to NF, CH, CB & JK regarding Braithwaite Rd (page 444). He alleged that the confirmation he had received from the subcontractor of the final cost of the project was confirmation of fraud and corruption. He also alleged that there had been a gross material breach of health and safety obligations relating to a CWO entering a building without reassurance test and that he was considering reporting GN to the HSE. On 3 November 2017 the claimant sent an email to SN (copying NF, CH and CB) seeking a meeting with him to discuss health and safety issues that had already been raised with the respondent's corporate fraud division (page 1352) this email asked as to keep the communication private. The claimant informed JK on 7 November 2017 that he had done this but had not received a response (page 1363). He asked JK to tell him who was the most senior person in Health and Safety, and she responded on 9 November 2017 informing the claimant to contact SN or another officer, P Davies.

PID V1

18.85 On 9 November 2017 a telephone discussion took place between the claimant and SN where the claimant informed SN he was concerned that he had been exposed to asbestos after a fire in a council property in 2015. The claimant also expressed concern that the level of airborne contaminants could remain high when he accessed the property and complained that other respondent staff had been allowed to access before an environmental clean taken place, pointing out a lack of appropriate protocols being in place. During this conversation SN explained to the claimant that in his view the level of risk was low and unlikely to have caused harm. However, SN suggested to the claimant that he contact WC to address the issues around putting an appropriate health and safety protocol in place to address such matters in the future. Following this conversation SN emailed the claimant the same day to confirm their discussion copying in WC and asking him to provide WC with his managers contact detail to enable information to be collected about how health and safety was being managed and suggesting the claimant meet with WC to provide further detail about the issues raised (page 1365). The claimant subsequently emailed JK on 10 November 2017 confirming that he had been contacted by SN but suggesting that he had adopted a "*laid-back approach*" and had passed the issue to a colleague.

18.86 The claimant responded to SN's e mail on 13 November 2017 providing the information and asking whether BG could be involved in the discussions which prompted a response from WC the same day asking for a meeting with the claimant and confirming it was acceptable for BG to be involved (page 1364).

PID V2

18.87 On 16 November 2017 there was a telephone conversation between the claimant and WC. Before this conversation had been attempts to schedule a meeting, and the claimant had rescheduled complaining that because of mounting pressures he was not well. The claimant suggested that the preliminary conversation could take place over the telephone. The claimant suggested in his written witness statement that the conversation took hours. WC told the tribunal that during this conversation she found, claimant difficult to follow as he was "*jumping all over the place*" mentioning the main issue of asbestos exposure in 2015 and various issues about his historical experience within housing, including PPE provision and compliance with construction legislation (with respect to Mears). We accepted the evidence of WC, particularly as at this time the claimant had stated he was feeling unwell which may have impacted his behaviour at this meeting. Following this conversation WC emailed the claimant thanking him for his time and suggesting that due to the nature and number of issues raised it would be helpful to meet with BG as soon as possible . She informed the claimant that she would

begin to collect information where she could about the concerns, he raised about safety management processes and practices of the respondent, the contractors and the fire service (page 1374).

PID V3

18.88 On 19 November 2017 the claimant sent an email to JK cc NF, CH and CB (page 451) forwarding WC's initial email to him dated 16 November 2017. The claimant's email confirmed he had spoken to WC but that having discussed this with her that "*no measures had been put in place*" and that the respondents practices were illegal and putting people at risk.

18.89 WC followed this up with the emails the claimant copying RJ advising them of her investigation and by informing the housing team that she was investigating an asbestos exposure claim. WC also met with the respondent safety manager, J Flaherty to discuss the Mears and Waites contracts in relation to fires and risk of asbestos exposure. She was assured by Mr Flaherty that full risk assessments were in place and provided with copies of the existing risk assessments for Waites.

18.90 On 23 November 2017, PH completed his investigatory report into the four allegations of misconduct/gross misconduct claimant (page 1387). His report concluded that there was a case to answer in respect of all four allegations made and the matter should proceed to a disciplinary hearing.

Meeting with WC and OH referral

18.91 On 24 November 2017 the claimant met with WC together with his TU rep BG to discuss the issues raised by the claimant around asbestos exposure. At this meeting WC and BG became concerned about the claimant as he broke down during the meeting. BG raised the matter with GN and WC spoke to J Sanders, the claimant's Wellbeing Manager and asked for an urgent OH referral with a doctor. GN e mailed her making the request for an urgent referral and FT completed the online referral on the same date (pages 1408-1409). The claimant subsequently went on sick leave which started on 30 November 2017.

18.92 Also on 30 November 2017, MT prepared a report for RJ at his request detailing the actions taken in response to various concerns raised by the claimant around 5 issues: Collingbourne Avenue; Barn House; Stratford Road; fire safety in tower blocks and the allegations re the incentive scheme at Wates involving SC. Whilst MT set out the factual occurrences from his point of view and what steps were taken, he was critical of the claimant throughout this e mail. He referred to the claimant having a "*major falling out*" over Collingbourne Avenue. He suggested that the claimant acted against instructions in visiting a tenant rather than a void. He also stated that Stratford Road was a property previously signed off by the claimant and where concerns were raised which GN felt were

unfounded. In relation to the Wates incentive scheme issues, MT suggested that the claimant had circumvented Wates management structures and that had been incorrect in his allegations stating that the claimant had: "*brought the reputation of [SC] into question without first checking his facts*".

18.93 On 1 December 2017, a letter was sent (page 1420-1422) which the claimant received on 2 December 2017, enclosing PH's disciplinary investigation report (pages 1387-1406) and inviting him to a hearing (page 1420). The claimant e mailed JK on 4 December 2017 asking for her help and she replied expressing her concern for him and encouraging the claimant to seek help from employee support services as she was out of the city at the time (page 1428). The claimant e mailed NF, JK and CH on 4 December 2017 alleging that "*the manager of Wates and Gary are trying to get rid of me, why is the whistleblower act not protecting me, I have done nothing wrong*". This email went on to state that putting the claimant through the process would "*destroy*" him (page 1429). The claimant met with RuJ together with his union rep on 4 December 2017 and during this meeting the claimant complained that he was being subjected to the disciplinary process because he had blown the whistle.

18.94 On 5 December 2017, the claimant telephoned MD in an emotional state explained to MD that he felt aggrieved at having been subject to disciplinary process and for assistance with his disciplinary process. MD told him that he was not involved in the disciplinary process, nor could he interfere as this was a separate process within the respondent. He reiterated to the claimant that his whistleblowing concerns were being taken seriously and suggested that he should make those who were conducting the disciplinary process aware that he had raised concerns via the whistleblowing procedure which were being investigated. The claimant told MD that he had already spoken to RuJ was sympathetic. md emailed RuJ following that conversation to inform him of what happened (page 3364-5) and advised RuJ to take a "*cautious approach*" stating:

*"Managers may be of the opinion that the complaint about [the claimant's] alleged behaviour is separate and unrelated to any protected disclosure he has made, but again I would be cautious here. It is true of course that making a protected disclosure about one matter, does not prevent you from being disciplined in relation to a separate matter. However, in the present case, it seems [the claimant] has made a disclosure about Wates, who have in turn accused [the claimant] of aggressive behaviour. It may not be too difficult for [the claimant] to argue that the two matters are related."*

18.95 RuJ responded stating that MD's e mail was timely as he had met with the claimant who had raised the issue the previous day. He had already asked LA for a list of the names of those involved in the disciplinary investigation and so provided that list to MD to investigate any possible

link between those involved in the disciplinary investigation who had complained against him and the allegations the claimant had made as part of the whistleblowing process (page 3364). MD sent an e mail to CB on 6 December 2017 including that list of names and asking him to confirm whether anyone on that list had been:

*"accused of wrongdoing and whose (alleged) conduct is therefore currently the subject of/being considered under the on-going Wates investigation"* .

He explained that this was to enable HR to "*identify any link/match between persons whose conduct is being considered by Audit, and certain HR complaints received about BCC employees, which are currently being dealt with*" (page 1438). CB replied to RuJ & LC stating that there was no ongoing internal audit work relating to the conduct of the individuals identified by MD (page 1439).

18.96 On 6 December 2017, the claimant e mailed JK, MD, BG, NF, CH, CB, FT, RJ and S Manzie the respondent's Interim CEO at the time asserting there was a plot of victimisation against him by GN, MT and SC. He asked for a meeting as a matter of great importance. He also noted:

"*Under the whistleblowers act I have a right to do this or go to an employment tribunal or both"* (page 1434).

The claimant then forwarded this to K Charlton the Senior Solicitor (and Monitoring Officer at the respondent) asking her to read his e mail as a matter of great importance (page 1434).

18.97 JK responded to the claimant and informed him that as he had already raised this with RJ, the matter was being looked into (page 1437).

1st OH Report

18.98 On 6 December 2017 the claimant attended an OH appointment with Dr Cathcart. The OH report completed by Dr Cathcart was shown at pages 1431-1433. This concluded that having examined the claimant he was "*psychologically unwell with anxiety and depression*". He described the claimant as distressed and informed the claimant during the appointment that it was his opinion that he was "*unfit to continue in work at this time*". In response to the question from the OH referral as to whether the claimant's condition was likely to be covered by the EQA, the report noted that it was "*likely to apply*".

Disciplinary hearing

18.99 On 18 December 2017 the claimant attended a Disciplinary hearing chaired by LA, who was accompanied by M Crump ('MC'), HR officer with PH as the presenting officer. The claimant was accompanied by BG. The notes of that hearing were shown at pages 1457-1466. The

claimant had prepared a statement in advance of the hearing (page 1446-1453). The disciplinary hearing heard evidence from GN and SC as witnesses on behalf of the presenting officer. The claimant called a subcontractor to Wates and FT as witnesses. Following the hearing, the claimant emailed NF and CH again thanking them for the kindness they had shown him and asking for them to pass on the same thoughts to JK (page 1467).

2nd OH report

18.100 The claimant attended a further OH appointment with Dr Cathcart on 3 January 2018 and the report produced following this appointment was shown at page 471. This confirms that the claimant was in a "highly distressed state" and was "physically and psychologically unfit for work". It did note that there was no medical objection to the claimant participating fully in all necessary meetings and procedures to resolve the issues at work.

18.101 On 22 January 2018 FT met with the claimant for a contact meeting and following that meeting emailed LA on 24 January 2018 to express his concern that the disciplinary case remained unresolved (page 1482-1483)

3rd OH report

18.102 The claimant saw Dr Cathcart again on 7 February 2018 and the OH report produced following that appointment was at page 1474-5. This noted that the claimant continued to be unwell both physically and psychologically and was currently awaiting the outcome of a scan test to indicate whether there would be a need for bowel surgery and was seriously affected by symptoms from this bowel condition in the meantime. It noted that the claimant remained anxious and:

*"The lack of any progress in his discussions with his employer is playing on his mind and he would benefit greatly from progress towards a resolution of his situation".*

Further investigation and disciplinary decision and preparation of outcome letter

18.103 Following the hearing LA emailed LC on 20 December 2017 asking her for information about the names of those included in the claimant's whistleblowing complaint so that she could consider his allegation that his disclosures had led to the disciplinary investigation as part of her decision-making (page 1469-10). LC responded to LA by e mail on 19 January 2018 confirming that the claimant's whistleblowing complaint was logged as a complaint to JK received on 3 July 2017. Her email provided a list of the names of those involved in the claimant's whistleblowing complaint, which included GN, JT, SC and FT. LC also

clarified that SC was aware of the claimant's complaint. We accepted LA's evidence that she then concluded that the allegations made against the claimant which led to the disciplinary investigation were not instigated or influenced by the claimant's whistleblowing complaint, given that the incident took place on 4 May 2017 but the first whistleblowing complaint of the claimant did not arise until 3 July 2017 (as far as she was concerned). The claimant suggested that LA should have investigated further and to have examined the whole of the whistleblowing spreadsheet held by Audit which would have shown a referral made by the claimant on 4 April 2017. However, we accepted LA evidence that she had no knowledge of this spreadsheet at the time and had no access to the documents held by Legal and Audit and acted on the information that was provided to her.

18.104 LA reached the decision that allegation 1 was partially upheld as she found that the claimant's behaviour on 4 May 2017 was inappropriate. She concluded that allegations 2, 3 and 4 were not upheld. LA concluded that no disciplinary action would be taken against the claimant but that as she did have concerns about his behaviour, that he should firstly be reminded of the respondent's values and behaviours. She further recommended that MT may wish to investigate further how the complaint of damage to the reputation of Wates made by SC during the process could be addressed "*regarding whether any action needed to be taken in relation to reestablishing the relationship and trust with the contractor*".

18.105 LA told us that she prepared an outcome letter for the claimant with the assistance of MC which was dated 22 February 2018 (page 1485-1490). The outcome letter went through the allegations against the claimant setting out the case of the presenting officer and the claimant's response. It went on to confirm that allegation one was partially upheld with LA finding on balance that the claimant's behaviour on 4 May 2017 at the site meeting was inappropriate. It went on to state:

*"however, while there is some debate about descriptions used to describe your conduct, I am satisfied that the incident. Below the level of gross misconduct. I have also taken into account the mitigation at your line manager, FT put forward that he was present at the site meeting and stated your behaviour was typical intend to challenge the contractors; that she overreacted but that you weren't rude or aggressive".*

the letter went on to remind the claimant of the Council's values and behaviours and the Code of Conduct. It confirmed that the remaining three allegations were not upheld but, in each case, advice was given that the claimant should reflect on the way he engaged with others and take a greater level of care and attention in the future. The letter made a number of recommendations. Firstly, that a manager meets with the claimant to set out with him the values and behaviours expected to ensure he understood the impact his approach has others. Secondly it advised the claimant that in future he had to raise any issues or concerns he had through the line

management hierarchy and only if such concerns had not been addressed satisfactorily that he should use the respondent's HR policies and procedures in an appropriate and responsible manner. The third recommendation was as follows:

*"I cannot ignore the comments made by [SC] in that in relation to the allegations you had made regarding a specific job, that he feels there has been damage to the reputation of his company and the relationship between Wates and Birmingham City Council. Whilst I have noted that your line management did not remove you from working with these contractors or take any other action, 3.2 of your job description does include a duty to; "develop and maintain effectively relationships with other contractors", I am therefore recommending to your head of service, [MT], that he may wish to investigate further whether any action needs to be taken in relation to this matter and also towards re-establishing the relationship and trust with Wates."*

18.106 There was much discussion during the hearing as to the template that LA used to prepare this letter and the extent of the changes she made to that template. The claimant's allegation was that template in use at the time had a number of potential outcomes including, if the employee was found not to have committed the conduct alleged, a finding of "no case to answer". The claimant alleged that LA changed this to a finding of "no further action". LA told us that she believed the template she used was one which came from People Solutions the online HR system or that it may have come from MC who was assisting her with the production of the letter. We saw a copy of a template in place at the time on page 2211-2 which indicated that one of the possible outcomes was in fact "No Action". We find that LA changed this template letter in place at the time to amend the outcome but accept that this was to accurately reflect the decision she made that although no disciplinary action was to be formally taken, recommendations were made. This could perhaps have been worded in better way as the reference to MT considering whether to "investigate further whether any action needs to be taken in relation to this matter" led to considerable ambiguity and uncertainty and may have left both MT and the claimant with the impression that further disciplinary action could possibly follow.

18.107 On 26 February 2018, the claimant met with JK at the respondent's offices having received an offer from her to attend and meet her. He expressed his concern about not hearing about the disciplinary outcome and again that he felt he was being penalised for making whistleblowing disclosures. JK informed the claimant that she had asked RJ to reach out and offer his support to the claimant.

<u>Meeting re disciplinary outcome between LA, RJ, MT and GN</u>

18.108 Although it was unclear on which date this took place (this may have been on 4 March 2018), having reached her decision, LA met with RJ,

MT and GN to inform them of the outcome before this was communicated to the claimant. When asked in cross examination whether this was usual practice, she stated that this would be if there was something in relation to the outcome of the hearing which meant that management needed to take further action or investigate something further and so given her conclusions, she felt this meeting was right and proper. The Tribunal's view is that such a meeting was inappropriate and has led to the impression being created of interference with the decision making process. During this meeting, when LA communicated her decision, GN became very upset and angry that the claimant had not been dismissed and walked out of the meeting (subsequently being signed off sick and not returning to work at the Kings Road site). He told us that he was "*dismayed*" at the decision of LA, as he felt that the respondent was condoning the claimant's behaviour and that it would result in the claimant having "*carte blanche*" to carry on. Both GN and MT suggested during the hearing that they had since heard that the decision was made not to act because of a failure of the respondent to include the correct information (namely statements from those who had complained) in the investigation pack. We did not find this evidence credible and find that such information was included in the investigation pack (as it was referred to during the hearing). LA and the other attendees at the meeting were "*taken aback*" at GN's reaction. RJ recalls suggesting to GN that his reaction to the decision was surprising as his own evidence against the claimant during the disciplinary hearing had generally been supportive of him.

18.109 On 8 March 2018, FT wrote to the claimant regarding his sickness absence (page 1495). This appeared to be a standard letter sent to those on long term sickness absence but it caused the claimant some concern given that it made reference to a possible Full Case Hearing.

18.110 On 12 March 2018 the claimant received the outcome letter at home. When asked LA could not explain why there was a delay between the preparation of the letter on 22 February 2018 and the claimant receiving it over 2 weeks later. The claimant was concerned about the comments in the letter about further action which he felt implied that MT could "*effectively put me on trial again*".

<u>4th OH appointment</u>

18.111 The claimant attended and OH appointment with Dr Cathcart on 14 March 2018 and during that appointment it was agreed that the claimant could return to work on 19 March 2019. The claimant informed FT by telephone and it was agreed that he should report to work to FT on that date.

<u>Telephone conversation with MT re "garden leave"</u>

18.112 MT told us that having heard the outcome of the disciplinary hearing he became concerned when he heard that the claimant was planning to return to work at Kings Road, as SC and GN (who had given evidence against the claimant at his hearing) and 3 of the Wates team involved in the complaint were also based there. He referred to his "*duty of care to all staff*" and that the claimant had made threats of self harm and therefore decided that it was appropriate for the claimant to remain home on full pay whilst the best solution was considered. We also saw correspondence between MT and RuJ about this decision around this time at pages 1500-1. On 16 March 2018, MT writes to RuJ stating that although the claimant may ignore his instruction to stay at home on full pay that:

*"Unfortunately this man cannot return to Kings road he is affecting the health and wellbeing of staff at this location and his actions have caused to manager to either leave or go off sick through stress at work"*

He referred to the outcome letter and the recommendation of further investigation by LA and went on to state that the claimant:

*"represents a clear threat to the health and wellbeing of the team and is a disruptive influence on day to day operational activity as well as affecting the relationship with our contractors I will be advising him to stay at home on full pay until I have carried out my investigation".*

MT was then advised by RuJ (page 1500) that he should not do this and that given the conclusion was that no disciplinary action would be taken, it was not possible for further investigation to be carried out unless something further had come to light. He suggested that to enforce "*gardening leave*" could be seen as a suspension and disproportionate.

18.113 On 16 March 2018 the claimant received a telephone call from MT. MT told the Tribunal that he advised the claimant to work from home as he had some concerns about his immediate return to Kings Road but says he did not recall instructing him to go on garden leave or using this term. The claimant told us that MT instructed him to go on garden leave. We preferred the claimant's account of this and find that MT did inform the claimant that he should remain at home on full pay on garden leave. A letter was then sent by MT on 16 March 2018 (page 1498) which stated:

*"As discussed on the telephone on 16th March 2018, this letter is to confirm that before you return to work a meeting needs to be held between yourself and me to discuss the outcome of your disciplinary and specifically point 3 on the last page of your outcome letter.*

*Until such time that the meeting is arranged you are to be on paid leave and not to return to work. During this time you will be In receipt of full pay."*

18.114 We accepted the claimant's evidence that he was alarmed upon receiving the telephone call and felt that the reference to gardening leave meant he was being suspended and may be dismissed. He contacted JK by e mail on 16 March 2018 (page 1499) to express his concern and distress (and that of his wife) and again on 18 March 2018 (page 1505-7) complaining about what was said and again stressing that he had been told several times by MT that he was to be placed on garden leave. She responded on 19 March 2018 stating that she had asked RuJ to review the position and would revert that day (page 1509). The claimant was informed on 20 March 2018 by BG that he had been told by senior managers that MT was incorrect, and the claimant should return to work.

18.115 On 21 March 2018 the claimant came back to work and attended a return to work interview with FT (notes at page 1514-1516). During this meeting a phased return to work was agreed. It was also noted that FT was to be the claimant's point of contact for any issues that cause the claimant concern whether they were work-related or personal. An OH referral was also agreed.

PID W

18.116 On 23 March 2018 the claimant e mailed JK, NF, CH, CB complaining about the removal of timber buildings at Kings Rd depot and the significant increase of cost involved in this from £23,000 to £80,000 which he described as being "*sickened about*" (page 446). He referred to the contract suggesting that comparison should be made as to the sums here and what was actually paid.

18.117 On 29 March 2018 the claimant sent an email to RJ and JK, where he expressed his concern at the recent OH referral that had been completed by MT. He also referred to a meeting that had taken place between the claimant RJ and MT several weeks ago. The claimant said he made complaints during the meeting and his email set out 4 specific matters that he wished to complain about (page 1539). RJ responded to this email by suggesting that as the claimant's complaint has expanded to include further issues it would be appropriate for him to submit a formal complaint under the respondent's dignity at work policy (page 1541).

PID X

18.118 On 3 April 2018 the claimant e mailed JK, CH & NF (copying CB) about Wates allegedly booking jobs as complete wrongly on two properties (Bordesley Green and Thirlmere Road) and alleging fraud (page 454) and we were satisfied that the claimant believed this was the case. This was part of a series of e mails the claimant sent at the time and on 6 April 2018, CH e mailed the claimant and informed him that CB was on leave but that:

*"However I do know that as part of his work [CB] is currently looking at the issues you have recently raised since you returned from sick leave".*

He went on to reassure the claimant that the matters were being looked at and that the claimant should concentrate on himself and his family.

PID Y

18.119 On 4 April 2018 the claimant e mailed CB copying CH and JK about a property which he alleged that Wates had left unsecured after works had been carried out (page 455). He suggested that Wates "*did not care*" about security of the customer or the building referring to vandalism and drug users sleeping in the lobby and the impact on tenants.

5th OH appointment and report

18.120 The claimant saw Dr Cathcart for a further OH appointment on 18 April 2018. The report at page 1549 noted that the referral had been made by management "*for advice on how to ensure a successful return to work*" following claimant's recent health. It confirmed that the claimant had a significant physical health problem, but that Dr Cathcart was "*happy with his psychological fitness*" when he saw him. The report recommended that the claimant would benefit from a phased return starting at around half the claimant's normal working hours. It suggested that he undertake the normal activities of his role at once on his return. It noted that the claimant was likely to have increased psychological vulnerability and that it was important for his future health that he work in a supportive environment and was not subject to the pressures and perceived work environment which led to him going off sick in the first place.

Grievance 1

18.121 On 20 April 2018 the claimant submitted a formal grievance (page 1552-3) sending this by e mail to RuJ, MC and JK. This complained about 7 listed matters regarding the disciplinary investigation, hearing and what took place just after it, and also that on 11 April 2017 MT read from a confidential email sent from the claimant alerting SC which the claimant believed led a complaint from Wates. RJ responded to the e mail on 23 April 2018 stating that having considered the grievance policy and it reference to trying to resolve matters informally at Stage 1, that as various meetings had already been held without resolution that he wanted to check that the claimant and BG were content that the grievance needed to move to Stage 2, being formal investigation (page 1558). There does not appear to have been a response to this e mail. The matter was then passed to CJ on 1 May 2018 to take forward.

18.122 On 3 May 2018, WC sent her interim report on the possible asbestos exposure issues the claimant had raised (she later summarised her findings in an e mail to RJ which is shown on page 1567). She concluded

that the claimant and a colleague had entered a building in June 2015 where an asbestos coated ceiling had been disturbed by the Fire Service in putting out a fire but had not established why this had taken place. She could find no evidence to suggest that the claimant had requested a safe operating procedure ('SOP') to deal with the issue which requests had been ignored but that this would further be explored with the claimant. She also identified a gap between the risk assessments of the contractors and the communications with respondent employees attending fires. She stated that a new SOP had been produced to address this which would be communicated across the repairs team and with contractors. She confirmed that she would meet with the claimant shortly to finalise the report. She met with the claimant on 18 May 2018 and the claimant subsequently sent approximately 60 e mails to WC with photographs. She e mailed the claimant on 24 May 2018 to confirm him that she had concluded her report and that a new SOP had been developed and that other concerns raised since would be discussed with JF.

18.123 The claimant was notified by CJ on 16 May 2018 that his grievance had been received and proposing a stage 1 meeting under the respondent's grievance procedure on 4 June 2018 (page 1570). This was rearranged at the claimant's request and on 7 June 2018 the claimant met with CJ.

18.124 On 14 June 2018 the claimant was sent a response from the Whistleblowing team e mail address acknowledging that a complaint he had made in 2017 had been reviewed and categorised as a whistleblowing complaint and so allocated a specific reference. This e mail informed the claimant that the complaint was subject to an ongoing enquiry by the Audit team. The e mail instructed the claimant to send any further emails about his whistleblowing complaints to the team email address and not directly to audit team members as this may distract them from their investigations. It also offered the claimant a chance to meet with a member of the legal team (page 3128). A further e mail was sent on 18 June 2018 from the whistleblowing e mail address following up on this and asking the claimant to provide information on other e mails that had been received which were entitled "38 Rushlake Green Bathroom Floor" and why they were a matter for whistleblowing. It directed him to the relevant policies and asked him to help them identify why it was a matter that should be treated as whistleblowing (page 1586). Whilst it was not absolutely clear what e mails were being referred to here, at page 1578 we saw an e mail the claimant had forwarded on to CB and CH on 24 May 2018 which appeared to include a written complaint from a tenant about the way his bathroom floor had been repaired and the fact that no working toilet was available.

<u>PID Z</u>

18.125 On 18 June 2018 the claimant e mailed the Whistleblowing team e mail address to complain that damp jobs were not being carried out correctly

by Wates and that the respondent had failed to take the appropriate corrective action on this matter following the audit report on the Mears contract (page 456). A response was provided on 19 June 2018 from the central Whistleblowing e mail address asking the claimant to provide more details on the allegations made, what the source of his information was and copies of any evidence to support his allegations (page 1588-9.

18.126 On 20 June 2018, WC completed her final report on the allegations of asbestos exposure and lack of procedures made by the claimant (pages 1590A1-A5). This report set out in detail the claimant's complaint and the investigations that had been carried out by WC to find out what had taken place and when. This included obtaining details from the fire service incident report. It concluded that the claimant and another employee had entered the fire damaged property (with the permission of the Fire Service) where there were damage asbestos coated ceiling panels but that it had been determined that the potential exposure to asbestos fibres and risk of disease was "extremely low". She confirmed a gap in the process to cover the situation when the fire service has released the property to respondent employees, rather than the contractor. She recommended that and SOP be put in place and confirmed that SOP 109 – Fire/Flood Damaged Properties had been developed and communicated at the end of April 2018.

PID AA

18.127 On 21 June 2018 the claimant sent an email to the Whistleblowing team email address (page 458). This appeared to be a response to a previous e mail, and we conclude that the claimant was in fact responding to the e mail sent by the Whistleblowing team e mail address on 18 June 2018 at page 1586. This briefly provided the answers to the questions posed about his previous complaint relating to Rushlake Green and why he felt these were matters for the Whistleblowing team.

18.128 CJ wrote to the claimant on 9 July 2018 apologising for the delay and summarising the discussions during the stage 1 grievance meeting on 4 June 2018(page 1597-1599). There was no reference to a request for homeworking in this email. CJ sett out his proposed informal outcome, namely that a review be undertaken in relation to the allegation that he had been victimised following the outcome of the disciplinary process by not being allowed to return to work and being subject to a sickness absence meeting. A suggestion was made that the claimant move to an equivalent role in a different team. CJ also suggested that the claimant set out clearly what compensation he felt he should be entitled to and the justification for it. He suggested meeting again to discuss the informal resolution of the complaints but that if the claimant was not happy, he could move the matter formally to stage 2 of the grievance procedure, which the claimant did on 10 July 2018. CJ then asked RuJ and MC to appoint a commissioning and investigating officer.

18.129 On 10 September 2018 CB completed his audit report in relation to the claimant's complaint about the demolition of a structure at Kings Road (pages 1605-34). This concluded that the allegation that the increase in costs was without justification was unfounded but did identify a number of problems with the procurement process and lack of communication and contractual clarity. It went on to make a number of recommendations to prevent reoccurrence of the issues arising.

PID AB and Grievance 2

18.130 On 20 September 2018 the claimant raised a second grievance by sending an e mail to RJ and JT. This complained about the way his disclosures had been dealt with by Legal Services, alleging that they did not have the appropriate building knowledge to deal with his complaints and that they were "constantly challenging" and asking for further detail, which he felt were delaying tactics. He alleged that Legal Services had failed to provide him with protection, report and forward his disclosures for investigation and keep him informed of their actions. He also made a further complaint about the continuation of poor practice identified in the Mears audit report into the new contract with Wates. RuJ wrote to JT on 21 September 2018 suggesting that he respond to the claimant on his behalf (page 1639).

18.131 On 16 October 2018 the claimant was admitted to hospital with sepsis. He was subsequently discharged on 21 October 2018 and signed off work until 5 November 2018.

6th OH appointment and report

18.132 The claimant had a telephone consultation with Dr Cathcart on 31 October 2018 and the report was shown at page 1641. This referred to his bowel condition and stated that further treatment may be required. It also noted that the claimant had significant psychological health problems at that time. It confirmed that Dr Cathcart had no medical objection to the claimant resuming his duties before being seen again if the claimant felt strong enough. He suggested that the claimant may benefit from a phased return to work which the claimant should discuss with his line manager.

18.133 On 2 November 2018, the claimant was sent an e mail from the Whistleblowing e mail address which provided more information about the process and responded to a number of his complaints about how the concerns he had raised were being dealt with (page 1644-1646). This again reminded the claimant to continue to respond with the group e mail address. It also informed the claimant that the respondent had now completed its first report into some of his allegations raised and was prepared to share some, but not all, of its findings with him. It asked him to confirm whether he was well enough to receive feedback and an update and how this should be done. The claimant sent a detailed

response to this e mail on 13 November 2018 (pages 1647-50). He complained about the lack of updates referring to section 10.4 of the Whistleblowing Policy. The claimant asked why he was unable to have a copy of the audit report and asked for a detailed description of what form the investigation took. He lastly asked for a list of the recorded disclosures he had made which had been categorised as whistleblowing disclosures. A response was provided on 15 November 2018 which invited the claimant to attend a meeting with JM (together with RJ and the claimant's trade union representative if desired) rather than continue with email correspondence.

18.134 On 13 November 2018 CH notified the claimant in writing that he had been appointed to carry out a formal investigation into the claimant's grievance as stage 2 (page 1652) and asked the claimant to contact him to arrange a meeting to take place in early December 2018 as soon as he felt well enough. The claimant wrote to RJ and MC on 16 November 2018 complaining about the appointment of SH as investigating officer, clarifying later that his objections were because he understood SH reported to RJ (page 1657-1659).

18.135 On 16 November 2018 the claimant sent an email to JT complaining about the lack of progress in the investigation of his grievance, noting that CH was the third person appointed to investigate his grievance and that he objected to his appointment as he reported to MJ (1661-2). Having received this e mail, JT got in touch with DH to seek her advice and she e mailed him on 20 November 2018 to state that she had discussed with RJ who was aware that the claimant had contacted JT. She advised JT to inform the claimant to follow the process in place. JT responded to the claimant on 20 November 2018 acknowledging receipt and informing the claimant that he had contacted DH who had advised that "*due process needs to be followed*" and acknowledging the meeting the claimant had scheduled with JM (page 1661).

18.136 The claimant subsequently e mailed DH direct on 21 November 2018 (page 1665-6) complaining again about the lack of progress in resolving Grievance 1. No response was provided to this e mail and DH could not recall receiving this e mail. She told us that she would not normally get involved in the investigation of grievances. We accepted her evidence that as part of her role she would have had no knowledge of any disclosures made under the whistleblowing policy as this was something within the remit of the Legal Services team.

<u>7th OH appointment and report</u>

18.137 The claimant attended a review appointment with Dr Cathcart on 21 November 2018 (report at page 1663-4). This noted that the claimant was in a process of phased return to work and recorded that measures had been put in place to ensure the claimant safety, particularly when lone working in a void property. It reported the significant physical health

condition suffered by the claimant which was likely to result in major surgery. It also noted that the claimant psychological health was a "*major concern*". It reported the claimant's concerns about the delay in the investigation of his grievances and of his whistleblowing case, and noted:

"*I am of the opinion continued delay in addressing [claimant's] issues is having a significant adverse effect upon his psychological health and with the passage of time this effect is becoming more severe"*

18.138 During December 2018, MB took over the role formerly undertaken by GN and became the line manager of FT. Shortly after her appointment she put in place an escalation process for the reporting of day to day work issues which was shown at page 1667. This required a CWO to raise firstly any issues with the Wates Team Manager and if this was not actioned, the CWO should escalate to the Service Coordinator.

PID AC and Grievance 3

18.139 On 2 January 2019, the claimant e mailed DB raising a grievance which he stated he was submitted to DB, as the most senior officer of the Council (page 466-477). This set out the background to the claimant raising complaints about Mears and then Wates, alleging that the respondent had failed to manage contract compliance. He then referred to the disciplinary investigation against him. He then went on to restate the grievances made already on 20 April 2018 (complaining about lack of progress). He further alleged that there had been an incident involving exposure to Asbestos in June 2015 (referred to above). He went on to complain about the way his disclosures had been dealt with by Legal Services. He attached copies of the first and second grievance already submitted. We were satisfied that the claimant believed that the disclosure around contract compliance tended to show that either a criminal offence might be committed or that there was a breach of a legal obligation. We were also satisfied that the claimant believed that the disclosure around asbestos disclosure tended to show a health and safety risk. We were also satisfied that the claimant believed he was making these disclosures in the public interest.

18.140 On 17 January 2019 the claimant was taken ill at work, and was admitted to hospital with acute diverticulitis, subsequently being discharged on 21 January 2019 but remaining off sick all to recover. On the day he was taken ill, an issue arose with regards to the return of keys to a property that the claimant had on his person. We do need to address this as it is not formally part of the complaint before us. The claimant ended up having to drive to work to return keys and subsequently submitted a complaint about how this was dealt with.

8th OH Appointment and report

18.141 Following a telephone consultation on 30 January 2019 Dr Cathcart prepared an OH report (shown at page 1691). This noted that the claimant had had a difficult time with his physical health and that psychologically he continued to be in a bad place and was highly anxious. Dr Cathcart expressed his opinion that resolution of the outstanding issues the claimant had raised was essential to restore his psychological and physical health and he urged the respondent to do what he could to ensure these were addressed at once at an appropriate level.

18.142 The claimant returned to work on 31 January 2019 and a return to work interview was carried out by FT with the claimant (page 1693). It noted that the claimant would resume work on a phased return over two weeks. This also noted additional actions that had been agreed including conducting weekly one-to-one and a referral to OH. Additional notes made by FT were shown at pages 1696 -1697. This included the following information on the claimant's work pattern:

*"We have a robust system for our current agile/ loan working pattern and your day to day welfare/ H&S should be covered as long as we keep the communication active with office while you are on site and maintain the normal records of your visits and finishing work onsite. Telephone communication/diary records are two critical factors for achieving this."*

The notes went on to mention complaints received from Wates regarding the claimant's differential treatment of supervisors. FT also raised issues of the claimant's behaviours particularly in the way he was expressing himself in emails suggesting that the claimant was overly emotive and over detailed and made personal comments. It suggested that the claimant be mindful of how his emails are composed avoiding making personal comments for example a recent email criticising the contractor by calling their senior manager unprofessional. FT suggested the claimant keep his feedback and any reports of failures/non-compliance is solely factual.

18.143 The claimant was carrying out his duties as normal at this time and we saw an e mail from him on Sunday 3 February 2019 to FT discussing a particular property and that it had taken him 3 hours to deal with some work on it and that he had 5 further properties to write up and needed to work on a Sunday to keep up (page 1702). FT responded by making some suggestions about how the claimant could spend less time mentioning that he did not need to forward photos by e mail and to be specific as to what areas of failure there were. When asked about the work the claimant was carrying out on a Sunday, we accepted FT's explanation that CWOs were under no obligation to take on and complete reports for all Voids that were issued to them. He explained that it was up to the individual CWO to decided what proportion of audit reports they could deliver upon. He also explained that the claimant never came to him to suggest that he had too much work to do which we also accepted as correct.

PID AD

18.144 On 7 February 2019 the claimant resent his e mail of 2 January 2019 to DB (page 482).

18.145 SH met with the claimant on 15 February 2019 to discuss Grievance 1 and notified the claimant by a letter sent later that day that he had commissioned PW as Investigating Officer to undertake a stage 2 investigation into Grievance 1 (page 1712-4).

Grievance 4

18.146 On 26 February 2019 the claimant submitted a fourth grievance (page 1722-1725). This complained about various matters are including the arrangements put in place for the return of keys of a void property when the claimant was taken ill. This also complained about what took place at the return to work meeting with FT when complaints made by Wates supervisors, and issues around the claimant's communications were raised by FT with the claimant.

18.147 On 7 March 2019 the claimant attended a grievance investigation meeting with PW accompanied by BG (notes of that meeting at page 1736-41). The claimant went through the matters raised in Grieavance 1, focusing on NT instructing him to go on garden leave and the attempt to instigate a sickness review meeting to consider terminating his employment (which claimant acknowledged did not ultimately take place). He was asked by PW had he received support locally to assist with his mental health issues and the claimant said:

"*No, nothing whatsoever. Coincidentally agile working was introduced across the service and that has really helped me due to both my physical and mental condition."*

When asked what outcomes he was seeking, the claimant confirmed that he wanted to see proper processes being followed and that persons all were held accountable.

18.148 On 25 March 2019, having been asked by MC how long his investigation was likely to take, PW confirmed that the was awaiting further information from the claimant and he may need a further meeting with the claimant before starting to interview the relevant managers from housing. He suggested that considering leave commitments he would realistically expect the matter to be concluded during May, subject to any further time pressures or other matters arising during the investigation. It was not clear whether this timescale was communicated to the claimant.

9th OH Appointment and report

18.149 On 27 March 2019 the claimant attended and OH appointment and the OH report subsequently completed by Dr Cathcart confirmed the claimant's fitness to continue work (Medical Bundle page 130).

18.150 PW commenced his investigations and met with RuJ on 1 April 2019 (notes at page 1749- 52), largely discussing the garden leave issue.

Meeting claimant and JM

18.151 On 10 April 2019 a meeting was held between the claimant (accompanied by BG), RuJ and JM (notes at page 3130-34). At that meeting JM produced a copy of the redacted Mears audit report to share with the claimant to show him that his disclosures were taken seriously and acted upon following the claimant's complaints raised in Grievance 2 that Legal Services had not dealt appropriately with his disclosures. He also brought a list of the claimant's disclosures to the whistleblowing email address between January 2018 and January 2019 which detailed how they had been categorised and the outcomes (page 1716-1718). JM expressed his frustration as to why the claimant failed to provide detail for serious looking allegations or that the claimant sent through matters which he felt were operational. The claimant alleged he was being victimised by his colleagues (naming GN and MT) and stated that he felt he was being ignored by DB when he emailed her in January 2019 with his complaints. The claimant's grievance was discussed, and the claimant complained at how long the investigation had been taking, such that he had been told to progress his concerns through ACAS early conciliation.

18.152 There was some discussion about which elements of the claimant's grievance were currently being investigated. It was noted that at the claimant's request only his grievance concerning garden leave was being investigated. The agreed outcome of this meeting was that the current investigation into the complaint about garden leave would be concluded then RJ would request PW to investigate the other elements of the claimant's grievance. MD also spent some time during that meeting explaining how the whistleblowing policy worked. MD also shared with the claimant the copy of the report completed by CB into the Kings Road depot hut demolition. MD informed the claimant he felt this showed that the claimant's disclosures were taken seriously but the notes record that the claimant "*dismissed*" this report and stated that there must be other reports. During this meeting the claimant also alleged that RJ was part of a conspiracy against the claimant with GN and MT. JM informed the claimant during this meeting that he "*had his back*" and wanted to be a "*critical friend*" which meant that he would listen to his concerns, but also challenge him where he did not feel that they were valid or that further information was required. The claimant became emotional during this meeting and concluded the meeting by hugging JM. Following the meeting the claimant e mailed K Charlton the City Solicitor complaining about what had been discussed (page 1753-4).

18.153 On 26 April 2019 a revised terms of reference ('TOR') was prepared regarding the claimant's grievance which stated that the investigation by PW would now include all matters included in his original grievance (and not just the garden leave issue as the claimant had believed) (page 1758-1760). This was sent to the claimant on 30 April 2019 by SH, asking him to let SH know if there was anything else that he wished to be included (page 1767).

18.154 PW met with FT for an investigation interview on 29 April 2019 (notes of that meeting at pages 1761-4). The discussions at this meeting explored the allegation that PM had tried to instigate a sickness review hearing to look at the possibility of terminating the claimant's contract in January 2018. FT said he had been prompted by PM to follow the long term sickness procedure but that there was no suggestion of terminating the claimant's employment. When asked whether he felt this was a deliberate attempt by senior manager to oust the claimant or exacerbate his vulnerable state, FT stated that he did not feel that this is the case, that PM was not familiar with the claimant's history and the sickness absence procedure was designed to help the employee.

Claim 1

18.155 On 20 April 2019, the claimant presented Claim 1 (page 34).

CB Initial contract management audit report

18.156 On 1 May 2019, CB finalised his initial report on the investigation into the adequacy, effectiveness and efficiency of the arrangements to manage the various repairs contracts (page 1776-1864). This included not just the Wates contract but two other contracts in place at the time. CB decided to include all contractors in his investigation as he wanted to provide assurance on overall contract arrangements, stating that he felt that if there was a problem with one, there may be a problem with all. The key findings of the report were that: KPIs indicated that the service was performing well; contract review mechanisms needed to be embedded by ensuring that contractors were regularly challenged on performance; standard operating procedures should be introduced; the service improvement group should be introduced, and the ongoing workforce review should include full planning including reviewing the CWO roles. As to the concerns raised by the claimant between November 2015 and January 2019, after the completion of this initial report, CN then started to investigate the concerns raised by the claimant and identified 5 key themes, namely: Work not done or delayed; Appointments not being made / kept; Poor quality work not identified / addressed; Large ad-hoc work charges not justified; Poor procedures in some areas. CB investigated the concerns raised by the claimant relating to a sample of jobs or properties as part of his review and looked at analysis across Birmingham of the data on the respondent's IT systems, in particular with the allegations about cancellation of jobs or marking jobs as complete

when they were not. We accepted that there were delays in this part of the investigation due to the complexities of creating and validating the data.

18.157 On 8 May 2019, the claimant was sent by SH an additional TOR relating to the matters raised in Grievance 2 which was the complaint about how Legal Services had dealt with his disclosures. This referenced the meeting held on 10 April 2019 as the attempt to deal with his grievance informally at stage 1 of the process and that this now represented the escalation of Grievance 2 to stage 2 a formal investigation. PW was appointed to carry out this investigation (pages 1858-61).

18.158 On 8 May 2019, the claimant was sent an e mail on behalf of DB responding to Grievance 3 submitted to DB in January 2019 (page 1862). This expressed DB's apologies for not responding t o the claimant earlier and confirmed that it was her understanding that this was being attended to already. She mentioned the appointment of SH and the investigations that were ongoing. She also stated that in relation to the Audit investigation, this was ongoing and being led by the Strategic Director for Finance and Governance and his team.

18.159 On 13 May 2019, there was an exchange of correspondence between the claimant and PW arranging a meeting. The claimant enquired whether "the first one" (referencing the first part of his grievance) had been completed and PW informed him that nothing had been completed and because the TOR had been updated, he needed to ensure there was no overlap before finalising any outcome. He acknowledged that the wait for the updated/new TOR had delayed matters. The claimant stated that as PW now had an additional 19 or so grievances, that this would be a "tremendous amount of work" which would take time (pages 1869-1872). PW and the claimant met on 23 May 2019 and following that meeting on 11 June 2019, the TOR for PW investigation was expanded to include 18 other grievances in addition to the original complaint about garden leave. A decision was also made to split the investigation in two: 12 complaints regarding the action of local management (points (a) to (l)) of the TOR; and secondly 7 complaints about the whistleblowing function of legal services (points (m) to (s) of the TOR (page 1892-1894).

18.160 PW held his investigatory interview with the claimant on 19 June 2019 (notes at page 1895-1904). This went through in detail each of the claimant's allegations with respect to points (a) to (l) of the TOR. Following that meeting the claimant sent many e mails to PW about the various issues (pages 1908-1918 and 1922-29). PW updated HR on his investigations on 2 July 2017 confirming that he had been collating information in a spreadsheet and that it had been agreed that he would focus on the management elements of the complaint first before moving on to the complaints about Legal Services (page 1919-20). SH left the respondent's employment in June 2019 which required the appointment of a new Commissioning Officer. PW spoke to the claimant at the end of

July 2019 by telephone and confirmed by e mail on 31 July 2019 that he had been through all the supporting documents sent by the claimant (which had taken some time) and he wanted to ask the claimant some further questions about those suggesting a meeting (page 1939). A further meeting then took place on 7 August 2019 (notes at pages 1945-1950) where further questions were asked and answered. PL was appointed as Commissioning Officer to replace SH in August 2019 and on 7 August 2019, he was sent a number of documents relating to the matter (page 1951).

18.161 PW became concerned for the claimant's health and wellbeing as he met with him during the summer of 2019. He arranged for the appointment of a colleague, Mr S Hardy, to act as a point of contact for the claimant to provide impartial support and assistance (page 1889) which the claimant took up (page 1889). On OH referral was also agreed.

18.162 On 9 September 2019 the claimant attended a meeting with MB and FT about his complaint about returning keys initially made as part of Grievance 4 received on 28 February 2019. This was being dealt with by Mr M Croxford, the respondent's Head of Environmental Health Director ('MC') in accordance with the respondent's Dignity at Work policy. A meeting was to be held between the claimant, MC, MB and FT. There were no notes taken of this meeting. The claimant said that during this meeting he made a request to permanently work from home, using his home as a base to make his visits. MB denied that such a request was made at the meeting. On balance we find that this request was not made at the meeting having considered the evidence and that the claimant was mistaken about making the request at this time. There was no mention of any discussion about home based working in the outcome letter (see below). Moreover, the claimant did not upon receiving the outcome letter raise the fact that is request for home based working had not been considered or mentioned. The context of this meeting was to consider a complaint made so it does not seem plausible that arrangements for working arrangements would be discussed.

18.163 Following this meeting MC sent an outcome letter to the claimant (page s 2014-5). This confirmed that the complaint was partially upheld as MC accepted that the claimant felt under pressure to return the keys because of telephone calls made to him whilst he was off sick. It suggested that MB should offer an apology (even though holding her not responsible) as the senior manager. The other elements of the complaint were not upheld. This apology was not made.

18.164 The claimant continued to provide further information to PW about his investigation during September. October and November 2019 (see pages 1998, 2011 and 2109). On 18 September 2019, PW interviewed LA as part of his investigation (notes pages 1999-2004). PL enquired of PL on 23 September 2019 how his investigation was going and stating that this needed to be brought to a close as soon as possible (page 2017) and

PW's response on 24 September was that he was in the process of interviewing witnesses but that this had caused delays (mentioning that he had to wait 4 weeks to speak to RJ) (page 2026).

CB's draft audit report into the claimant's whistleblowing disclosures ('CB Report')

18.165 On 26 September 2019, CB prepared a draft audit report with the results of his investigations into the claimant's various disclosures between 3 July 2017 and January 2019. It went through the various disclosures by way of a thematic approach categorising the complaints in the five types of concerns that CB had identified (see 18.155 above). This concluded that there was "*substance to the whistleblower's concerns that some work is not done or is delayed*" and his concerns were founded. In respect of the other 4 issues, CB reported that these were partially founded concluding that monitoring shortcomings meant that assurance could not give given that appointments were always made and kept; that poor quality work was being identified or that large ad hoc charges were justified. It recommended investigation of data anomalies and improvements in monitoring and tenant communication. It recorded specific findings in respect of the concerns raised by the claimant about Braithwaite Road (relevant to Disclosures J, R and U); Thirlmere Drive (relevant to Disclosure X); Dreghorn Road (relevant to Disclosure Y); Bordesley Green East (relevant to Disclosure X) and Rushlake Green (relevant to Disclosure AA). CB's investigation however concluded that there was no fraudulent activity on behalf of contractors overcharging for works.

18.166 PW interviewed RJ for his investigation on 30 September 2019 (notes at pages 2105-2108) and MT on 21 November 2019 (notes at page 2149-54). During his interview, MT was asked about the meeting on 11 April 2017 and gave his account of what took place. He went on to refer to the claimant making "*spurious complaints*" and said that the way the respondent had handled the claimant had "*empowered this individual and fed his paranoia*". He said that he had suggested to RJ three years ago that the claimant should be dismissed. When asked whether the claimant's name was mentioned during the meeting on 11 April 2017, MT responded:

*"I doubt it very much but everyone in the room knew where it's come from. It is like "he who should not be named" in Harry Potter. Everyone knows it's Voldemort".*

MT was then asked about the garden leave incident, and he gave his account as above. When asked if he had anything to add, he stated that he had only had about 20 minutes interaction with the claimant and that his actions were all for the benefit of the business. He further stated:

*"I have never in 32 years seen anything like this. I would not have walked into such a trap by someone who complains about the sun rising or the sun setting"*

18.167 On 24 November 2019, PW interviewed GN as part of his grievance investigation (notes at page 2018-2025). At the start of that meeting GN informed PW that he would refer to the claimant throughout that meeting as the "*known persistent complainant*" and then proceeded to do that at any time he mentioned the claimant in his answers. GN was asked for his account of the meeting on 11 April 2017 with a number of questions being put and responded to. Later in the meeting GN said he believed that he had been "*subjected to a barrage of ongoing spurious and vexatious complaints some defaming me personally*" from the claimant and that the respondent had not taken action to support him. He said that during his sickness absence he had asked for the claimant to be moved from his team whilst he was off sick and then stated:

*"[RJ] said he would deal with the known persistent complainant called him fucking barmy".*

GN was also asked about the initial investigation he carried out with respect to the disciplinary allegations made against the claimant. He told PW that having done his initial fact finding, because of the seriousness of the complaint, he met with MC to ask him whether the claimant as a whistleblower could still be investigated under the Code of Conduct and MC advised him that he could. He also told PW that during a meeting on 22 February 2018 he was provided with feedback about the outcome of the claimant's disciplinary hearing which he felt was "strange". On 4 December 2019 PW interviewed PH notes at page 2166-2170).

18.168 On 29 November 2019 a Stress risk assessment on the claimant was completed with FT (shown at pages 2160-2165). This recorded a number of issues which were said to place the claimant at risk of stress. This included the demands of his job; control/autonomy; relationship with colleagues; change; job role; support and training and home factors. It recorded that the claimant felt he was constantly being challenged by weights and unfairly treated. In terms of a control to counter those risks it is noted:

*"Mark is currently working on agile basis which is extremely beneficial to him in coping with current medical conditions. Clearly there are ongoing HR matters involving various senior management tier, there are issues out of his control and he feels that nobody is conscious of his current medical problems let alone giving him the credit for having to put up with the associated stress"*

It further recorded at a later point that the claimant was *"very grateful with the agile working pattern*". The claimant agreed that no discussion about

a permanent move to home-based working took place during this conversation.

18.169 The claimant alleged that during December 2019, JG denied a request that he made for permanent home-based working. There was no evidence of a specific request being made or refused. However, the claimant attended a meeting on 11 December 2019 with AF and CB to discuss how the investigation of his whistleblowing concerns was progressing. CB told the claimant that his initial report had been drafted and explained what had been included and the process undertaken to draft this report. He thanked the claimant for his input. CB informed the claimant that it would need to be shared with MT for operational input to be obtained and that JG (the new Assistant Director for Housing) had already seen it and would work with MT to fact check. The claimant expressed his concern at MT's involvement and AF then discussed with the claimant what action could be taken to ensure that he was protected from any detriment. They discussed what an appropriate level of protection might look like with AF suggesting:

*"That might mean transferring to a different job, even on a temporary basis, or other ways of getting away from the normal situation such a special leave. It might also mean just clarifying what the arrangements will be for ensuring there is a proper response to any punitive action"*

the claimant went on to state that it was happy with the way things have been dealt with by PW, AF, CB and NF but said he did not want to move jobs. He went on to state:

*"what would help me is to work from home, still under the same reporting structure."*

He then mentioned the allocation of a specific contact person if anything happened, and that he was not sure about special leave making the point that he had not been offered such leave for the purpose of pursuing his Employment Tribunal claim (a point the claimant made again during the hearing). AF responded that this could help his physical and mental well-being for example just prior to him having his operation. The claimant was reassured by AF that there would be outcomes from the concerns that he had raised through the actions currently being taken by himself and CB.

18.170 On 20 December 2019 p W emailed PL to update him about the progress of his investigation. He set out some difficulties with being able to interview JK (who was absent from work on approved leave at the time and subsequently left the respondent's employment in 2020). He also said intended to re-interview RJ on 13 January 2020. He also mentioned some difficulties with getting signed interview notes from GN following that investigatory interview. He explained that he was in the process of drafting the report subject to receiving additional evidence (page 2175).

18.171 Oo 30 December 2019 the claimant e mailed AF asking him to confirm his recollection of their discussions on 18 December 2019 (we think this refers to the meeting on 11 December 2019) (page 2178-9). It touched on some of the matters discussed about protection from detriment and the claimant referred to the respondent offering "*protective leave*" if there were any adverse comments on unwelcome behaviour because of the circulation of the CB audit report. It also stated that as the claimant was expecting to have major surgery in January 2020 that "*you offered paid special leave if required, prior to surgery, so that I can face the surgery in the best possible physical and psychological health".*

18.172 On 6 January 2020 the claimant was admitted to hospital with acute Diverticulitis, being discharged on 9 January and returning to work on 17 January 2020. PW again met with RJ on 28 January 2020 (notes at page 2186-90) where he asked additional questions including about whether as alleged by GN that he had referred to the claimant as being "*fucking barmy*" which RJ denied stating that that is not the sort of thing he would say. It was also apparent that at this time PW was still experiencing some difficulties with being able to interview JK and referred to this in an e mail to PL on 30 January 2020. He explained that the investigation had taken significant amounts of his time and having to deal with the investigation and to deal with the claimant's upset and stress had been difficult. He suggested that he would now complete the report without having interviewed JK, as a priority.

18.173 On 31 January 2020, AF contacted the claimant by e mail to update him on the ongoing discussions about the release of CB's Audit report to MT for his comments and the protections to be put in place for the claimant. He mentioned that he had been in discussion with the claimant's senior management who were satisfied that the arrangements already in place were sufficient to protect him and so the report could be released (page 2196). The claimant asked for clarification about what was meant by this and sent a further e mail on 2 February 2020 asking a number of specific questions (page 2200-2201). AF responded on 3 February 2020 (page 2197-8) by stating that he had been in discussions with JG about the level of protection needed but that it was to be as agreed between the claimant and AF during the meeting on 11 December 2019 (see above) that the claimant remain in post with home working. However, AF further clarified that this effectively would mean that the claimant's current working arrangements would continue i.e., as an agile worker with protected time to meet with parties around the ongoing processes of grievance and whistleblowing not as a designated "home worker". Having raised the issue of homeworking with the claimant on 11 December 2019 that on subsequent discussions with JG (who had sought MB's input) that they did not want the claimant's arrangements to be designated as "homeworking" but to remain as currently categorised as "agile working". This e mail went on to state:

*"My recommendations were that home working be formalised as we discussed and agreed, however in light of that you do work agilely already and that your directorate have countered that full time home working would not be feasible, as they do need to see you when required."*

and answered a question posed as to what arrangements were rejected even though they were agreed with the following:

*"home working, but agile working is already in place, as true home working is not feasible in your role.*

AF further confirmed that JG had seen the CB report and would meet with CB to follow up on it. He stated that he was not certain that the claimant would receive a copy (as this was not guaranteed under the whistleblowing policy) but the outcomes of the investigation would be shared with him.

18.174 Having released a draft of the CB Report to MT and the relevant managers within the Housing Directorate, CB told us that he worked with JG to get their input and to finalise the report so that it could be issued. He told us he did meet some difficulty in getting some elements of his recommendations agreed and had to enlist the support of JG to get it finalised. The final report was not issued until November 2020.

18.175 On 7 February 2020 PW sent the first draft of his investigation report to PL dealing with the first 12 points of grievance (page 2267-8). He updated the claimant upon request on 19 February 2020 that a draft had been done and further work was required. On 19 February 2020 PL provided his feedback suggesting that the report be split into two versions, one for the claimant to receive with outcomes and one for management to consider the actions to be taken. As there was reference to potential disciplinary action being required, PL felt this should be kept confidential and could prejudice future action. PW did this and sent this back to PL on 13 March 2020.

<u>Period of Covid 19 restrictions March 2020 onwards</u>

18.176 On 26 March 2020 the first national lockdown in the UK came into effect. The respondent declared a major emergency and PL was allocated to work full time on the respondent's management of its responses. We accepted that he did not have the time to go through PW's report and only managed to do so in May/June 2020. He raised concerns about the appendices being sent to the claimant as he felt this might prejudice any future management action and contained information that may be inappropriate for the claimant to see about colleagues. We also accepted PL's evidence that he did not know about the claimant having made a Tribunal claim and this played no part in any delay that took place.

18.177 The claimant e mailed PW and PL several times in early June 2020 asking when he would receive the report and stating that he was very anxious and having thoughts of suicide (pages 2343-2351). PL took the decision to release PW's report but without the appendices as had not had the opportunity to explore and resolve his earlier concerns. This was sent to the claimant by e mail on 1 July 2020 (page 2360) although the covering e mail did suggest that the appendices would be included. We accepted that this was an error and there had been no intention to release the appendices at that time due to the issues already raised by PL. There was a lengthy exchange of correspondence between the claimant and PL about the release of the appendices during July 2020 (2371-7). On 12 August 2020, the final grievance investigation report was released to the claimant (page 2413-4 and 2419). This concluded that there was a case to answer in relation to 5 of the 12 matters considered and no case to answer on the remaining 7. It made a recommendation for disciplinary action/capability process to be applied in respect of 2 of the points raised, namely MT reading C's confidential email out and the garden leave issue. The respondent agreed that this action was not "*immediately implemented*". JG told us that she was in contact with HR about taking this action and she believed that the "relevant officers" were taken down the disciplinary process. When asked further about this, JG said that she became aware that other investigations were taking place from a legal perspective and a further investigation would take place. She was unaware whether that was concluded. We find that JG did not implement the recommendations for disciplinary action/capability process to be applied.

18.178 After a further exchange of correspondence about the arranging of a Stage 3 Grievance meeting, the claimant confirmed on 18 September 2020 that he accepted the report of PW and thanked PW for his hard work, kindness, integrity & honesty.

18.179 On 3 July 2020 the claimant contacted JG to ask whether he would receive formal feedback on the CB report and a copy, having asked AF several times for this. She responded stating she would investigate this (page 2365-6). He also asked her by e mail on 13 July 2020 whether he could assist with the work involved in "*putting things right*" following the issuing of the CB report (page 2381). JG told him that she was currently still working with Audit to finalise the report and would come back to him with next steps and how recommendations would be taken forward (page 2380). She informed him on 16 July 2020 that Audit would update the claimant monthly on his enquiries/complaints and directed the claimant to AF for any further queries. The claimant raised with JG on 16 July 2020 that he did not feel he was being provided with appropriate support and that the long delay in resolving his grievance was having a severe delay on his health and wellbeing (page 2395). JG asked the claimant whether she should contact FT to check what arrangements were in place and later offered the claimant her support if he needed anything (page 2396).

The claimant sent an e mail to PL and RJ on 11 August 2020 in which he indicated that he was severely unwell and was dying (page 2409). RJ replied offering his support and suggested that he contact MB to ensure he was being supported.

18.180 On 14 August 2020 the claimant received an e mail from the Whistleblowing e mail address which provided him an update on the queries he had been raising and the progress of the CB reports (page 2425-6). The claimant was during 2020 continuing to raise new concerns regularly to the Whistleblowing team. We have not explored these matters as they do not form part of the proceedings. There was significant contact between the claimant and the respondent's Whistleblowing team during this period.

18.181 The claimant e mailed FT copying MB, PW, JG and AF on 1 September 2020 informing him that he had been very ill over the last two weeks. He made several references to facing life threatening surgery and that he felt he did not have anyone to talk to that he could trust. He thanked those copied on the e mail for their help, integrity and love. On 7 September he e mailed JG to ask to meet her as things were "*getting worse*" and again on 10 September 2020 stating that this was a "*cry for help*"" (page 2449). MB suggested that the claimant must contact FT or MB if he needed anything. The claimant sent a further e mail to PL, LW, JG, CB, NF, AF and two other respondent employees on 18 September 2020 again stating that he had become ill and distressed. The claimant used emotive language stating that he had become a "*broken man*" and felt with his impending surgery that he was in his "*final days*". MB had previously discussed concerns JG had raised about the claimant's wellbeing and asked her to arrange for a further OH assessment. MB said that she telephoned the claimant on 18 September 2020 to discuss this. She said that whilst the claimant expressed doubt as to the need for the OH referral that he agreed that it should go ahead. We find that there was a conversation between the claimant and MB on that date given the proximity of that alleged phone call to the e mail sent to MB and others about his health on that day. We also find that the possibility of an OH referral was discussed, and it is likely that the claimant at least agreed verbally to this. The claimant had attended numerous other OH appointments without any objection by this time and it seems unlikely that he would have raised objection to this one.

18.182 On 7 September 2020 the claimant contacted PW to ask him when the investigation into the second part of his grievance would commence and PW responded to state that although he had not received any instruction from PL, he expected that the investigation should commence imminently, and he would be in touch to arrange a meeting (page 2446-7)

18.183 On 21 September 2020, FT carried out a review of the claimant's Stress risk assessment (document at pages 2498-2502) adding

comments as to where the various risk factors had got to at this time. It noted that the claimant still believed he was regarded as a troublemaker and the failure to resolve the various concerns he raised continued to cause him stress.

18.184 The claimant went off sick from 23 September 2020 and underwent surgery for his Diverticulitis on 28 September 2020. He remained off sick until 4 March 2020.

18.185 On 5 November 2020 the CB Report was issued to the respondent's senior management (page 2512-2599). The claimant asked for a copy of the report on a number of occasions. JG told us that he was not provided with a copy because it was not standard practice in the respondent to disclose Audit reports to employees which may have sensitive commercial data in them. We accepted this evidence.

18.186 During November 2020, the claimant sent e mails to CB and PW informing them that he was struggling with his mental health (pages 2604-5). He also chased PL and AF for action to be taken as a result of the result of the first grievance investigation. In an e mail of 23 November 2020, he asked AF to get involved and stated that he was "*deeply offended*" with the contents of statements in particular the reference to "Fuc**ing Barmy" (page 2611).

18.187 On 16 December 2020 the claimant was contacted by FT about a possible referral to OH and it appears that the claimant indicated that he was not prepared to attend an OH appointment as it was a waste of money. On 17 December 2020 MB wrote to the claimant about this (page 2634-5). This e mail attached a copy of the OH referral that MB proposed to make and asked the claimant to look through this and consider it and then confirm to either FT or her if he consented to the referral. This draft referral was shown at page 2638-9. It mentioned the respondent having increasing concerns about the claimant's wellbeing and the impact work was having on his physical and mental health and the impact his behaviour was having on colleagues, in particular mentioning comments the claimant had been making referencing his death, self harm, mood swings and displaying signs of distress. It then went on to ask a number of questions about what steps could be taken to support the claimant and his fitness for work.

18.188 The letter also referred to a telephone conversation that took place "some weeks ago" and we were satisfied that this was a reference to the telephone conversation on 18 September 2020. The letter went on to encourage the claimant to co-operate but that if he did not do so, his continued long term absence would still be managed in accordance with the respondent Managing Attendance Procedure. It was also indicated that FT would still need to undertake a 9 week case review as required in that Managing Attendance Procedure, explaining that this was a desktop process by which the claimant's absence would be reviewed to check

support was in place, to confirm if any further actions would be required and to decide whether the case should proceed to a full case hearing. FT subsequently carried out that 9 week desktop case review and decided to defer the decision on proceeding to full case hearing until January 2021 and send this to the claimant (pages 2636-7). MB did not speak to the claimant on this day.

18.189 The claimant wrote to JG on 21 December to complain about the letter from MB stating that it had made him very ill (page 2645) also sending a similar email to RJ. It mentioned the referral to OH which the claimant said *"I have already agreed to do with [FT]"* but the letter went on to refer to the comments made by MB in the draft referral about the impact his behaviour was having on colleagues. JG responding apologising that the letter had made the claimant ill but reiterating that the OH referral was to support the claimant. He responded stating that it was not the referral itself that he had a problem with but the additional contents stating that she had no right to make such comments as the claimant was a *"protected whistleblower".* (page 2643). JG told the claimant she would pick this up on MB's return to work. On 4 January 2021 the claimant complained about the lack of response (page 2667) and there was then an exchange of correspondence between JG and the claimant about this with the claimant making an allegation of bullying to which JG responded that she did not believe that asking the claimant to attend an OH appointment was bullying as concerns had been raised about the claimant's health and the welfare of colleagues (page 2661). The claimant responded stating again that it was not the referral he objected to but the comments and stating that he would have to make a Tribunal claim (page 2660). During this exchange the claimant again referred to the "F***ing Barmy" comment when asked what discrimination he had suffered due to his mental health, describing it as "*pretty significant*". (page 2664). JG offered to investigate if he wanted to make a formal complaint and the claimant stated that he would go to OH "*but I have to agree the conditions for which the doctor has to look at, I do not agree with the above comments but are willing to discuss by illness physical and my general mental health*" (page 2659).

18.190 The claimant also replied to MB's letter of 17 December 2020 by an e, mail sent to her on 4 January 2021 (page 2668-2670). He updated her on his health and recovery from surgery and went on to state:

*"Regarding the referral to Occupational Health, I wish to make it clear that I have no problem with an Occupational Health referral by my manager [FT]"*

and went on to state he had expressed concerns about this when he spoke to FT on 15 December because he felt that an OH report would be weaponised against him. He referred in this e mail to senior managers being on record for wanting him sacked and allegedly calling him "f***ing barmy". He went on to challenge whether an OH referral was required by

the Managing Sickness Absence Procedures. He commented about the draft referral that MB had sent and the comments, challenging the correctness of what had bene said. He suggested that the questions posed in the referral were heavily weighted to manage his absence, including medical redeployment and ill health retirement. He went on to state, "I will attend a further Occupational Health consultation if it assists [FT] with his Case Review." MB replied to the e mail and stated:

*"Your e mail reads that you are now consenting to the OH referral so we'll move it forward".* The claimant did not respond further to this.

18.191 On 15 January 2021, MB completed the OH referral form for the claimant (pages 2691-7). MB completed various sections of the form and added details of the claimant's absence and health. There was a section on the referral which dealt with consent and stated: *"It is essential that the purpose of this referral and content of the form are fully discussed with the employee and that the employee is in agreement with the referral".* It then asked the manager to confirm that they had discussed this referral with the employee, to which MB indicated *"yes"* and asked for the date of the discussion to which MB added *"17/12/2020".* We find that MB had not discussed the contents of the form with the claimant. She had informed him of its proposed contents and through exchange of correspondence had reached the conclusion that the claimant had agreed to it. The form also asked for confirmation that the claimant agreed to an OH appointment and response to which MB indicated "*yes*" and we accept that at the time MB believed that the claimant had agreed. The substantive part of this form contained the text sent to the claimant on 17 December 2020. MB informed the claimant that the referral had been made on the same day (page 2679).

18.192 The OH appointment was due to take place on 21 January 2021 and in advance of this, the claimant e mailed the OH central e mail address asking for a copy of the referral before the consultation which was subsequently e mailed to him ((page 2685-7). The claimant was contacted by OH by telephone and the claimant indicated that he did not want to participate as he had not agreed to the terms of the referral. It became clear that the claimant did not wish to consent to the appointment as he did not agree with what had been included in the referral and objected to MB having indicated in the referral, he had seen that there had been a "*discussion*" with him on 17 December 2021. On that basis when contacted by the OH doctor, he did not continue. After much discussion the OH appointment did take place on 30 April 2021 and the OH report produced was shown at pages 2767-2771.This determined that the claimant was fit to work but that "*his angst about an organisational issue continues*". It suggested that the support mechanisms identified from the stress risk assessment would be the most appropriate intervention. It notes that if the claimant continued to struggle that redeployment may be an option,

although in the OH practitioner's opinion this would not be for medical reasons.

18.193 On 15 March 2021 the claimant presented Claim 2.

18.194 On 18 March 2021 the claimant contacted PW to ask for an update on the investigation of the second part of his grievance. He responded on 22 March 2021 stated that he had been in touch with PL and hoped to start interviewing witnesses in April (page 2744). When asked about the 6 month delay, PW responded that there had been a number of reasons for this relating to his own workload, the pandemic and his hope that he could have interviewed witnesses face to fact. He also mentioned "*delays in obtaining guidance/clarification with regards to technical elements*" of the claimant's grievance. The claimant asked for further explanation as to who was holding matters up (page 2743). There were some further communications between the claimant and PW, and he started to contact witnesses to arrange interviews towards the end of April 20201 (see for example e mail to CH of 23 April 2021 at page 2759). PW interviewed a number of witnesses and sent his draft investigation report to PL on 5 August 2021 (page 2689). There were then exchanges between PL and PW regarding the contents of the report and the final report was sent to the claimant on 20 December 2021. PL acknowledged that there had been some delay to this part of the process as he was going through the report in detail and found it difficult to get the time due to his own level or work. We accepted that he was trying to get this done as quickly as possible. PW found a case to answer on 4 points, no case on 3, and recommended an external investigation to determine extent of detriment suffered by the claimant (page 3015).

18.195 On 5 July 2021, the claimant was informed by AF that an external investigator, B Price, from Browne Jacobsen LLP ('BP') had been commissioned to investigate allegations of detrimental treatment as a whistleblower made by the claimant which became known as "Project Calgary"(page 2832).This investigation was completed and on 9 February 2022, AF e mailed the claimant with the outcome, which was that the actions of management did not amount to harassment or victimisation as a result of assumed disclosures (page 3031-2).

<u>The Relevant Law</u>

19. The relevant sections of the ERA we considered were as follows:

***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, tends to show one or more of the following—*

19.1 *(a) that a criminal offence has been committed, is being committed or is likely to be committed,*

*(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*

*(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*

*(d) that the health or safety of any individual has been, is being or is likely to be endangered,*

*(e) that the environment has been, is being or is likely to be damaged, or*

*(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.*

***43C Disclosure to employer or other responsible person.***

*(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure ...—*

*(a) to his employer,*

***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.*

*(1A) A worker ('W') has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—*

*(a) by another worker of W's employer in the course of that other worker's employment, or*

*(b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.*

*(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.*

***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.*

*(3) An employment tribunal shall not consider a complaint under this section unless it is presented—*

*(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or*

*(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.*

*(4) For the purposes of subsection (3)—*

*(a) where an act extends over a period, the "date of the act" means the last day of that period, and*

*(b) a deliberate failure to act shall be treated as done when it was decided on;*

*and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.*

20. The relevant sections of the EQA applicable to this claim are as follows:

***4 The protected characteristics***

*The following characteristics are protected characteristics: …*

*…disability;"*

***20 Duty to make adjustments***

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

*(2) The duty comprises the following three requirements.*

*(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*

***21 Failure to comply with duty***

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

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

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

***26 Harassment***

*(1) A person (A) harasses another (B) if—*

*(a) A engages in unwanted conduct related to a relevant protected characteristic, and*

*(b) the conduct has the purpose or effect of—*

*(i) violating B's dignity, or*

*(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

*(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*

*(a) the perception of B;*

*(b) the other circumstances of the case;*

*(c) whether it is reasonable for the conduct to have that effect.*

**27 Victimisation**

*(1) A person (A) victimises another person (B) if A subjects B to a detriment because—*

*(a) B does a protected act, or*

*(b) A believes that B has done, or may do, a protected act.*

*(2) Each of the following is a protected act—*

*(a) bringing proceedings under this Act;*

*(b) giving evidence or information in connection with proceedings under this Act*

*(c) doing any other thing for the purposes of or in connection with this Act;*

*(d) making an allegation (whether or not express) that A or another person has contravened this Act.*

**123 Time limits**

(1) [Subject to [sections 140A and 140B],] proceedings on a complaint within section 120 may not be brought after the end of—

(a) *the period of 3 months starting with the date of the act to which the complaint relates, or*

*(b) such other period as the employment tribunal thinks just and equitable.*

*(3) For the purposes of this section—*

*(a) conduct extending over a period is to be treated as done at the end of the period;*

*(b) failure to do something is to be treated as occurring when the person in question decided on it.*

***136 Burden of proof***

*(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.*

***Section 212 General Interpretation***

*In this Act-*

*"substantial" means more than minor or trivial;*

**Paragraph 20 (1) (b) of Schedule 8** provides that an employer is not subject to a duty to make reasonable adjustments if the employer does not know and could not reasonably be expected to know that the employee had a disability and was likely to be placed at the relevant disadvantage.

21. The relevant authorities which we have considered in relation to the claims for PID detriment were as follows:

Williams v Michelle Brown AM/UKEAT/0044/19/00 where HHJ Auerbach considered the questions that arose in deciding whether a qualifying disclosure had been made

*"It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held."*

Cavendish Munro Professional Risks Management Ltd v Geduld UKEAT [2010] ICR 325, [2010] IRLR 38 made it clear that to be a disclosure there must be a disclosure of information, not an allegation.

Fincham v HM Prison Service EAT/0925/01 confirmed that the disclosure of information must identify, albeit not in strict legal language, the breach of the legal obligation that the claimant is relying on.

Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436 - paragraphs 31 and 32 on the irrelevance of the distinction between 'allegation' and 'information' in whistleblowing complaints as this is essentially a question of fact depending on the particular context in which the disclosure is made.

Chesterton Global Ltd v Nurmohamed [2017] ICR 731 CA The following guidelines were suggested as to determining whether the worker genuinely believed the disclosure was in the public interest and whether it was reasonable for him to have done so:

(a) the numbers in the group whose interests the disclosure served;

(b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;

(c) the nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;

(d) the identity of the alleged wrongdoer – the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e., staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest, though this should not be taken too far.

Korashi v Abertawe Local Health Board [2012] IRLR 4 EAT, para.62 & 64 the reasonable belief of the person making the disclosure takes into account the characteristics of the claimant, i.e., what a person in C's position would reasonably believe to be wrong doing. In the case of multiple disclosures, it is not enough that C believes that the gist of the multiple disclosures are true, there must be a reasonable belief in respect of the particular disclosure relied upon.

Eiger Securities v Korshunova [2017] IRLR 115 EAT) - The ET must identify the breach of legal obligation (if that is relied upon). Conduct which is immoral, undesirable or in breach of guidance is not enough without also being in breach of a legal obligation

Blackbay Ventures Ltd v Gahir [2014] IRLR 416 EAT) - When considering a claim of detriment for multiple disclosures the ET should be precise as to the detriments and disclosures in question and should not just roll them all up together

Fecitt v NHS Manchester [2011] EWCA Civ 1190, [2012] IRLR 64 [2012] ICR **372** – *"section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower".*

International Petroleum Ltd & Ors v Osipov & Ors [2017] the EAT determined that "*the words "on the ground that" were expressly equated with the phrase "by reason that in Nagarajan v. London Regional Transport 1999 ICR 877. So the question for a tribunal is whether the protected disclosure was consciously or unconsciously a more than trivial reason or ground in the mind of the putative victimiser for the impugned treatment. Under s.48(2) ERA 1996 where a claim under s.47B is made, "it is for the employer to show the ground on which the act or deliberate failure to act was done". In the absence of a satisfactory explanation from the employer which discharges that burden, tribunals may, but are not required to, draw an adverse inference*."

Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL - for a disadvantage is to qualify as a "detriment" , Tribunals should take the broad and ordinary meaning of detriment from its context and from the other words with which it is associated. It confirmed De Souza v Automobile Association [1986] ICR 514, 522G, that the court or tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work.

Jesudason v Alder Hey Childrens NHS Trust [2020] IRLR - Some workers may not consider that particular treatment amounts to a detriment; they may be unconcerned about it and not consider themselves to be prejudiced or disadvantaged in any way. But if a reasonable worker might do so, and the claimant genuinely does so, that is enough to amount to a detriment. The test is not, therefore, wholly subjective. The causal connection of "on the ground that" is satisfied if the protected disclosure materially influences (in the sense of being

something more than trivial) the employer's treatment of the whistleblower. It is more aptly described as a "reason why" test, it is not a "but for test.

Martin v Devonshires Solicitors [2011] ICR 352 EAT - In looking at the reason why it is open to the ET to distinguish between the protected act and other features which could properly be separable, such as the manner in which complaints were made, frequency and repetitive nature and effect on other employees.

Bolton School v Evans [2007] ICR 641 CA at para.18 - if the cause of a disciplinary process was the belief that C had committed an act of misconduct the reason why for such a detriment will not be the disclosure (even though it may satisfy a but for test)

22. The authorities on whether the complaints for PID detriment were presented in time were considered were as follows:

Bodha (Vishnudut) v Hampshire Area Health Authority [1982] ICR 200 - The statutory test is one of practicability. It is not satisfied just because it was reasonable not to do what could be done. The existence of an impending internal appeal was not in itself sufficient to justify a finding that it was not reasonably practicable to present a complaint to a tribunal within the time limit.

Walls Meat v Khan 1979 ICR 52There has to be some impediment, which reasonably prevents or interferes with the ability of the claimant to present in time.

Consignia v Sealy [2002] IRLR 624 at para.23 If the claim under s.47B is presented after the 3-month period the burden is upon C to show the reason or reasons why it was not reasonably practicable to present the claim in time.

Cygnet Behavioural Health Ltd v Britton [2022] IRLR 906 EAT: the following principles were confirmed in relation to the not reasonably practicable test, here in relation to an unfair dismissal claim:

(a) A person who is considering bringing a claim for unfair dismissal is expected to appraise themselves of the time limits that apply; it is their responsibility to do so.

(b) The tribunal only had jurisdiction to hear the claimant's claim if he had satisfied the tribunal that (a) it had not been reasonably practicable to present his claim within the primary time limit; and (b) he had presented his claim within a reasonable period thereafter.

(c) The test is a strict one and, perhaps in contrast to the 'just and equitable' extension in other statutory contexts (such as discrimination cases), there is no valid basis for approaching the case on the basis that the tribunal should attempt to give the 'not reasonably practicable' test a liberal construction in favour of the claimant. The 'just and equitable' test is very much more generous towards the claimant than the 'not reasonably practicable' test.

Hendricks v MPC [2003] IRLR 96: for an act extending over a period the focus should be on the substance of the complaints that R was responsible for an ongoing situation or a continuing state of affairs. The question is whether that is "an act extending over a period" as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed. Hendricks was cited with approval in Arthur v London Eastern Railway [2007] IRLR 58 CA in a case concerning s.47B.

Hale v Brighton & Sussex University Hospitals UKEAT/0342/17: There is a distinction to be drawn between a one-off act with continuing consequences and

an act extending over a period. The EAT regarded the instigation of a disciplinary process as creating a state of affairs that continues until the conclusion of the process.

Royal Mail Group v Jhuti UKEAT/0020/16:

*"In our judgment, at least the last of the acts or failures to act in the series must be both in time and proven to be actionable if it is to be capable of enlarging time under s 48 (3) (a) ERA. Acts relied on but on which the claimant does not succeed, whether because the facts are not made out or the ground for the treatment is not a protected disclosure, cannot be relevant to these purposes."*

23. In relation to a claim for failure to make reasonable adjustments under sections 20 and 21 EQA the following Guidance and authorities were considered:

The Equality and Human Rights Commission Code of Practice on Employment ("the Code") paragraph 6.10 says the phrase "provision, criterion or practice" ("PCP") is not defined by EQA but

"*should be construed widely so as to include for example any formal or informal policy, rules, practices, arrangements or qualifications including one off decisions and actions*".

The obligation to take such steps as it is reasonable to have to take to avoid the disadvantage is considered in the Code. A list of factors which might be taken into account appears at *paragraph* 6.28, but (as paragraph 6.29 makes clear) ultimately the test of reasonableness of any step is an objective one depending on the circumstances of the case.

*Environment Agency –v- Rowan [2008] IRLR 20* and also Secretary of State for Work and Pensions (Job Centre Plus) versus Higgins [2014] ICR 341 emphasised the importance of a Tribunal going through each of the parts of the statutory provision. The ET has an obligation to make explicit factual findings identifying the relevant PCP, the persons who were not disabled with whom comparison should be made, the nature and extent of any substantial disadvantage suffered by the claimant and any step or steps it would have been reasonable for the employer to take.

*Ishoha v Transport for London [2020] IRLR 368* CA said that all three words (provision, criterion or practice) carry the connotation of a state of affairs indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor disability related discrimination is made out because the act or decision was not done/made by reason of disability or other relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP.

*Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194, CA*, -the duty to comply with the reasonable adjustments requirement under S.20 begins as soon as the employer can take reasonable steps to avoid the relevant disadvantage.

*Griffiths v Secretary of State for Work and Pensions 2017 ICR 160, CA* **-** The nature of the comparison exercise under s.20 was to ask whether the PCP put the disabled person at a substantial disadvantage compared with a non-disabled

person. The fact that they were treated equally and might both be subject to the same disadvantage when absent for the same period of time did not eliminate the disadvantage if the had a more substantial effect on disabled employees than on their non-disabled colleagues. In addition, in relation to whether an adjustment is effective the Court of Appeal said '*So far as efficacy is concerned, it may be that it is not clear whether the step proposed will be effective or not. It may still be reasonable to take the step notwithstanding that success is not guaranteed; the uncertainty is one of the factors to weigh up when assessing the question of reasonableness.'*

Secretary of State for Work and Pensions v Alam 2010 ICR 665, a tribunal should approach the issue of knowledge in reasonable adjustments claim by asking whether the employer knew that both that the employee was disabled and then that his disability was likely to disadvantage him substantially in relation to the PCP's application.

*Romec Ltd v Rudham EAT 0069/07.* Tribunals must consider the essential question whether a particular adjustment would or could have removed the disadvantage experienced by the claimant, but this must be read with care as in Noor -v- Foreign & Commonwealth Office [2011] ICR 695

24. In relation to harassment the following authorities were relevant:

Richmond Pharmacology V Miss A Dhalliwell [2009] ICR 724. There are two alternative bases of liability in the harassment provisions, that of purpose and effect, which means that the respondent may be held liable on the basis that the effect of his conduct has been to produce the prescribed consequences even if that was not a purpose, and conversely that he may be liable if he acted for the purposes of producing the prescribed consequences but did not, in fact, do so. A respondent should not be held liable merely because his conduct has had the effect of producing the prescribed consequence. It should be reasonable that the consequence has occurred and that the alleged victim of the conduct must feel that their dignity has been violated or that an adverse environment has been created. Therefore, it must be objectively decided whether or not a reasonable person would have felt, as the claimant felt, about the treatment in question, and the claimant must, additionally, subjectively feel that their dignity has been violated, etc.

Grant v HM Land Registry & EHRC [2011] IRLR 748 CA emphasised the importance of giving full weight to the words of the section when deciding. whether the claimant's dignity was violated or whether a hostile, degrading, humiliating or offensive environment was created: "*Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."*

Pemberton v Inwood [2018] EWCA Civ 564. Underhill J *''In order to decide whether any conduct falling within sub-paragraph (1)(a) of section 26 EqA has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective*

*question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b)).*

*Greasley-Adams v Royal Mail* 2023 EAT disparaging comments discovered later upon disclosure of investigatory interview notes cannot amount to harassment until the individual alleging harassment becomes aware of them. The EAT also upheld the reasoning of the ET that it was not reasonable for comments to have the effect required and took into account that an employer should not be constrained in carrying out an investigation because matters emerging may then be "unwanted conduct" or that interviewees should be constrained in their answers provided they are truthful.

25. The relevant authorities which we have considered on the victimisation claims are as follows:

Burrett v West Birmingham Health Authority 1994 IRLR 7, EAT is an example of the proposition that it is for the tribunal to decide as a matter of fact what is less favourable treatment and the test posed by the legislation is an objective one. The fact that a claimant believes that he or she has been treated less favourably does not of itself establish that there has been less favourable treatment, although the claimant's perception of the effect of treatment is likely to be relevant as to whether, objectively, that treatment was less favourable.

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

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

Madarrassy vNomura International Ltd 2007 ICR 867 - the bare facts of the difference in protected characteristic and less favourable treatment is not "without more, sufficient material from which a tribunal could conclude, on balance of probabilities that the respondent" committed an act of unlawful discrimination". There must be "something more".

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

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

Bahl v Law Society [2003] IRLR 640 – "*where the alleged discriminator acts unreasonably then a tribunal will want to know why he has acted in that way. If he gives a non-discriminatory explanation which the tribunal considers to be honestly given, then that is likely to be a full answer to any discrimination claim. It need not be, because it is possible that he is subconsciously influenced by unlawful discriminatory considerations. But again, there should be proper evidence from which such an inference can be drawn. It cannot be enough merely that the victim is a member of a minority group. This would be to commit the error identified above in connection with the Zafar case: the inference of discrimination would be based on no more than the fact that others sometimes discriminate unlawfully against minority groups.*"

26. On whether the discrimination and victimisation complaints are in time:

Section 33(3) of the Limitation Act 1980 (power to extend time in personal injury actions) specified a number of factors that a court is required to consider when balancing the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, in particular: (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the party sued had co-operated with any requests for information; (d) the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and (e) the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

British Coal Corporation v Keeble [1997] IRLR 336, it was held that the Tribunal's power to extend time was similarly as broad under the 'just and equitable' formula. However, it is unnecessary for a tribunal to go through the above list in every case, 'provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion' (Southwark London Borough v Afolabi [2003] IRLR 220).

Robertson and Bexley Community Centre (trading as Leisure Link) 2003 IRLR 434CA - there is no presumption that time should be extended to validate an out of time claim unless the Claimant can justify the failure to issue the claim in time. The Tribunal cannot hear a claim unless the Claimant convinces the Tribunal that it is just and equitable to extend time, so the exercise of the discretion is the exception rather than the rule.

Abertawe Bro Morgannwg University v Morgan [2018] EWCA Civ 640 - the "such other period as the employment tribunal thinks just and equitable" extension indicates that Parliament chose to give the tribunal the widest possible discretion.

Although there is no prescribed list of factors for the tribunal to consider, "factors which are almost always relevant to consider are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent".

## Conclusion

27. The issues between the parties which fell to be determined by the Tribunal were set out above. We set out our analysis and conclusion on each identified issue as follows:

**Claim 1**

**(1) Complaint of detriments on ground of protected disclosures**

Disclosures

28. In relation to the disclosures identified in the Schedule of Disclosures and as set out below (and labelled PID A to PID AD) these were all made to the Respondent, being the Claimant's employer for the purpose of s. 43(C)(1)(a) ERA 1996. Therefore, in each case, if the disclosure was a qualifying disclosure, it was a protected disclosure.

29. To determine whether each disclosure was a qualifying disclosure, the Tribunal was required to determine in the case of each disclosure relied upon:

29.1 What was said or written to whom and when?

29.2 Did this amount to a disclosure of information?

29.3 Did the Claimant believe the disclosure of information was made in the public interest?

29.4 Was that belief reasonable?

29.5 Did he believe it tended to show (as applicable) that:

(a) a criminal offence had been, was being or was likely to be committed;

(b) a person had failed, was failing or was likely to fail to comply with any legal obligation;

or

(d) the health or safety of any individual had been, was being or was likely to be endangered;

29.6 Was that belief reasonable?

30. The Respondent admitted that for PIDs A-F; I; J; L; O-T; V1; V2; W-Z and AA-AD that at least in part the Claimant made qualifying disclosures but disputed that in some bases pleaded by the Claimant that all the relevant tests are made out. The Respondent did not admit that PIDs G, H, K, M, N, U and V3 were qualifying disclosures at all. Therefore, it was necessary to make findings and conclusions about all the disputed matters. This was an extremely lengthy and detailed task which took many days of deliberation. This required the Tribunal to have close recourse to the Disclosures Schedule as to what the Claimant pleaded in relation to each disclosure and the AGOR to determine the Respondent's pleaded position on each of the disputed matters as a starting point. From there we went on for each of the 30 pleaded disclosures to examine all the evidence and to make the required findings of fact above and conclusions below on all the evidence heard. In relation to each alleged disclosure relied upon we set out our conclusions on the disputed matters as follows:

PID A: To CH by e mail on 19 February 2016 in relation to Property 1 that there was a missing kitchen wall and the contractor had refused to rebuild it and in relation to Property 2 that the contractor had refused to renew a kitchen resulting in inadequate cooking and bathroom facilities.

31. The Respondent admitted that there was a disclosure of information by the Claimant. It also admitted that the Claimant had a reasonable belief that the disclosures in relation to both properties tended to show a matter within s. 43B(1)(b) namely that a person had failed, was failing or was likely to fail to comply with any legal obligation. It also admitted that the Claimant had a reasonable belief that the disclosure in relation to property 2 tended to show a matter within s. 43B(1)(d), namely that the health or safety of any individual had been, was being or was likely to be endangered. The Respondent also admitted that the Claimant had a reasonable belief that the disclosures were in the public interest. The only outstanding matter to determine was whether the Claimant had a reasonable belief that the disclosure in relation to Property 1 tended to show a matter within s. 43B(1)(d), i.e., the health or safety of any individual had been, was being or was likely to be endangered. We refer to our findings of fact at paragraph 18.12 above and conclude that the Claimant did have such a belief (as the Claimant specifically refers to the issue at Property 1 being about the "*health and safety of the customer*"). In the circumstances we also conclude that this belief was reasonable. The Claimant had tried to resolve such matters and had been advised by CH to report health and safety matters to management, suggesting CH recognised this was a matter of health and safety. We conclude that PID A was a qualifying disclosure on the above basis and therefore a protected disclosure.

PID B: To JK, CH and JMK by e mail on 11 July 2016 alleging failures under the new Wates contract around housing repairs in that appointments were not being

booked with tenants, contractual timescales not being met and work being completed/part completed but still being charged for.

32. The Respondent admitted that there was a disclosure of information but did not accept that the Claimant made a disclosure to the effect that that work was not being completed but still charged for. We refer to our findings of fact at paragraph 18.24 above and conclude that the Claimant made a disclosure around housing repairs i.e., that appointments were not being booked with tenants and contractual timescales were not being met but that he did not make a disclosure that work was not being completed but charged for. The Respondent accepted that the Claimant had a reasonable belief that the disclosures that were made tended to show a matter within s. 43B(1)(a) (that a criminal offence had been, was being or was likely to be committed) and s. 43B(1)(b) (that a person had failed, was failing or was likely to fail to comply with any legal obligation) so we did not need to consider this further. The Respondent also admitted that the Claimant had a reasonable belief that the disclosures were in the public interest. PID B was a qualifying disclosure and therefore a protected disclosure on the above basis.

PID C: To JK by e mail on 6 February 2017 alleging that 65 jobs marked as complete were not complete; outstanding jobs being booked as complete; damp jobs not being carried out correctly and appointments not being made.

33. See our findings of fact at paragraph 18.35. The Respondent admitted that the Claimant had a reasonable belief that the disclosures tended to show a matter within s. 43B(1)(a) and s. 43B(1)(b), that a criminal offence had been, was being or was likely to be committed and that a person had failed, was failing or was likely to fail to comply with any legal obligation. It was also admitted that the Claimant had a reasonable belief that the disclosures were in the public interest. Disclosure C was a qualifying disclosure and therefore a protected disclosure.

PID D: To JK by e mail on 23 February 2017 alleging that repairs were being converted to voids by the contractor to attract additional payments and that legacy jobs were not being completed resulting in payment to previous contractor and being claimed again by the new contractor.

34. It was not admitted by the Respondent that the Claimant made the disclosures relied upon said to be alleging that repairs were being converted to voids attracting additional payments or legacy jobs were not being completed. We refer to our findings of fact at paragraph 18.36 above that the Claimant did not make this allegation at all. Nonetheless the Respondent did admit that by forwarding the e mail from KS that the Claimant made a disclosure of information setting out a timeline of repairs to a property. It admitted that the Claimant had a reasonable belief this disclosure of information tended to show a matter within s.

43B(1)(a) and s. 43B(1)(b) and was made in the public interest. PID D was therefore on this basis alone a qualifying disclosure and therefore a protected disclosure.

PID E: To JK by e mail on 6 March 2017 alleging that legacy jobs were not being completed resulting in duplicate payments to both old and new contractor and that the contractor was converting repairs to voids to attract additional payments.

35. The Respondent did not admit that the Claimant made the first disclosure relied upon and as per our findings of fact at paragraph 18.37 above we found that this disclosure was not made. It was also not admitted that the Claimant's suggestion that the contractor would argue that it was a legacy job, constitute a disclosure of information and we conclude that this was not a disclosure of information at all, but simply the Claimant expressing an opinion as to what the contract might do. The Respondent admitted that the Claimant had a reasonable belief that any disclosures in fact made tended to show a matter within s. 43B(1)(a) but not a matter within s. 43B(1)(b). We were satisfied that the Claimant did have a reasonable belief that the disclosures in fact made tended to show a matter within s. 43B(1)(b) namely that a person had failed, was failing or was likely to fail to comply with any legal obligation, as well as within s. 43B (1)(a). The Respondent accepted that the Claimant had a reasonable belief that the disclosures were in the public interest. Accordingly, PID E was therefore a qualifying disclosure and therefore a protected disclosure on the above basis.

PID F: To JK by e mail on 4 April 2017 making an allegation firstly that the contractor was awarding operatives to close jobs prematurely falsely recording them as complete; secondly reopening incomplete jobs as new jobs to increase payments and KPIs; thirdly in relation to tendering arrangements and fourthly overcharging for work.

36. The Respondent did not admit that the Claimant made the first and second disclosures relied upon. As per our findings of fact at paragraph 18.39 above, we conclude that the first and second disclosures were not in fact made. The Respondent admitted that the third disclosure relied upon related to works being awarded without a proper tender procedure was made. The Respondent does not admit that the Claimant has evidenced the factual basis of the fourth disclosure relating to overcharging. Our finding of fact above was that an allegation of overcharging was made by the Claimant. The Claimant alleged that he had a reasonable belief that the disclosures made tended to show a matter within s. 43B(1)(a) and (b) but this was disputed in part by the Respondent We conclude that the Claimant had a reasonable belief that the disclosures made here tended to show both matters within 43B (1) (a) and (b). The Respondent admitted that the Claimant had a reasonable belief that the disclosures were in the public interest. Accordingly on this basis PID F was therefore a qualifying disclosure and therefore a protected disclosure.

PID G: To JK by e mail on 11 April 2017 alleging that the Respondent allowing residents into a building following a fire caused exposure to asbestos and other contaminants.

37. The Respondent admitted that by forwarding FT's e mail the Claimant disclosed information that fire officers allowed residents into fire damaged properties but did not admit that this email made any disclosure of information to the effect that there was possible exposure to asbestos and other contaminants. As per our findings of fact at paragraph 18.42 above, whilst there was no specific reference to asbestos, we were satisfied that the Claimant made a disclosure of information re possible health and safety risks arising when tenants were allowed into fire damaged properties without masks. Whilst this was disputed by the Respondent, we were content that the Claimant had a reasonable belief that the disclosure made tended to show a matter within s. 43B(1)(d) and that this disclosure was in the public interest. Accordingly on this basis Disclosure G was therefore a qualifying disclosure and therefore a protected disclosure.

PID H: To JK by e mail on 28 April 2017 providing more information about PID G

38. We refer to our findings of fact at paragraph 18.44. As with PID G, the Respondent did not admit that the Claimant's suggestion that there had been possible exposure to asbestos and other contaminants constituted a disclosure of information, nor that the Claimant had a reasonable belief that the first disclosure tended to show a matter within s. 43B(1)(d) or that the disclosure was in the public interest. We concluded for the same reasons as above, that in both cases this was the case, and the Claimant had a reasonable belief that the disclosure made tended to show a matter within s. 43B(1)(d) and that this disclosure was in the public interest. PID H was therefore a qualifying disclosure and therefore a protected disclosure.

PID I: To CH by e mail on 4 May 2017 forwarding the e mail containing PID F

39. Please refer to findings of fact at paragraph 18.51. For the same reasons and on the same basis as set out at paragraph 37 above in relation to PID F, we conclude that PID I was a qualifying disclosure and therefore a protected disclosure.

PID J: To JK by e mail on 10 May 2017 re possible overcharging and a housing officer taking tenants into fire damaged property declared unsafe by a structural report.

40. It was not admitted by the Respondent that the Claimant made the first disclosure relied upon, namely that there was overcharging and our findings of fact at paragraph 18.52were that we agreed with this. The Respondent admitted the second disclosure was made as alleged but not that the Claimant had a reasonable belief that the second disclosure

tended to show a matter within s. 43B(1)(d). As per our findings above, we accepted that the Claimant had a reasonable belief in the relevant failure relied upon. The Respondent admitted that the Claimant had a reasonable belief that these disclosures were in the public interest. Accordingly on this basis PID J was therefore a qualifying disclosure and therefore a protected disclosure.

PID K: To JK by e mail on 18 May 2017 alleging that contractor operatives were working without safety helmets/PPE and had failed in its duty of care.

41. (The Claimant did not rely on the disclosure relating to destabilisation of the structure by the rain.) The Respondent admitted that the Claimant had a reasonable belief that the disclosure he did rely upon tended to show a matter within s. 43B(1)(d). However, it did not admit that there was a disclosure of information or an allegation that the contractor had failed in its duty of care, or that the Claimant had a reasonable belief that the disclosure relied upon was in the public interest. As per our findings of fact at paragraph 18.53 above, we found that the Claimant did not allege that the contractor had failed in its duty of care. However, we were satisfied that in respect of the disclosure that was made that the Claimant had a reasonable belief that the this was in the public interest. Accordingly on this basis PID K was therefore a qualifying disclosure and therefore a protected disclosure.

PID L: To JK by e mail on 23 May 2017 alleging contractor was calling without appointment and “carding” when tenant not in; allegation about jobs not completed; that electrical cables were exposed; that contractors had ignored tenants request for asbestos check and exposing tenants to asbestos.

42. Please see our findings of fact at paragraph 18.54 above. The Respondent did not admit that the Claimant’s suggestion in his own email of possible exposure was a disclosure of information. We were satisfied that it was, particularly when combined with the letter attached to his e mail. The Respondent did admit that the tenant’s own letter contained two categories of disclosure and that the Claimant had a reasonable belief that the second category of disclosures tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column and s. 43B(1)(d). The Respondent did not admit that the Claimant had a reasonable belief that the first category of disclosures tended to show a matter within s. 43B(1)(b) or (d), particularly as the Claimant made specific reference to the HSE acting. We were satisfied that he did have such a belief and it was reasonable. The Respondent did admit that the Claimant had a reasonable belief that these disclosures were in the public interest. Accordingly on this basis PID L was therefore a qualifying disclosure and therefore a protected disclosure.

PID M: On 8 June 2017 to RJ by e mail alleging that contractor operatives were working at height without safety helmets and outside protective scaffolding safety zone.

43. The Respondent admitted that the Claimant had a reasonable belief that the disclosure tended to show a matter within s. 43B(1)(d but that the Claimant had a reasonable belief that this disclosure was in the public interest. As per paragraph 18.55 we were satisfied that he did have a reasonable belief that the disclosure was in the public interest. Accordingly on this basis PID M was therefore a qualifying disclosure and therefore a protected disclosure.

PID N: To RJ by e mail on 8 June 2017 alleging tenant had been decanted following fire to a property without central heating and hot water

44. The Respondent admitted that the Claimant had a reasonable belief that the disclosure tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column and s.43B(1)(d). It did not admit that the Claimant had a reasonable belief that this disclosure was in the public interest. As per our findings at paragraph 18.56 above, we were satisfied that he did. Accordingly on this basis PID N was therefore a qualifying disclosure and therefore a protected disclosure.

PID O: to JK and RJ by e mail on 16 June 2017 alleging that contractor was overcharging for construction of a disabled access ramp.

45. The Respondent did not admit that the Claimant made the disclosure relied upon, namely that there was overcharging. As per our findings of fact at paragraph 18.58 above we were satisfied that this was the essence of the disclosure. It was admitted that the Claimant had a reasonable belief that if made, this disclosure tended to show a matter within s. 43B(1)(a) and that the disclosure was in the public interest. Accordingly on this basis PID O was therefore a qualifying disclosure and therefore a protected disclosure.

PID P: to Whistleblowing Team by e mail on 10 July 2017 raising contractual issues relating to Mears and Wates contract.

46. We refer to our findings of fact at paragraph 18.65. The Respondent admitted that six disclosures relied on were made and were disclosures of information. It also admitted that the Claimant had a reasonable belief that the disclosures tended to show a matter within s. 43B(1)(a) and that the second and third disclosures tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column. It was also admitted that the Claimant had a reasonable belief that the disclosures were in the public interest. The issue in dispute was whether the Claimant had a reasonable belief that the first disclosure (about incorrect sums of money being paid to Mears) and fourth to sixth disclosures (relating to high quotations, PP jobs being categorised as ad hoc jobs/inflated charging )tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column, namely that the Respondent was in breach of section 11 of the LTA 1985 and section 4 of the DPA 1972. We were not satisfied that the Claimant reasonably

believed these particular disclosures tended to show such matters, as they primarily make allegations about overcharging and contract manipulation, not in relation to the quality of the work itself. Accordingly on this basis PID P was therefore a qualifying disclosure and therefore a protected disclosure on the above basis only.

PID Q: to NF and CH by e mail on 17 July 2017 questioning tendering arrangements for structural jobs

47. We refer to our findings of fact at paragraph 18.66. The Respondent did not admit that the Claimant made the disclosure relied upon that there were questionable arrangements for tendering but did admit that he made a disclosure of information that works had been tendered once, cancelled, finally started and had only been sent to 3 contractors, going on to ask a series of questions around the tendering arrangements. We conclude that reading this email in context, it was clear that the Claimant was making an allegation of questionable tendering arrangements as well as the more specific information. It was admitted that the Claimant had a reasonable belief that the disclosure in fact made tended to show a matter within s. 43B(1)(a) and that that this was in the public interest. Accordingly on this basis PID Q was a qualifying disclosure and therefore a protected disclosure.

PID R: to NF, CH and JK by e mail on 12 August 2017 alleging the sub contractor had been told to carry out minimum work for maximum charge to the Respondent.

48. We refer to paragraph 18.73 above. The Respondent admitted that the Claimant had a reasonable belief that the disclosure tended to show a matter within s. 43B(1)(a) and was in the public interest. Accordingly on this basis PID R was a qualifying disclosure and therefore a protected disclosure.

PID S: to NF and CH by e mail on 8 September 2017 alleging that contractor was booking jobs as complete when not and cancelling jobs for no reason and had been leaving debris on site likely to cause a health and safety hazard.

49. We refer to our findings at paragraph 18.80. The Respondent admitted that the Claimant had a reasonable belief that the first disclosure tended to show a matter within s. 43B(1)(a). We were satisfied that the Claimant in this e mail had evidenced the factual basis of the second allegation (given the detail provided), and that he had had a reasonable belief that the second disclosure tended to show a matter within s. 43B(1)(d). It was also admitted that the Claimant had a reasonable belief that these disclosures were in the public interest. Accordingly on this basis PID S was therefore a qualifying disclosure and therefore a protected disclosure.

PID T:to NF, CH and CB orally during a meeting on 10 October 2017 alleging that the contractor had been booking incomplete jobs as complete; manipulating KPIs; poor workmanship; had been receiving double payments for legacy jobs; had failed to conduct asbestos testing or structural integrity checks; had a lack of health and safety training; had been converting PPP/PPV jobs to Voids to enhance payment; had inflated rates for work and had left a property in a dangerous condition.

50. Our findings of fact about PID T are at paragraph 18.83. It was admitted that the Claimant had a reasonable belief that the 1st and 2nd disclosures tended to show a matter within s. 43B(1)(a) but that this was not the case for disclosures 3-8. It was admitted that the Claimant had a reasonable belief that the 1st, 2nd, 3rd and 8th disclosures tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column, but not disclosures 4-7. The Respondent did not admit that the Claimant had a reasonable belief that the disclosures tended to show a matter within s. 43B(1)(d) or (f). Subject to reasonable belief in the failures relied upon, it is admitted that the Claimant had a reasonable belief that the disclosures were in the public interest. We concluded that the Claimant did not have a reasonable belief that the 3rd - 8th disclosures tended to show a matter within s. 43B(1)(a), namely that a criminal offence was or could take place as these items related largely to contractual concerns, health and safety and workmanship. However, we were satisfied that the Claimant had a reasonable belief that the 5th - 7th (although not the 4th) disclosures tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column 7. We were satisfied that the Claimant had a reasonable belief that disclosures 5-8 only tended to show a matter within s. 43B(1)(d). We did not conclude that the Claimant had a reasonable belief that the disclosures tended to show a matter within s. 43B(1)(f). The Respondent did not admit that the Claimant made the additional disclosures relied upon, namely that there was conversion of PPP/PPV jobs to voids to enhance payment and that there were inflated rates for work. We were satisfied that the Claimant did not make the additional disclosures relied upon as stated, but rather explained what he had done under the previous year's contract and that he felt that charging at National Housing Federation rates was too high. PID T (except for the additional disclosures relied upon) was a qualifying disclosure on the above basis and therefore a protected disclosure.

PID U: to NF; CH; CB and JK by e mail on 20 October 2017 alleging that the subcontractor had been paid less than the agreed price but that the Respondent had been charged the full price by the contractor and that a CWO had been allowed to enter a fire damaged property without an air reassurance test.

51. The Respondent did not admit that the second disclosure constituted a disclosure of information. We conclude based on our findings at paragraph 18.84 that given the contents of this email and its reference

to Braithwaite Road, there was disclosure of information relating to the lack of an air reassurance test. Although it was not admitted that the Claimant had a reasonable belief that any such disclosure tended to show a matter within s. 43B(1)(d) we satisfied that the Claimant did have such a belief by reference to his suggestion of having to make a report to the HSE. It was not admitted that the Claimant had a reasonable belief that the second disclosure was in the public interest, but we were satisfied that he did. On this basis PID U was a qualifying disclosure and therefore a protected disclosure.

PID V1: to SN during a telephone conversation on 9 November 2017 alleging lack of protocols and procedures for risk of exposure to asbestos.

52. The Respondent did not admit that the Claimant had a reasonable belief that the first disclosure tended to show a matter within s. 43B(1)(d). We were satisfied because of our findings at paragraph 18.85 that the Claimant did have such a belief and referred to possible exposure and its effects which were discussed with SN. It was however admitted that the Claimant had a reasonable belief that the second disclosure tended to show a matter within s. 43B(1)(d). It was admitted that the Claimant had a reasonable belief that the disclosures were in the public interest. On this basis PID V1 was a qualifying disclosure and therefore a protected disclosure.

PID V2: to WC orally in during a telephone meeting held on 16 November 2017 alleging that he had been exposed to asbestos and complaining about the lack of protocols and protections for staff contractors and tenants.

53. We refer to paragraph 18.87. The Respondent admitted that the Claimant had a reasonable belief that the second disclosure tended to show a matter within s. 43B(1)(d) but not that the Claimant had a reasonable belief that the first disclosure tended to show a matter within s. 43B(1)(d). We conclude that he did have such a belief for the same reasons as set out in paragraph 52 above in relation to PID V1. The Respondent did admit that the Claimant had a reasonable belief that the disclosures were in the public interest. On this basis PID V2 was a qualifying disclosure and therefore a protected disclosure.

PID V3: By e mail to JK, NF, CH and CB on 19 November 2017 complaining about lack of action in putting a protocol in place.

54. Our findings of fact on PID V3 were at paragraph 18.88. The Respondent admitted that that the Claimant had a reasonable belief that the disclosure tended to show a matter within s. 43B(1)(d) but not that he reasonably believed this disclosure was in the public interest. We find that although the Claimant may have believed he was making the disclosure in the public interest, in this instance, it was not reasonable for him to have held this belief. His primary complaint here appears to relate to the lack of action taken by WC following the

conversation held with her just three days earlier on 16 November 2017 (see paragraph 18.87). Firstly, it appears, and WC confirmed to the Claimant what action would be taken. Moreover, it is hard to see what action could reasonably have been taken in this short period. A delay of three days in acting on information provided does not appear to us to have been something reasonably to be seen as in the public interest of itself. On this basis PID V3 was not therefore a qualifying disclosure and therefore a not protected disclosure.

PID W:by e mail to JK, NF, CH and CB on 23 March 2018 alleging that the price of removing a timber building at works depot had increased without explanation.

55. We refer to our findings at paragraph 18.116. It was not admitted by the Respondent that there was a disclosure of information that the cost increase was without explanation. However, we were satisfied that the gist of the Claimant's e mail was to complain about the increase in cost and suggest that this was not in accordance with the contract. It was admitted that the Claimant had a reasonable belief that the disclosure in fact made tended to show a matter within s. 43B (1)(and that the Claimant had a reasonable belief that the disclosure was in the public interest. On this basis PID W was therefore a qualifying disclosure and a protected disclosure.

PID X: to JK, CH, NF and CB by e mail on 3 April 2018 alleging that two properties named as test jobs had incomplete works recorded as complete and reminding about disclosures raised with other properties.

56. Our findings about PID X are at paragraph 18.118. The Respondent admitted that the Claimant had a reasonable belief that the disclosures tended to show a matter within s. 43B(1)(a) and s. 43B(1)(b) of the type stated in the 5th column, and the disclosures were in the public interest. Accordingly on this basis PID X was a qualifying disclosure and therefore a protected disclosure.

PID Y: to CB, JK and CH by e mail on 4 April 2018 alleging that two properties had been left unsecured and that there was possible damage to property and nuisance to neighbours.

57. It was admitted by the Respondent that the Claimant had a reasonable belief that the first disclosure about failing to secure the property tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column and that the Claimant had a reasonable belief that the disclosure was in the public interest. It was not admitted that there was a disclosure that there had been possible damage to property and nuisance to neighbours. The Respondent did not admit that the second disclosure about possible damage to property/nuisance to neighbours was made or if made that this was a disclosure of information. As per our findings at paragraph 18.119 above, we conclude that the Claimant had made an allegation about possible damage to property (vandalism) and

nuisance to neighbours (drug users sleeping in the lobby) and on balance that this did constitute a disclosure of information. On this basis PID Y was a qualifying disclosure and therefore a protected disclosure.

PID Z: By e mail to Whistleblowing Team on 18 June 2018 alleging that damp jobs were not being completed properly and that there had been a failure to act on previous audit reports.

58. Please refer to our findings at paragraph 18.125. It was admitted that the Claimant had a reasonable belief that the first disclosure tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column and s. 43B(1)(d). It was not admitted that the Claimant had a reasonable belief that the second disclosure tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column, or s. 43B(1)(d) (if the latter is alleged. We conclude that the Claimant did not have a reasonable belief that the second disclosure relating to the Respondent failing to take appropriate action after the original audit report tended to show a matter within s. 43B(1)(b) of the type stated in the 5th column or s. 43B(1)(d). Whilst the Claimant was complaining about lack of action there was no suggestion of a breach of any legal obligation or that this lack of action of itself was a health and safety risk. It is admitted that the Claimant had a reasonable belief that any such disclosures were in the public interest. On this basis PID Z was therefore a qualifying disclosure and a protected disclosure in relation to the first disclosure only.

PID AA: By e mail to Whistleblowing Team on 21 June 2018 complaining about a faulty repair to a bathroom floor, about damp jobs and about a failure to act on previous discussions.

59. It was not admitted that in this e mail, the Claimant made a disclosure of information either that there had been a faulty repair to a bathroom floor, or anything related to damp jobs, or that there had been a failure to act on previous disclosures. However, based on our findings of fact at paragraphs 18.124 and 18.127 we find that there was a disclosure of information relating to a poor repair of a bathroom floor. It was admitted that the Claimant had a reasonable belief that any disclosure relating to damp jobs tended to show a matter within s. 43B (1) (b) of the type stated in the 5th column, and s. 43B(1)(d). However not that he had a reasonable belief that any disclosure relating to the 38 Rushlake Green bathroom/toilet floor tended to show a matter within s. 43B (1) (b) of the type stated in the 5th column, and s. 43B(1)(d). We find on balance that it did, given the context already referred to. On this basis PID AA was therefore a qualifying disclosure and a protected disclosure.

PID AB: to RJ and JT by e mail on 20 September 2018 alleging that there had been a failure to investigate his disclosures properly and alleging that poor practices were allowed to continue in the Wates contract.

60. It was admitted that the Claimant had a reasonable belief that his allegation about the Wates contract tended to show a matter within s. 43B(1)(a), s. 43B(1)(b) of the type stated in the 5th column and s. 43B(1)(d). It was not admitted that the Claimant had a reasonable belief that the disclosure about the failure of Legal Services to investigate his complaints tended to show a matter within s. 43B(1)(a); or s. 43B(1)(b) of the type stated in the 5th column; or s. 43B(1)(d). We conclude that the Claimant did not reasonably believe that the complaints about Legal Services tended to show a matter within s. 43B (1) (a); (b) of the type stated in the 5th column or (d). The complaints here are largely about how Legal Services have dealt with his own personal complaints and none of these matters appear reasonably to disclose an allegation of criminal conduct, a breach of a legal obligation or a health and safety risk, It was admitted that the Claimant had a reasonable belief that the disclosure about Wates was in the public interest. On this basis only Disclosure AB was a qualifying disclosure and therefore a protected disclosure.

PID AC: to DB by e mail on 2 January 2019 alleging that there had been a failure to investigate disclosures properly; a failure to manage contract compliance and that there had been exposure to asbestos.

61. The Respondent admitted that as at the date of disclosure the Claimant had a reasonable belief that the second disclosure (only) tended to show a matter within s. 43B(1)(a), s. 43B(1)(b) of the type identified in the 5th column and s. 43B(1)(d). The Respondent did not admit that the Claimant had a reasonable belief that the disclosures tended to show a matter within s. 43B(1)(f). We find that the for the third disclosure only (exposure to asbestos) the Claimant had a reasonable belief that this tended a matter within s. 43B(1)(f) We find that the Claimant did not have a reasonable belief that the first disclosure about the failure to deal with his disclosures tended to show a matter within section 43B(1)(a), (b) of the type identified in the 5th column and/or (d). In addition, we did not accept that the Claimant had a reasonable belief that any of the disclosures tended to show a matter within section 43b (f). It was admitted that the Claimant had a reasonable belief that the second disclosure was in the public interest. It is not admitted that the Claimant had a reasonable belief that the other disclosures were in the public interest. We were satisfied that for the third disclosure (but not the first disclosures) the Claimant had a reasonable belief that this was in the public interest. On this basis PID AC a qualifying disclosure and therefore a protected disclosure.

PID AD: to DB by e mail on 7 February 2019 reminding her of e mail of 2 January 2019 to which there had been no reply; alleging a failure to investigate disclosures properly; a failure to manage contract compliance and exposure to asbestos.

62. Please see paragraph 18.144 for our findings of fact. Given that PID AD was the Claimant forwarding on the e mail containing PID AC, for the same reasons PID AD was a qualifying disclosure and therefore a protected disclosure.

**Detriments**

63. Having concluded that the Claimant made protected disclosures on all the above occasions (except for PID V3), we needed to determine whether the Claimant was firstly subject to the detriments he alleged and secondly whether he was subject to any such detriment on the grounds of having made any of the protected disclosures. We conclude in relation to each alleged detriment as follows:

(a) As recorded in the Order dated 28/3/22 sent to the parties after the 4th PH, the Claimant is not pursuing this allegation;

64. This allegation is accordingly dismissed upon withdrawal.

(b) From March 2016 to the date of presentation of Claim 1, did the following alleged perpetrators (i) fail to record and investigate the following disclosures appropriately and (ii) fail to provide regular and meaningful progress reports on whistleblowing disclosures?

65. The Claimant confirmed on 27 February 2022 that the disclosures which he alleges were not recorded and investigated appropriately for the purpose of this allegation, and the alleged perpetrators, were as set out in the List of Issues: Our conclusions in respect of each alleged failure by the named individual are as follows:

PID A (19/2/16): CH

66. This allegation is that CH (1) failed to record and investigate PID A and (2) failed to provide regular and meaningful progress reports to the Claimant. Despite this allegation being made the Claimant did acknowledge during cross examination that CH did do his best to investigate the Claimant's concerns. CH was by the time the Claimant had disclosed PID A, already investigating a number of whistleblowing disclosures made by FT (see paragraph 18.8 above) and the Claimant had become involved in providing information for this investigation before PID A (see paragraph 18.9). The information disclosed by the Claimant in PID A provided two examples of properties where there had been issues around repairs alleging a breach of a legal obligation and a health and safety risk. CH had already provided the Claimant with advice as to how to act on this information by escalating to management (paragraph 18.12). Upon receipt of this information again, CH forwarded the e mail on to JK (see paragraph 18.12). JK informed the Claimant that an independent investigator within the legal team had been appointed to investigate (paragraph 18.14). The Audit report

written by CH addressed the types of issues raised by FT and the Claimant already and although specific reference was not made to the two properties identified in PID A, it did address concerns about management of the contract and poor repairs (see paragraph 18.16). The concerns raised by the Claimant in PID A and more generally were then investigated by JMcK and his report was produced in July 2016 (see paragraph 18.26). Therefore, in the first instance we were not satisfied that the Claimant had shown that there was any failure by CH to record and investigate PID A.

67. Regarding the second part of the allegation that of a failure of CH to provide regular and meaningful progress reports, we were again not satisfied that the Claimant had made this out on the facts. There was a significant amount of e mail correspondence between the Claimant and CH around this time (see paragraphs 18.8-18.18). The Claimant informed the Claimant and FT about the progress of his Audit report (paragraph 18.16) and then also responded to specific e mails from the Claimant asking for updates and went as far as to organise a meeting for the Claimant with the JMcK (paragraph 18.18).

68. As this allegation of detriment is not made out on the facts, then we do not need to go on to consider whether such detriment was because the Claimant made protected disclosure PID A. This allegation is dismissed on the facts.

<u>PIDs B - H, J - L, O, V3, X (last disclosure 3/4/18): JK</u>

69. This is an extensive allegation that in respect of the 13 specific disclosures identified that JK (1) failed to record and investigate those disclosures and (2) failed to provide regular and meaningful progress reports to the Claimant. We dealt first with the allegation of failing to record and investigate the disclosures. All the identified disclosures were contained in e mails to JK and other individuals within the Respondent. We accepted what JK told us in general terms that upon receipt of the e mails from the Claimant she spoke to internal audit and Legal Services, to record and investigate such concerns. However, dealing with particulars disclosures or groups of disclosures in more detail, we conclude that:

69.1 In respect of PID B, which was a general allegation about similar problems arising with the Wates contract as had arisen with Mears, following the e mails sent to JK in July 2016, the Claimant was in correspondence with JK and CH extensively (paragraphs 18.25 and 18.27). The Claimant met with SEv to discuss his concerns in October 2016. On a number of occasions, the Claimant was offered support and he subsequently expressed his thanks for the support he was receiving from JK and CH (see paragraphs 18.27 and 18.33). There was therefore no failure by JK to record and investigate this disclosure.

69.2 PIDs C, D and E raised specific concerns between 6 February and 6 March 2017 with respect to the carrying out of works by Wates at particular properties, including Bordesley Green East. This was passed to CH to investigate with the outcome of this being that the Claimant was advised to check with his line manager about the query (paragraph 18.38). Again, we concluded there was no failure by JK to record and investigate these disclosures as this was delegated to CH to deal with.

69.3 We heard much about PID F and its repercussions during the hearing. Following this disclosure having been made to JK about the Wates incentive scheme, JK passed this to RJ to investigate (see paragraph 18.39) and this led to the meeting held on 11 April 2017 (see paragraph 18.40) where the matter was raised with Wates to seek their response to the accusation. The outcome was then communicated to RJ (see paragraph 18.41). There was accordingly no failure to record and investigate these disclosures.

69.4 As for PIDs G, H, J and K again there was much discussion during the hearing about these Collingbourne Avenue disclosures. We refer to our findings of fact at paragraphs 18.43 (JK directed the Claimant to raise with RJ); paragraph 18.44 (the Claimant was further told that the matter was being addressed with RJ); paragraph 18.51 ( the Claimant was informed that this had been passed to RJ); paragraph 18.52 (FT providing an update as to what had taken place for PH to pass to RJ and paragraph 18.53 (the Claimant confirming that RJ had contacted him). There was no failure to record and investigate these disclosures by JK.

69.5 As to PID L, Kendrick Avenue, we refer to our findings of fact at paragraph 18.54 that following the disclosure JK informed the Claimant that this had been escalated to RJ. Therefore, there was no failure to record and investigate this matter.

69.6 As to PID O, the access ramp, we refer to our findings of fact at paragraph 18.58. It appears that JK did not record or investigate this disclosure but rather assumed that RJ would deal with this. Therefore, this factual allegation of JK failing to record or investigate is made out.

69.7 As to PID V3, we did not find that this was a protected disclosure. In any event we refer to our findings of fact at paragraph 18.85 -18.87, 18.89, 18.91 and 18.126. The allegation as regards to possible asbestos exposure in 2015 was thoroughly investigated by WC (see below). This allegation is therefore not made out on the facts.

69.8 As to PID X, we refer to our findings of fact at paragraph 18.118. Whilst JK did not address this matter herself, this was picked up by CH who informed the Claimant that the matter was being investigated by CB. Therefore, we cannot conclude that there was a failure to record or investigate.

70. We therefore found that regarding PID O only, that JK did not record or investigate this disclosure. Regarding the second part of the allegation that of a failure of JK to provide regular and meaningful progress reports, then it is clear that with regard to the specific matters raised, JK did not provide the Claimant with detailed progress reports as to what was being done to address his concerns. In many cases, the claimant was in fact updated by other individuals who were tasked with the piece of work, but JK did not provide progress reports, so this alleged failure is made out on the facts. In respect of these specific failures by JK, we then had to go on to consider whether any of these matters amounted to detrimental treatment on the ground of having made a protected disclosure. The clamant contends that it does and points to the effect what he contends is the Respondent's lack of action had on him. It was clear to us that the Claimant did not agree with the steps taken by the Respondent in response to the disclosures he made. He felt that he was entitled to receive full reassurance that the matters he had reported would result in punishment to those responsible and a reassurance that such matters would not reoccur. Mr Starcevic submitted that following the guidance in Shamoon as set out above, that in order for a disadvantage to qualify as a 'detriment', it must arise in the employment field in that the court or tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. He submits that an unjustified sense of grievance will not be sufficient to constitute a detriment. He suggests that the Claimant is really complaining about the correctness of the decisions made and of the competence of those making them and does not even really suggest that the treatment is because of disclosures. He reminded the Tribunal that the test is one of "the reason why" not a "but for" test and suggests that any failure to communicate was not because the Claimant had made disclosures.

71. We conclude that the fact that the Claimant had made disclosures was not the reason why JK failed to record and investigate PID O and to provide regular and meaningful progress reports on the other identified disclosures. We conclude this because:

71.1 JK was generally very supportive of the Claimant providing her with information about alleged wrongdoing. We refer to our findings at paragraphs 18.11 that the Claimant acknowledged she took his concerns seriously; at paragraph 18.14 regarding the appointment of an independent investigator; at paragraph 18.23 where she met the Claimant in person and then checked that the move to Voids was not connected to disclosures; at paragraph 18.25 where the Claimant was told he could always contact JK; at 18.27 where a further meeting is held and at 18.34 and 18.37 where the Claimant was reassured that he could always contact JK with his concerns. JK communicated to the Claimant that she trusted him and believed he was trying to instigate change

(paragraph 18.43). It seems highly improbable that a senior manager who devoted this time and attention to listen to the claimant and act on the matters he reported would then subsequently treat him detrimentally because he reported those matters.

71.2 The Claimant himself thanked JK for her support (see paragraphs 18.11; 18.23 and 18.33). He informed the Respondent's Whistleblowing team when making PID P that JK had been wonderful and had supported him when things got tough (paragraph 18.65).

72. Therefore, this allegation of detrimental treatment on the grounds of having made protected disclosures is dismissed.

PIDs M - N (last disclosure 8/6/17): RJ

73. This allegation is again that RJ (1) failed to record and investigate those disclosures about matters relating to Collingbourne Avenue and (2) failed to provide regular and meaningful progress reports to the Claimant. We dealt first with the allegation of failing to record and investigate the disclosures and refer to our findings of fact at paragraphs 18.55, 18.56 and 18.59 and concluded that RJ did in fact fully record the disclosures made by the Claimant with regards Collingbourne Avenue and took steps to arrange and carry out an urgent investigation. This part of the allegation is also not made out on the facts. As to the second allegation, then again as per our findings of fact, at all times after these disclosures were made, RJ responded promptly to the Claimant's e mails and informed him that he would be carrying out an independent review. Therefore, this allegation is not made out on the facts. There was no failure here and therefore there is no need to go on to consider what any reason for such failure might be. This allegation is dismissed.

PID Q - U (last disclosure 20/10/17): NF

74. This allegation relates to the period when the Claimant was informing NF in Internal Audit about various matters from July 2017 onwards. The Claimant suggests that in respect of the 5 specific disclosures identified that NF (1) failed to record and investigate those disclosures and (2) failed to provide regular and meaningful progress reports to the Claimant. We dealt first with the allegation of failing to record and investigate the disclosures, addressing each of the alleged disclosures in turn:

74.1 PID Q – We refer to our findings of fact at paragraph 18.66 above, having received this report in relation to jobs not being completed, the Claimant received a reply from NF that this would be addressed by CB once he was in post. The CB Report specifically addressed allegations about poor quality of work and work not being completed.

74.2 PID R – We refer to our findings of fact at paragraphs 18.73 and 18.83. Having received the e mail from the Claimant on 12 August 2017 about mould treatment Braithwaite Road, this matter was discussed and recorded in the minutes of the meeting held on 10 October 2017 and subsequently picked up by CB's investigation. There was express reference to the subject matter of PID R in the CB Report (see paragraph 18.165)

74.3 PID S – We refer to our findings of fact at paragraphs 18.76 and 18.79. Having received the e mail from the Claimant on 8 September about Stafford House, this matter was discussed and recorded in the minutes of the meeting held on 10 October 2017 and subsequently picked up by CB's investigation. The allegation of poor quality of work and failure to follow procedures was again reported on in the CB Report.

74.4 PID T – We refer to our findings of fact at paragraph 18.83. During this meeting, all the disclosures made by the Claimant were recorded in the minutes of meeting taken by CB and were subsequently picked up by CB's investigation and addressed in the CB report.

74.5 PID U – We refer to our findings of fact at paragraph 18.84, the allegation regarding Braithwaite Road had been recorded and was subsequently picked up by CB's investigation and addressed in his report.

75. Therefore, we were unable to conclude that there was a failure by NF to record and investigate these disclosures as each was accurately recorded and subsequently investigated in full as part of the investigations conducted by CB and Audit and detailed in the CB report. We went on to consider the second element of the investigation which was the contention that NF failed to provide regular and meaningful progress reports to the Claimant on these matters. To that end, given that these matters were passed on to CB to investigate, it is correct that NF did not provide updates on these disclosures so to an extent this element of the allegation is made out on the facts. We then went on to consider whether any such failings on NF's behalf were because the Claimant had made protected disclosures. For reasons very similar to those set out at paragraph 71 above in respect of similar allegations made against JK, we conclude that this was not the case. Again, NF was entirely supportive of the Claimant making disclosures, communicated with him on many occasions by e mail and telephone and the Claimant acknowledged this and thanked NF for his support more than once. We were therefore not at all convinced that any failings in terms of providing progress was a deliberate act of detriment because of the disclosures made. This allegation is also dismissed.

<u>PID V1 (9/11/17): SN</u>

76. This allegation is that SN (1) failed to record and investigate these disclosures about possible asbestos exposure in 2015 and (2) failed to

provide regular and meaningful progress reports to the Claimant. We refer to our findings of fact at paragraphs 18.85 and conclude contrary to what was alleged, SN clearly recorded this allegation and passed it directly to WC to investigate. He also gave the Claimant his clear opinion that the level of risk to him was low but that an appropriate protocol should be put in place. Whilst SN's involvement in the matter was then at an end, the matter went on to be investigated fully and thoroughly by WC who involved the Claimant throughout this process and kept him informed. Therefore, this allegation fails on the facts and is dismissed.

PID V2 (16/11/17): WC

77. This is a similar allegation as the one made against SN at paragraph 76 above in relation to a similar disclosure made to WC directly on 16 November 2017. We refer to our findings of fact at paragraphs 18.86, 18.87, 18.88-9 and 18.121. We were satisfied that WC recorded accurately, investigated thoroughly and communicated regularly with the Claimant as to his disclosure and the investigation that ensured. This led to a full and detailed report being drafted and a new SOP being developed of which the Claimant was made aware. This allegation fails in its entirety on the facts and is dismissed.

(c) As is recorded in the Order dated 28/3/22, the Claimant is not pursuing this allegation;

78. This allegation is accordingly dismissed upon withdrawal.

(d) In June 2016, did GN (i) notify the Claimant of a transfer of duties to voids, and (ii) threaten him with disciplinary action?

79. We refer to our findings at paragraph 18.21 above and conclude that GN did in fact notify the Claimant that he would be transferred to voids and did in effect threaten him with disciplinary action if he refused. The factual part of this allegation is made out. We then had to consider whether either of these things was done because the Claimant had made protected disclosures. For the purposes of this claim at the time GN took these steps, only one protected disclosure had been made and that is PID A about failures in respect of Mears made on 19 February 2016 to CH (see paragraph 18.12). It is correct that the Claimant had been in correspondence (along with FH) with the Respondent's managers about potential whistleblowing matters for some time but for these purposes, PID A is the only disclosure that could have been the reason why. We were unable to conclude that this was the reason why GN took these steps and conclude this because:

79.1 GN had in fact had very little direct contact with the Claimant before the decision was made to transfer him to Voids. At this time, DC (a direct

report of GN) was the Claimant's line manager (paragraph 18.9), with FT becoming his manager after the transfer to Voids.

79.2 As well as the Claimant, FT had at this time made whistleblowing allegations in relation to the Mears contract. He was to an extent in a directly comparable situation to the Claimant and was not subject to any instruction to move teams (see paragraph 18.8).

79.3 We accepted that there were prior operational reasons for the move including the Claimant's knowledge and the Claimant's perceived closeness to tenants, becoming too emotionally involved (see paragraph 18.21).

79.4 Whilst it was clear that GN and other managers had frustrations because the Claimant was seemingly bypassing line management protocols and reporting his concerns to senior management (see paragraphs 18.15 and 18.21), there is nothing which links PID A in particular to the decision made by the local management and communicated by GN that the Claimant would be moved.

79.5 JK specifically checked and at least satisfied herself that the move was not because of the claimant raising concerns (paragraph 18.23).

80. We were satisfied that the mention or threat of disciplinary action was because GN regarding his instruction to move to Voids was a reasonable management instruction. Therefore, this allegation fails and is dismissed.

(e) On 11/4/17, did GN and MT disclose the Claimant's email to a contractor?

81. We refer to our findings of fact at paragraph 18.40 that GN and MT did not disclose the Claimant's e mail to the contractor during the meeting on 11 April 2017 but that having read the allegations from that e mail (without identifying the Claimant) that SC correctly deduced that the Claimant had written it. This allegation therefore is not made out on the facts and is dismissed.

(f) On 26/6/17, did MT (i) instruct the Claimant to stop contacting the executive director (JK), and (ii) accuse the Claimant of staring him down?

82. We refer to our findings of fact at paragraph 18.61 and 18.62 above. The two factual aspects of this allegation are made out as we found that MT did instruct the Claimant to not contact JK and that he did ask the Claimant why he was staring at him. We then had to consider whether either of these things was done because the Claimant had made protected disclosures. Dealing firstly with MT instructing the Claimant not to contact JK. We found that MT had been asked by RJ to instruct the Claimant to report his concerns using the usual channels of communication through line management (paragraph 18.62). However, MT went further than this and expressly instructed the Claimant not to

contact JK. The Claimant had been informed by JK that he could contact her, if necessary, on a number of occasions (see paragraph 18.25 and 18.34) and the Claimant valued this support (see 18.11; 18.23; 18.33; and 18.63). We were satisfied that by putting his instruction in this manner, this was an act of detrimental treatment (considering the guidance provided by Shamoon and Jesudason above).

83. We then had to consider whether any of the pleaded disclosures were the reason why he acted in this manner. We take guidance from Osipov and Jesudason above and have asked ourselves whether any of the protected disclosures, were consciously or unconsciously a more than trivial reason or ground in MT's mind. By this time MT admitted and it is clear from our findings of fact at paragraphs 18.39 and 18.40; 18.41-18.43 and 18.54-18.59, that the Claimant had been raising concerns with JK and others which were then delegated back down through the chain of command via RJ for MT and his direct reports to deal with. In particular, issues raised by the Claimant related to the Wates incentive scheme allegations (PID F) and Collingbourne Avenue (PIDs G, H, I, J, K, M and N) came through to MT to deal with and investigate. It is also quite clear that MT was irritated by the suggestions being made by the Claimant (see his later comments - paragraphs 18.62, 18.112 and 18.166). He raised issues of the time spent in dealing with the investigation but also the impact on the reputation of the contractor. We conclude that PIDs G, H, I, J, K, M and N were more than a trivial influence on MT's decision to instruct the Claimant not to contact JK. He wanted to stop the Claimant from raising these concerns directly to JK and senior managers and adverse consequences such as taking additional time on what he felt were spurious comments, creating divisions and hostility within his team and affected contractor relationships. We considered as argued and by looking at Martin v Devonshires above, whether it was the manner of the disclosures as separable from the disclosures itself which was the reason for the treatment. Although the Claimant's practice of by passing chains of command was frustrating it was also the content of the disclosures themselves (and the fact that MT considered them "*spurious or exaggerated*") that was a factor. Therefore, we conclude that this element of the allegation is made out in relation to the communication on 26 June 2017.

84. As to MT asking the Claimant why he was staring at him, we conclude that this was not because of the Claimant having made any protected disclosures. Whilst the meeting was about the disclosures and the way they should (or should not) be raised, we were entirely satisfied that MT asked the Claimant why he was staring at him because the Claimant was staring at him (see our findings of fact at paragraph 18.61). This was nothing to do with the disclosures at all but was a reaction to

something taking place at this time. This part of the allegation is therefore dismissed.

(g) (1) On [or after] 4/5/17, did GN conduct the disciplinary investigation in an improper manner?

85. Our findings about the way in which GN conducted the disciplinary investigation were at paragraphs 18.47 to 18.50 (initial fact finding carried out between 9 and 11 May 2017) and 18.69 (as to the decision upon advice from MC as to refer the matter to a Stage 2 Disciplinary investigation). At this stage his involvement in the matter concluded as it was handed over to the commissioning and investigating officers to progress. As regards to the initial fact finding, we did not find that GN conducted this in an improper manner. His actions were measured and reasonable with a view to establishing some initial facts around the incident.

86. However, GN then went on to make the decision (which he acknowledged was his alone) that a formal disciplinary investigation would be undertaken based on not just the incident but his view that the Claimant had "*an ongoing patter of erratic, rude and aggressive behaviour*" towards contractors (paragraph 18.69). There is no reference during that initial fact finding he carried out to any pattern of behaviour. This investigation simply asked questions from those present what took place on 4 May 2017 during the incident involving JT. We concluded that GN's decision to refer the matter for a formal disciplinary investigation was therefore improper in the sense that it took into account other factors than the information he had concluded as part of his fact find. We have considered whether this was done because the Claimant had made protected disclosures. We conclude that the fact that the Claimant had made protected disclosures was consciously or unconsciously a more than trivial reason or ground in GN's mind at the time he made the decision. We conclude this for the following reasons:

86.1 There was a delay of almost 3 months between the conclusion of GN's initial fact finding and the decision being made to commence a Stage 2 Disciplinary Investigation. During this period between mid May and early August 2017 the Claimant raised a significant number of concerns including a number of protected disclosures (PIDs I, J, K, L, M, N, O, P and Q).

86.2 The fact that GN said he made his decision because of the Claimant's "*pattern of behaviour"* suggests that it was not just the complaint re the incident on 4 May 2017 that was instrumental. At this stage, further investigation by PH had not yet disclosed other matters relating to the Claimant's interaction with contractors. We conclude that the pattern of behaviour being referred to was actually the many disclosures the claimant was making.

86.3 GN consulted MT before making his decision and for the reasons we set out at paragraph 83 above, MT was irritated and frustrated by the complaints he was making, particularly those in relation to Collingbourne Avenue and the Wates incentive scheme.

86.4 GN gave evidence to the Tribunal about the Claimant making "*spurious allegations*" and "*circumventing the chain of command*" which was "*time consuming and resource intensive*". In his interview with PW in November 2019 he referred to the Claimant subjecting him to a "*barrage of ongoing spurious and vexatious complaints*". We conclude that this was a reference to the disclosures made by the Claimant at this time including PIDs I, J, K, L, M, N, O, P and Q.

87. Therefore, we conclude that this allegation is made out in relation to the decision by GN taken on or before 3 August 2017 which was because of the claimant making a protected disclosure.

(g) (2) On or before 15/3/18, did LA conclude in relation to the disciplinary proceedings' outcome, 'no further action' instead of 'no case to answer'?

88. We refer to our findings of fact at paragraph 18.103-18.106 above as regards to the conclusion reached by LA and the wording used in her outcome letter. This facts behind this allegation are made out in that LA concluded and used the words "*no further action*" rather than "*no case to answe*r". We went on to consider whether this was because the Claimant had made protected disclosures. Again, we considered whether the fact that the Claimant had made protected disclosures was consciously or unconsciously a more than trivial reason or ground in LA's mind at the time she made this decision. We conclude that it was not for the following reasons:

88.1 LA was not involved in the various disclosures made by the Claimant and their investigation and was neither implicated in any way in any wrongdoing nor even involved in the area of work which was the subject of the disclosures. She was not part of the chain of command involving the Claimant.

88.2 LA had been appointed as a disciplinary officer as part of the Respondent's process and had a limited remit to consider solely the information presented to her by the Respondent and the Claimant during the disciplinary hearing itself.

88.3 LA had concluded that one of the allegations had been partially upheld but did not merit disciplinary action. She had made a recommendation and therefore her decision and outcome wording used, reflected what she in fact decided. Whilst this could have been worded in a clearer manner to avoid any assumption that a further disciplinary investigation might ensue, there was no doubt that she had decided some action might need to be taken, hence the use of these words.

88.4 LA had been alerted to the fact that the Claimant had made disclosures that could be considered whistleblowing and therefore took steps to satisfy herself that the Claimant's whistleblowing did not play a part in the matters that had arisen (see paragraph 18.103).

89. Therefore, this allegation fails and is dismissed.

(h) On 6/12/17, did the Monitoring Officer [subsequently clarified to mean MD] fail to investigate claims of bullying and intimidation?

90. We refer to our findings at paragraphs 18.92 to 18.97 which set out the steps taken in relation to the complaints made by the Claimant to MD and RuJ that he was being bullied and victimised because of making a whistleblowing complaint. We are satisfied that this matter was investigated at the relevant time by MD and CB on behalf of the Monitoring Officer. This was a perfectly reasonable task for the Monitoring Officer to delegate as the Monitoring Officer is an identified function, rather than a job title This allegation is not made out on the facts and is dismissed.

(i) On 15/3/18, did MT instruct the Claimant to take garden/ing leave?

91. As we found and recorded at paragraph 18.113 the Claimant did instruct the Claimant during a telephone call (albeit this took place on 16 March 2018 (not 15 March) that he should take gardening leave. We then went on to consider whether MT took this action (which we accepted was detrimental treatment (see paragraph 18.114) because the Claimant had made protected disclosures, again considering whether any of the protected disclosures were consciously or unconsciously more than trivial reason or ground for the decision. We find that they were for the following reasons:

91.1 In contemporaneous e mails between MT and RuJ at the time the decision to put the Claimant on garden leave was made, MT states that the Claimant cannot return to work at the Kings Road depot, he mentions the Claimant being a threat to his team's health and wellbeing and a "*disruptive influence on day to day operational activity as well as affecting the relationship with our contractors*" (paragraph 18.112).

91.2 He went against advice from HR that this was not appropriate action to take (paragraph 8.112), and his actions were then effectively overturned by RJ (paragraph 18.114).

91.3 At the time MT, made the decision, GN (MT's direct report) had gone off sick having found out that disciplinary action would not be taken against the Claimant and GN blamed the claimant and his disclosures for this (see paragraph 18.112). As we found at paragraph 18.63 above, the working relationship between the Claimant and MT had entirely

deteriorated culminating in a difficult 1:1 meeting on 26 June 2017 and a further meeting where their differences were unresolved on 3 July 2017.

(j) From 20/4/18, was there a failure to hear the Claimant's grievance in a timely manner?

92. Our initial findings of fact about Grievance 1 raised on 20 April 2018 were at paragraphs 18.121, 18.123 and 18.128. Upon receipt of Grievance 1 it was acknowledged promptly by RuJ within 3 days, and he asked a question of the Claimant about how grievance should be progressed which does not appear to have been responded to. After this it was referred to CJ to investigate promptly on 1 May 2018. CJ wrote to the Claimant within a reasonable period on 16 May 2018 proposing a way forward and a meeting took place with 2-3 weeks. There was a slight delay between 7 June 2018 and the Claimant being provided with a suggested outcome on 9 July 2018, but we did not consider this to be unreasonable in the circumstances. Once the Claimant confirmed on 10 July 2018 that he wanted to move to Stage 2, this was passed back to HR for the appointment of a Commissioning and Investigating Officer. To that end we were not satisfied that the progressing of the Claimant's grievance between 20 April and 20 September 2019 was particularly untimely, and the timescales appeared to us to be reasonable. What took place in relation to Grievance 1 after 20 September 2018 is addressed below. This allegation is therefore not made out on the facts and is dismissed.

(k) From 20/9/18, was there a failure to hear the Claimant's grievance in a timely manner?

93. As of 20 September 2018, Grievance 1 had been referred to HR for the appointment of a Commissioning and Investigating Officer to take it to Stage 2. SH was subsequently appointed as Commissioning Officer for Grievance 1 and wrote to the Claimant on 13 November 2018 (paragraph 18.134). This gap of 2 months was longer than was ideal and could perhaps have been progressed more promptly. However, by this time the Claimant had submitted Grievance 2 on 20 September 2018 (paragraph 18.130). The Claimant had also been unwell and was off work between 16 October and 5 November (paragraph 18.131) and was subsequently on a phased return to work. The Claimant immediately objected to the appointment of SH (see paragraph 18.134) and then complained to JT about lack of progress (paragraph 18.133). These two complaints made by the Claimant to other people involved more and more individuals in the process and we found that all of this contributed to the slowing down progressing the Claimant's grievances. The Claimant submitted Grievance 3 on 2 January 2018 (paragraph 18.139) this time to DB, again involving a further individual into the process which again slowed things down. The Claimant was then unwell and off sick between 17 and 31 January 2019 (paragraph 18.142).

94. SH having met with the Claimant on 26 February 2019, appointed PW as Investigating Officer, and the first in investigation meeting took place on 7 March 2019 (paragraph 18.147). We did not find that this was an unreasonable delay at this stage considering the difficulties of arranging such meetings around a number of people's availability. It then took a further 3 months until 11 June 2019 for the terms of reference for the various grievances to be clarified. This was a long time and the process involved was cumbersome and time consuming. However, we find this was largely due to miscommunication and perhaps misunderstanding about what was included and not in the grievance (paragraph 18.152). The Claimant's grievances were contained in at least four separate documents submitted at different times and to different individuals. This caused confusion and undoubtedly delay.

95. Once the terms of reference had been agreed, between June and August 2019, various proactive steps were taken to understand the Claimant's grievance by meeting with him twice and reviewing the relevant documents he had submitted (paragraph 18.159- 60) with the claimant himself acknowledging that a great amount of work was involved in investigating his complaints. Again, given the number of issues to understand and the complexity of some of the matters raised, this was not an unreasonable delay. Between September and November, the Claimant continued to provide information and PW started to carry out investigatory interviews (paragraph 18.160 and 18.164). There were some delays in arranging these interviews and an issue then arose as to whether it was possible to interview JK which delayed the report being finalised into the start of 2020 (paragraph 18.170). This did take longer than it should have and caused a delay in progressing matters. Once such issues had been concluded, the report was sent to PL in draft relatively quickly in February 2020 but there was then a long delay until the report was released to the Claimant without appendices in July 2020 (paragraphs 18.175-18.176). We were satisfied that the predominant reason for this delay was the Covid 19 pandemic and the fact that PL was heavily involved in the Respondent's response to this (see paragraph 18.176). The further delay in releasing the full report and appendices was perhaps longer than it should have been. However, we accepted that there were issues to consider, and input was required from Legal and other colleagues before it could be released.

96. We do conclude that overall, the completion of the investigation in the Claimant's grievance raised in April 2018 did take longer than it should have done, with the conclusion not being reached until August 2020 (after Claim 1 had been accepted). We then considered whether the reason for any of this delay (which we entirely accepted was detrimental treatment and caused the Claimant significant distress as noted in several OH reports referred to above) because the Claimant had made protected disclosures, again considering whether any of the protected

disclosures were consciously or unconsciously more than trivial reason or ground for what was done. We had no hesitation in concluding that any failures to complete this process were not because of the protected disclosures. We conclude this because:

96.1 Each of the delays we have identified above was explained by matters that were taking place at the time unrelated to the claimant's disclosures. There was clearly some confusion and miscommunication. There was a change of Commissioning Officer and there was significant additional information being provided throughout. The TOR changed dramatically during the investigation. Whilst this is regrettable and caused severe upset and distress, and the respondent could have handled the grievance in a much more efficient and sensible manner in our view, this had nothing to do with the Claimant having made protected disclosures.

96.2 The Claimant did not even allege when cross examining PW and PL that they were motivated by a desire to somehow punish him for having made disclosures or to prevent him doing so in the future. Once the Claimant had received the final report in August 2020, he thanked PL and PW for their kindness integrity and honesty (see paragraph 18.178)

97. This allegation is therefore dismissed.

(l) On or after 6/11/18 [16/11/18?], was there a failure by the Assistant [Deputy] CE (JT) to investigate the Claimant's concerns?

98. We refer to our findings at paragraph 18.135, JT responded to the Claimant's e mail sent on 16 November 2018 by informing him that due process had to be followed with respect to the Claimant's grievance. The grievance was in fact duly concluded (see above) and the investigation into the Claimant's disclosures was ultimately concluded with the CB report. We cannot conclude given the steps taken by those who were subordinate to JT, that this amounted to a failure by JT to investigate. Thes investigation was undertaken on his behalf and on behalf of the Respondent by other officers. This allegation is not made out on the facts and is dismissed.

(m)On or after 21/11/18, was there a failure by the Head [Director] of HR to investigate the Claimant's concerns?

99. DH's first involvement appears to have been her advice provided to JT on 20 November 2018 to respond to the Claimant's e mail by instructing him to follow due process (see paragraph 18.135). When the Claimant subsequently e mailed her direct to complain about how long his grievance was taking, she did not respond, and it does not appear she asked anyone to investigate. Therefore, the facts behind this allegation are made out. We then considered whether the reason for any of this delay (which we accepted was detrimental treatment) because the Claimant had made protected disclosures, again considering whether

any of the protected disclosures were consciously or unconsciously more than trivial reason or ground for what was done by DH. We concluded that it was not. DH was unaware of the detail of the disclosures made by the Claimant and had only fleeting involvement in the matters the claimant was involved in as a senior manager of other HR managers supporting the various processes. There was simply no evidence adduced that anything that she did or did not do was related to or because of the protected disclosures. This allegation is dismissed.

(n) On or after 2/1/19 and 7/2/19, was there a failure by the CE (DB) to respond to the Claimant's correspondence?

100. We refer to paragraphs 18.139, 18.144 and 18.158. DB did respond to the Claimant's e mails on 8 May 2019, albeit that there was a significant delay in doing so. There was not therefore a failure to respond, and this allegation is not made out on the facts and is dismissed

101. We found that 3 of the alleged detriments (allegations (a); (g) (1) and (i) above) were because ethe Claimant had made protected disclosures. We then had to consider whether the Tribunal had jurisdiction to determine these complaints.

Jurisdiction

Is the complaint out of time in respect to any acts/omissions predating 26/11/18?

102. The Claimant notified ACAS and started his period of ACAS early conciliation on 25 February 2019. Therefore, any acts omissions that took place before 16 November 2018 are on their face presented outside the time limit contained in section 48 (3) (a) ERA. Whilst the three acts/omissions found to have been because of a protected disclosure were in our view part of a series of similar acts or failures as they were carried out by the same individuals and related to the disciplinary investigation undertaken, the last of such acts or failures (allegation (i)) was done on 15 March 2018 and so is of itself presented out of time. For this to have been in time, the Claimant would have to have commenced early conciliation by 14 June 2018. This was not commenced until 25 February 2019, so these complaints were presented some nine months out of time.

103. Therefore, the Tribunal only had jurisdiction to consider those complaints if the Claimant had demonstrated that it was not reasonably practicable for him to present a complaint about that act within 3 months of that act. The Claimant effectively has the burden of proof in showing that it was not reasonably practicable for his claim to have been presented in time. The Claimant referred the Tribunal to the submissions he made on this issue at the 3rd PH (pages 224-238). He firstly submits that his claim is in time because the Respondent created a continuous state of affairs extending over a period of time. We have

already addressed the issue of whether there was a series of similar acts or failures above. We conclude that in respect of those allegations that are made out this was the case. However, as the last of these allegations was presented out of time, that argument does not assist the Claimant. The allegations made by the Claimant that would have been in time (act (n) above) were not well founded. Therefore, as per Jhuti above, as it is not an actionable complaint it cannot form part of a series of acts to bring the remaining acts within the jurisdiction of the Tribunal.

104. The Claimant firstly alleges that he tried to resolve his disputes internally by submitting a grievance on 20 April 2018 and that this was not resolved in a timely manner with the outcome not being communicated to him until July 2020. We have already set out our conclusions on this allegation as part of the substantive complaint above. The Claimant correctly tried to resolve his disputes by pursuing internal procedures but having regard to the guidance set out in the case of Bodha above, awaiting the outcome of an internal appeal was not of itself enough to justify a finding that it was not reasonably practicable to present the complaint in time. This does not appear to be a case where the Claimant was unaware of the ability to bring a Tribunal complaint and the existence of time limits. The Claimant is a highly intelligent man who is very aware of his rights and the provisions of the legislation under which he now seeks protection and recourse. He had the support of his trade union throughout his employment and BG accompanied the Claimant to very many of the numerous meetings he attended. We also heard about the support the Claimant had from Mr Francis (who had himself been involved in a claim in the Employment Tribunal for whistleblowing detriment). The Claimant was very much aware of his ability to present a claim to the Employment Tribunal expressly mentioning this in an e mail to various managers on 6 December 2017 (see paragraph 18.96 above).

105. Secondly the Claimant points out that during this period he was suffering poor health. He points out that he had three periods of sickness absence between 29 July 2017 and 2 November 2018, and we note that two of these absences were caused by the Claimant's emergency admission to hospital because of Sepsis, caused by the Claimant's diverticulitis (see paragraphs 18.68, 18.131). The Claimant was absent from work from 29 November 2017 until March 2018 because of Anxiety and Depression (paragraph 18.91. The Claimant has had bouts of severe ill health which has clearly taken its toll as recorded in the various OH reports commissioned by the respondent (see paragraphs 18.98, 18.100, 18.102, 18.111, 18.120, 18.132. 18.137 and 18.141). He suffers from debilitating physical and mental health symptoms and is on medication for many of these. We have every sympathy for the struggles the claimant has had and continues to have with his health.

106. The question we must ask ourselves is whether this meant that it was not reasonably practicable for the Claimant to have presented his claim in time. The period we are particularly required to examine is the time when the Claimant would need to have commenced early conciliation and presented his claim in order that the complaints we had found to be well founded to be in time. Early conciliation should have commenced by 14 June 2018, so we have considered the period from March 2018 until July 2018. The Claimant had returned to work following a period of sickness absence on 21 March 2018 (paragraph 18.115). On 18 April 2018 the OH report produced by Dr Cathcart indicated that he was happy with the Claimant's psychological fitness (see paragraph 18.120). Within two days of his return the Claimant made a further protected disclosure (PID W at 18.116) in relation to the hut at Kings Road. He went on to make four further protected disclosures setting out his concerns clearly and articulately (PIDs X-Z and PID AA). The Claimant was able to put together a full and detailed grievance complaint (paragraph 18.120) and attend a grievance investigation meeting on 7 June 2018 (paragraph 18.122). The Claimant was supported by BG throughout. Therefore, we cannot in any way conclude that it was not reasonably practicable, or not feasible as Mr Starcevic puts it, for the Claimant during this period where he was attending work as normal and putting together detailed written documents for him to have started early conciliation and presented his online complaint.

107. As the Claimant has now shown that it was not reasonably practicable for him to have presented his claim in time, we do not need to go on to consider whether he had presented his complaint about that act within such further period as is reasonable. Therefore allegations (f), (g) (1) and (i) are dismissed because the Tribunal has no jurisdiction to hear the same by virtue of section 48 (3) ERA (having been otherwise made out). These complaints were presented after the expiry of the statutory time limit. That time limit cannot be extended because it was reasonably practicable for the Claimant to present his claim within that time limit. Although this may seem a harsh outcome for the claimant, the Tribunal's jurisdiction is very strictly proscribed and there is very little discretion to extend time (unlike the wider discretion afforded to Tribunal for complaints of discrimination and victimisation).

**(2) Complaint of failure to make reasonable adjustments**

**Claim 1**

108. When looking at the Claimant's complaint under sections 20 and 21 EQA, we firstly conclude that the Claimant was aware that the Claimant was a disabled person as a result of Anxiety and Depression and had either actual or was fixed with constructive knowledge of the Claimant having a disability as a result of Diverticulitis under Paragraph 20(1) (b) of Schedule 8 to the EQA from early 2018 (see paragraphs 18.98 and 18.102).

109. We were required to look at whether any of the PCPs identified and relied on by the Claimant were applied to him and, if so, when this took place. We then had to consider whether any such PCP applied put him at a substantial disadvantage compared to non-disabled people (and what that disadvantage was), considering the appropriate comparator. We then looked at the whether the Respondent knew that the Claimant was placed at this disadvantage at the relevant time. We finally had to consider what adjustments would have been reasonable to make to avoid any relevant disadvantage.

110. The Respondent admitted that it had the PCP identified at paragraph 8.1 of the List of Issues of:

"(*a) Expecting employees to carry out a full workload (interpreting this to mean, a workload commensurate with their contracted working hours)."*

111. However, it did not admit that it had the remaining 3 PCPs relied upon in claim 1 and set out at paragraph 8.2 of the LOI. We therefore firstly had to determine whether any such PCPS were in place and were applied to the Claimant. Dealing with each in turn:

*(b) Requiring CWOs to work at the Respondent's premises;*

112. We firstly conclude that the Respondent did not as such have a PCP of *"Requiring CWOs to work at the Respondent's premises"* in the sense that on and before 30 April 2019 when Claim 1 was presented, the role of a CWO primarily involved visiting the Respondent's properties to monitor the performance of contractors in carrying out works to those properties (paragraph 18.5 above). It was largely a field role. It was acknowledged that the Claimant was required to attend the Respondent's premises at Kings Road from time to time for the attendance of meetings, to see his line manager and to collect PPE. However, the Claimant alongside other CWOs carried out many of his duties outside of visits to properties from home (see paragraph 18.1). The Respondent had a policy of Agile Working which we heard much about during the hearing. This had been in place for some time following the introduction of automated process by MT and the Claimant specifically refers to being assisted by this on 7 March 2019 during his grievance investigation interview with PW (paragraph 18.147). Whilst the Claimant may have been at the start of the events we heard about working from the Kings Road Office more regularly (he reminded us about the anonymous complaint raised in October 2016 (see paragraph 18.29) which was about the time he was spending away from the office). However, at the time the Claimant was disabled, from early 2018, there is no evidence that such a policy was in place or was applied to the Claimant. As we have found that such a PCP was not in place, nor applied to the Claimant, this allegation goes no further.

*(c) Progressing whistleblowing allegations slowly;*

113. We have considered whether the Respondent had a PCP of "*Progressing whistleblowing allegations slowly"* and have concluded that no such PCP was in existence. Our findings of fact about the provisions of the Whistleblowing Policy are at paragraph 18.6 above. There were timescales in that policy in relation to the acknowledgement of a disclosure (2 working days) and being contacted by an investigator (10 working days), but no timescales is allocated to any other steps involved in what the Claimant describes as "*progressing whistleblowing allegations*". In terms of outcome, the written provision is that the Respondent will; "*arrange to keep the whistleblower updated throughout the process and, wherever possible, will seek to advise the whistleblower of the outcome of the investigation*".

114. It seems that the Claimant had a fundamental mismatch of expectations as to what this meant. The Claimant in our view expected this to entail that he would receive a written outcome to each disclosure he made, and that action would then be taken to resolve the matter if he was found to be correct. He was in a sense expecting each disclosure he made to be treated rather as if he was making an individual complaint under the grievance procedure to which he would (understandably) expect an outcome to be provided to him. It may be that the Respondent contributed to this misunderstanding on the Claimant's behalf by the way it handled his disclosures, particularly those made directly to senior managers and not the later disclosures via the formal Whistleblowing Policy process. The ERA does not approach protection from whistleblowing detriment in the way the Claimant understands it and rather prevents anyone who has legitimately raised a concern from being subject to a detriment in their employment. It does not confer a right to be told about the outcome to the disclosure made or to have any actual action taken to resolve the complaint even if it is found to be correct. The purpose of the relevant provisions of the ERA on whistleblowing detriment is not to correct or punish the wrongdoing itself but to protect those who raise it from being detrimentally treated at work. Therefore, to an extent what the Respondent chose to actually <u>do</u> about the disclosures made by the Claimant was a matter for the Respondent, not any entitlement from the Claimant's point of view.

115. With this in mind, it is hard to see how the progress of an investigation into a protected disclosure received by an individual can really amount to a "*provision, criteria or practice*" in the employment context. The Whistleblowing Policy did anticipate (perhaps unusually) that the Respondent would keep the whistleblower updated and <u>if possible,</u> advise them of the outcome. However, no timescale was provided to this at all so it is difficult to see how we could find that even if this could form the subject of a PCP, how we could find that there was also a PCP of progressing such matters slowly. In any event, we were not satisfied that the concerns raised by the Claimant were progressed particularly slowly and we refer to our conclusions above in relation to the

complaints of whistleblowing detriment. We find that this PCP has not been shown to have been in existence or applied to the Claimant as alleged and this part of the allegation can go no further.

*(d) Progressing disciplinary proceedings slowly.*

116. We next had to determine whether the Respondent had a PCP of "*Progressing disciplinary proceedings slowly"* which it applied to the Claimant and if so from when. The only disciplinary proceedings we heard about during the hearing of this claim was the disciplinary investigation carried out into the Claimant's conduct on 4 May 2017. Our findings of fact about the investigation which started on 9 May 2017 culminating in the disciplinary hearing held on 18 December 2017 and outcome being provided to the Claimant on 12 March 2018 were at paragraphs 18.47-18.50; 18.69-70; 18.75-18.79; 18.81-18.82; 18.90; 18.93; 18.95; 18.99; 18.103-18.106; 18.108 and 18.110. The disciplinary investigation and process from start to finish took 10 months which is clearly a very long time, and we conclude that in this case the Respondent did progress the disciplinary allegations against the Claimant slowly.

117. However, that is not the question we have to answer which is whether there was a "provision, criteria or practice" of doing do. We refer to the guidance at Ishoha above that there must be a state of affairs indicating that this was how similar cases were generally treated and how a similar case would be treated if it occurred again. Unfair treatment that is not direct discrimination or disability related discrimination should not be somehow converted int a PCP to enable a Claimant to succeed in a discrimination complaint. We simply cannot say whether the Respondent had a PCP of progressing disciplinary allegations slowly as the only information we were provided with related to the Claimant's own case. The Claimant has not shown that there was such a PCP and in fact suggested that the way in which he was treated in respect of delay was exceptional. This allegation therefore cannot be sustained, and the complaint is dismissed.

118. Having concluded that just one of the PCPS were applied to the Claimant, which was the one admitted by the Respondent of *"(a) Expecting employees to carry out a full workload (interpreting this to mean, a workload commensurate with their contracted working hours)",* we then had to determine whether that PCP put the Claimant at a substantial disadvantage compared to non-disabled people from early 2018 to date of presentation of the 1st Claim. We were unable to conclude that this PCP had a relative substantial disadvantage on people with the Claimant's disability than those without based on the evidence that we heard. The Claimant was dedicated to his job and took it very seriously indeed. He appeared on occasion to go 'beyond the call of duty' visiting tenants and offering them additional assistance which we heard on a number of occasions when the claimant was

giving evidence. That is admirable and to his credit but there was no expectation that these additional tasks were required to be carried out (paragraph 18.143). The Claimant only complained once about having excessive work to do as far as this Tribunal heard and that is on 3 February 2019, and we accepted the explanation of FT that his level of workload was not expected and was something that the Claimant took on by choice. None of the many OH reports identified issues with the level of the Claimant's workload, rather focusing on the impact of not having resolution to the issues the Claimant had been raising as impacting him. When recommendations were made e.g., for a phased return on return from sick leave, these were accepted and put in place (see paragraphs 18.115, 18.137 and 18.142). Therefore, as the Claimant has not shown the substantial advantage alleged (or really explained what this disadvantage in fact was), this complaint for failure to make reasonable adjustments can go no further and is dismissed. We do not need to go on to consider the remaining issues of knowledge or whether any adjustments put in place were reasonable.

**CLAIM 13300820/2021**

**(1) Complaint of failure to make reasonable adjustments**

**PCP**

119. The Respondent admitted that the Respondent had a PCP of requiring the Claimant to work as an agile worker, with no guarantee of working from home. We therefore had to determine whether the application of this PCP caused the Claimant a substantial disadvantage from December 2019 to the date of presentation of Claim 2 (15 March 2021) when compared to people without the Claimant's disability. We were not able to find that this was the case. This was firstly because the issue around permanent home working or somehow guaranteeing that the Claimant would work from home was discussed in the context of providing the Claimant with protection from detrimental treatment following the publication of the CB report (see paragraph 18.169). This discussion was not even held in the context of making adjustments for the Claimant's disabilities. Homeworking was suggested (and it appears agreed) between the Claimant and AF during the meeting on 11 December 2019, but this position was changed when AF wrote to the Claimant on 2 February after he had checked with the Housing Directorate managers (see paragraph 18.173). Moreover, we concluded that the discussions here were around a move to what was termed *"true home working"* i.e., being based fully at home, rather than having the current arrangement of agile working guaranteed. We were satisfied that the arrangements in place at the time greatly assisted the Claimant, as was acknowledged by the Claimant only a few weeks earlier during the stress risk assessment (paragraph 18.168). There was no substantial disadvantage by the application of this agile working policy, quite the opposite as the Claimant was greatly assisted by it.

120. Therefore, we do not need to consider whether there was knowledge of disadvantage or whether any adjustments would have been reasonable to make to remove such disadvantage. This complaint is dismissed.

**(2) Complaint of harassment related to disability**

121. To determine these complaints, we needed to decide whether the Claimant was subject to unwanted conduct of the type described; then determine whether the conduct was related to disability. We were then required to consider whether the conduct had the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him, having regard to: (a) the perception of the Claimant; (b) the other circumstances of the case; and (c) whether it is reasonable for the conduct to have that effect. We set out our conclusions on each matter alleged to be disability related harassment below:

Paragraph 20 (a) from 17/9/20, did JG fail to implement recommendations that two of the grievance allegations against MT and GN should be proceeded with under capability or disciplinary procedures ("the grievance recommendations")?];

122. As we found at paragraph 18.177 above, JG did fail to implement the grievance recommendations so the facts behind this allegation are made out. However, there is simply no evidence at all to suggest that this was in any way related to the Claimant's disability. This is not something that bears an obvious connection to the disabilities of Anxiety/Depression and Diverticulitis. The Claimant did not put to JG that this was in some way related to his disability. It is a key element of a claim made under section 26 EQA that any unwanted conduct must relate to the protected characteristic. There is no link to disability here at all. On this basis this allegation can go no further and must fail. We did not need to go on to consider whether the conduct had the required purpose or effect. This allegation is not well founded and is dismissed.

On 21/11/19, did MT make comments about the Claimant in the grievance investigation interview [provided to the Claimant on 1/9/20]?

123. Our findings of fact about what MT said about the Claimant during his grievance investigation interview on 21 November 2019 are at paragraph 18.166 above. It appears that the Claimant complains about the comment made about Voldemort and the remark about the Claimant complaining about the sun rising and setting. It was clear to us that the Claimant was offended when he became aware of both such comments. However, we had to consider whether either of the comments were related to disability and we concluded that they were not. Dealing with the "sun rising and setting" comment first, this appears to be a reference to the many complaints made by the Claimant. There does not appear to be any link at all to the Claimant's disability or

disabilities more generally. Therefore, this part of the allegation goes no further.

124. The Voldemort comment is suggested by the Claimant to be a reference to the Claimant's mental health issues. He suggests that the character Voldemort in the Harry Potter books is a vile character who is evil and therefore to compare the Claimant to him is offensive and is related to mental health. We did not accept that this was the case. It is abundantly clear that the reference to Voldemort was a reference to the requirement MT felt he was under to not identify the Claimant by name. He specifically refers to "*He who should not be named*" i.e., how characters in the Harry Potter books and films refer to Voldemort to avoid saying the name. That is why this reference was used and this is particularly clear to us given that MT was being asked at the time about the meeting in April 2017 where the Claimant alleged that MT disclosed his identity to SC. This comment does not relate to disability and so the allegation can go no further. This allegation of disability related harassment is dismissed.

<u>On 21/11/19, did GN make comments about the Claimant in the grievance investigation interview [provided to the Claimant on 1/9/20]?</u>

125. Our findings of fact about what GN said about the Claimant during his grievance investigation interview on 21 November 2019 are at paragraph 18.167 above. He referred to the Claimant as the "*known persistent complainant*" throughout the interview and reported that RJ called the Claimant "*fucking barmy*". Firstly, for similar reasons as are set out above in relation to the Voldemort comment, we do not find that the first comment about the Claimant being a "*known persistent complainant*" was related to disability. The comment here was about the many complaints the Claimant made which GN considered to be spurious. This is not about disability and can go no further. However, the comment made by GN reporting a statement said to have been made by RJ that the Claimant was "*fucking barmy*" is a comment that could be said to have some connection to the Claimant's disability. It is a slur to describe those suffering from a mental health illness and the Claimant was someone who was disabled because of Anxiety and Depression.

126. Therefore, we had to go on to consider whether this was a comment with either the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. We firstly considered whether it had the required purpose and concluded that it did not. There was clearly no love lost between the Claimant and GN but the context in this comment was made was during an investigatory interview. GN was in our view trying to set out his own position and defend the actions he took but there was no expectation or intention that the comments made here would be passed to the Claimant and therefore would have the effect required.

127. Although we conclude that the comments did not have the purpose required, we also had to consider whether the Claimant reading comments made in the interview had the effect of violating his dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant and if it did was it reasonable for it to have that effect. There were a number of nuances as firstly it was not a comment made by GN himself, but a comment noted on disciplinary investigatory notes of something GN said he heard RJ saying about the Claimant. RJ denied making the comment and the Claimant during cross examination seemed to accept that RJ did not and would not have made such a comment, agreeing that he had never experienced RJ swearing, and it would not have been his manner to do so. We do not in fact have to decide whether RJ in fact made this statement, as whatever its provenance, this comment was reported and read by the Claimant when he received the notes of that interview.

128. Following the Pemberton decision above, to decide whether any conduct falling within section 26(1)(a) has either of the proscribed effects under section 26(1)(b), a tribunal must consider both (by reason of section 26(4)(a)) whether the putative victim perceives themselves to have suffered the effect (the subjective question) and (by reason of section 26(4)(c)) whether it was reasonable for the conduct to be regarded as having had that effect (the objective question). It must also consider all the other circumstances under section 26(4)(b). The relevance of the subjective question is that if the Claimant does not perceive their dignity to have been violated etc the conduct should not be found to have had that effect. The objective question is then relevant and if it was not reasonable for the conduct to be regarded as violating the Claimant's dignity etc, then it should not be found to have done so.

129. We firstly considered the subjective question which was whether the Claimant perceived the conduct to have had the effect of violating dignity or creating an intimidating etc environment. The Claimant became aware of the comments of GN when he received the appendices to the investigation report containing the notes of GN's interview on 12 August 2020 so following the guidance of Greasley-Adams above, that is the time at which we must consider the effect on the Claimant. The Claimant was offended when he read this comment as he referred to it in later e mails of complaint (see paragraphs 18.186, 18.188 and 18.190). He was at the time off work following major surgery and at the time was expressing concerns about his mental health and wellbeing.

130. We must then consider the objective question which is whether it was reasonable for the Claimant to have regarded reading a comment made in the notes of an interview as violating his dignity and creating a hostile etc working environment considering all the circumstances. We note that at the time of reading this comment, GN had been absent from

work and was no longer working in the Claimant's area. The Claimant himself was working almost entirely remotely by this time. We also bear in mind the guidance from paragraphs 22 of the Greasley-Adams case that Mr Starcevic directed the Tribunal to. In this particular case it was found not to have been reasonable for comments made during the course of an investigation that were disparaging to have had the proscribed effect. The Tribunal in this case noted that an employer should not be constrained in carrying out an investigation if what emerged from that investigation is then alleged by the subject of the investigation to be unwanted conduct. This is precisely what occurred in this case. The Claimant's allegations about the actions of management were being investigated by PW as part of the first 12 allegations of the 19 contained in the grievance. GN was a key part of this investigation and PW needed to interview him to fully consider the Claimant's allegations. It was important for GN to give his account of events involving the Claimant and what he alleged to have been said at the time. We do not consider it reasonable therefore for such information to have had the proscribed effect in this context. The Claimant did not in fact believe RJ to have made the comment and his view of GN and his actions towards the Claimant was already clear. We do not consider that reading about this matter in investigatory notes was something that it was reasonable to have had the effect of violating dignity and creating a hostile environment etc. On this basis the allegation is dismissed.

On 3/2/20, did JG refuse the Claimant's special leave request?

131. It was not entirely clear what this allegation related to but during the hearing it became apparent that this allegation was about the discussion that took place between the Claimant and AF on 11 December 2019 where AF spoke to the Claimant about the possibility of him having special leave (paragraph 18.169). However, this does not have been progressed any further than this, save that on and around 3 February 2020 there was the exchange of correspondence between the Claimant and AF where he stated that the Claimant's line management had decided that the current agile working arrangements with protected time were sufficient to protect the Claimant from further detriment (18.173). We conclude that the Claimant did not make a special leave request to JG, nor did he make this to AF during the meeting on 11 December 2019. This was simply mooted as a possibility but not progressed further. Therefore, having made no request, we also conclude that JG did not refuse such a request. This allegation is not made out on the facts and is dismissed at this first stage.

On 3/2/20, did JG refuse the Claimant's request to work permanently at home?

132. It became apparent that this allegation was along similar lines to the one referred to above about special leave. During the meeting on 11 December 2019 the Claimant indicated to AF that he wanted to "*work from home*" which was agreed to in principle by AF (paragraph 18.169).

Following discussions between AF and JG (who consulted MB) it was then clarified to the Claimant on 31 January 2020 that full time home working would not be feasible but that he should continue with his current agile working arrangements (paragraph 18.173). To that extent it appears that JG did effectively refuse the Claimant's request to work permanently at home when it was put to her by AF. We therefore had to go on to consider whether this refusal was related to the Claimant's disability, and we find that it was not. The decision that the Claimant should continue with agile working rather than full time home working was an operational decision. AF confirms as much when he states that "*true home working is not feasible in your role*". It was not put to JG that by refusing this request she was doing so related to the Claimant's disability and we did not find that there was that connection or relationship. This allegation therefore fails, and we did not need to go on to consider whether the conduct had the required purpose or effect. This allegation is dismissed.

<u>On 15/1/21, did MB make a referral to OH stating that she had spoken to the Claimant on 17/1/21 (we believe the date intended to be referred to her was 17/12/20) when she had not done so, and make that referral without the Claimant's consent.</u>

133. We refer to our findings of fact at paragraph 18.188. MB did not speak to the Claimant on 17 December 2020 (or indeed 17 January 2021). She did not in fact expressly state anywhere that she had "*spoken*" to the Claimant, but we conclude that the use of the word "*discussed*" on the OH form did anticipate a two way conversation. We were satisfied however that MB believed that the exchange of correspondence she had with the Claimant amounted to a discussion and was sufficient. This part of the complaint is made out on the facts in part. However, we did not accept that the referral itself was made without the Claimant's consent as the Claimant had already indicated to JG that he was prepared to see OH (paragraph 18.189) and to MB (paragraph 18.109). It was reasonable for her to assume that consent had been provided and so we conclude that the referral itself was made with consent, albeit that the Claimant objected to some of the words used in that referral. We have considered whether indicated that the Claimant had been spoken to when he hadn't related to the Claimant's disability. The making of the referral itself was clearly connected to his health and therefore disability as it sought advice on the Claimant's physical and mental health and how that could be managed at work. Therefore, at a stretch we are content to accept that ticking a box on that form also had a relationship with disability.

134. As above, we then had to go on to consider whether MB's actions had the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. We were satisfied that they did not have that purpose as we were

content that MB was of the view that her exchange of correspondence with the Claimant was sufficient to amount to a discussion and thus, she ticked the box. This was an administrative matter only and cannot in any way be seen to have been done with the intention of causing harassment. As to whether it had that effect, the Claimant was offended about some of the comments used by MB in her referral (see paragraph 18.189) and complained to JG about this. It seems that the fact that MB had ticked the box to say she had discussed the referral with the Claimant when the Claimant felt she hadn't only become apparent to him when he received a copy of the referral itself (paragraph 19.136). We were not satisfied that this was really a matter that caused the Claimant offence, let alone violated dignity or created a hostile etc environment. we doubt that given the findings of fact and the evidence of the Claimant even at its highest, it would be reasonable for this to have had this effect. The referral was ultimately made to provide the Claimant with support and to provide the Respondent with information to support him in the workplace. This allegation of disability related harassment does not succeed.

**(3) Victimisation - Equality Act, section 27:**

135. It was accepted that the Claimant did a protected act when he issued Claim 1 on 30 April 2019

136. The Claimant makes 5 allegations of detrimental treatment which he says took place because he did a protected act. For each detriment relied upon we had to determine whether the Respondent subjected the Claimant to the detriment complained of (which is set out at paragraphs 27 (a) to (e) of the List of Issues) and then go on to decide whether any of this was because of the protected act. The provisions on the two-stage burden of proof set out at Section 136 EQA apply in victimisation cases. Once a Claimant establishes a prima facie case of victimisation, the burden of proof shifts to the Respondent to show that the contravention did not occur. To discharge the burden of proof, there must be cogent evidence that the treatment was in "no sense whatsoever" because of the protected act. We set out below our conclusions on these matters for each allegation listed in the List of Issues with reference to each paragraph number whether the allegation is listed:

<u>(a) On [or from?] 14/9/20, did JG fail to provide the Claimant with audits reports on the housing maintenance and repairs contract following finalisation of the audit investigation in November 2020?</u>

137. The Claimant first asked JG for a copy of the CB report on 6 July 2020 (see paragraph 18.179). That report was not in fact finalised until November 2020. The Claimant was not provided with a copy of that report, and we were entirely satisfied that this was because it was not the Respondent's practice to disclose such confidential management

reports (see paragraph 18.185). The Claimant was not entitled to see or receive a copy of the report under the Whistleblowing Policy which just refers to receiving updates and being advised of the outcome (paragraph 18.6). This had already been done by CB and AF some months previously (paragraph 18.169) and the Claimant was receiving monthly updates on the progress of his whistleblowing. We were not satisfied that this was detrimental treatment, and, in any event, we conclude that the Claimant has not met the first stage of showing a prima facie case that this was because of him having raised a protected act. There is simply no evidence at all that the protected act played any part in JG's decision, and this was not put to JG when she gave evidence. Even if burden had shifted it, the Respondent would have discharged that burden. This treatment was not because of the protected act. This allegation of victimisation is dismissed.

(b) On 1/7/20, did PL delay the outcome to the first part of the Claimant's grievance until September 2020?

138. We refer to our findings of fact at paragraphs 18.176 & 18.177 above which deals with the specific period in question. There was delay between March and September and we accept that this was a detriment to the Claimant.

139. However, the Claimant has not been able to make out a prima facie case that this was because of him having done a protected act. There is no evidence at all that the protected act played any part in the decision of PL to not issue PW's report until September 2020 and we accepted his very clear evidence that it did not play a part (paragraph 18.176). Even if burden had shifted it, the Respondent would have discharged that burden. The report was delayed because mainly of PL's increased workload leading the respondent's response to Covid 19 and because he took the view that the appendices needed to be reviewed in detail before being released due to potential prejudice to other investigations (see paragraph 18.176). This treatment was not because of the protected act. This allegation of victimisation is dismissed.

(c) On 1/7/20, did PL fail to attach appendices to the outcome to the first part of the Claimant's grievance provided on 1/7/20?

140. This allegation fails for the same reasons as set out at paragraph 139 above in relation to the delays to the report. The appendices were not attached because PL decided that they need to be reviewed by Legal as he had concerns that disclosing the information this might prejudice any future management action and contained information that may be inappropriate for the Claimant to see about colleagues (see paragraph 18.176 above).

(d) Did PL delay the outcome to the second part of the Claimant's grievance?

141. We refer to our findings of fact at paragraph 18.192 above. There was no evidence that PL played any part in the delays to starting the investigation into the second part of the grievance up until 15 March 2021 when Claim 2 was presented PW explained the delay in relation to his own workload, the pandemic and difficulties getting advice on technical elements. He does not mention PL at all. PL acknowledged during cross examination that he was the reason why the release of he reports was delayed between August and December 2021 but that is not part of the period we are considering, and, in any event, we were satisfied that this delay was because of PL's workload. This allegation fails on the facts, and we were not satisfied that any delays in the second part of the Claimant's grievance were because of the protected act in any event for similar reasons to those set out above.

(e) On 17/9/20, did JG fail to implement the grievance recommendations?

142. We refer to our conclusions at paragraph 122 above in relation to this same allegation being put as a complaint of disability related harassment. Here we had to determine whether the failure by JG to instigate disciplinary action against MT and GN was because the Claimant had made a complaint to the Employment Tribunal. The Claimant has failed to adduce any cogent evidence which suggests that the reason for this was anything to do with Claim 1. The burden of proof does not pass to the Respondent to explain this decision and this claim is dismissed.

Jurisdiction

143. Given that none of the complaints for failure to make reasonable adjustments, disability related harassment or victimisation have succeeded, we do not need to go on to consider whether there was conduct extending over a period and if not, whether the claims were made within a further period that the Tribunal thinks is just and equitable. All the claims failed having been considered fully on their merits.

**Employment Judge Flood**

Date:30 August 2023