EMPLOYMENT TRIBUNALS

Claimant: **Mr M Arian**

Respondent: **The Spitalfields Practice**

Heard at: **East London Hearing Centre**

On: **9, 11, 12, 16, 17, 18, 19 May 2023, 11 July 2023 (In chambers) and 13 July 2023**

Before: **Acting Regional Employment Judge Burgher**
Members: **Mr J Webb**
Mr L O'Callaghan

Appearances

For the Claimant: **Mrs K Parker (Counsel)**
For the Respondent: **Mr G Lomas (Consultant)**

Intermediary for Claimant **Ms Tess Power**

JUDGMENT having been sent to the parties on 2 August 2023 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

Introduction

1. The Claimant brings claims for protecting the disclosure detriment, automatic unfair dismissal arising from protected disclosures, disability discrimination and unfair dismissal concerning his treatment during employment and subsequent termination.

Procedural matters and issues for determination

Amendment

2. On the third day of the hearings Mrs Parker made an application to amend the Claimant's claim to produce the full page application, setting out the base of the application and the law, and developed her application with those submissions.

3. Insofar as could be ascertained amendment application seeks to add following clarification.

> "Due to lack of training of staff, for ABPM machines with you were left in trays and not switched off on using ABPM is in this date led to an excessive number of readings, such that the validity of those readings was inaccurate and unreliable, exposing the patience to further this I've missed diagnosis and neglect"

4. Mrs Parker made this application, following observations from the Tribunal judge the day before that a patient note to Dr Uddin dated 31 October 2018, was not listed as a protected disclosure in the list of issues. Mrs Parker was given permission to take instructions from the Claimant during his evidence overnight and produced a 4 page submissions, with amendment application for the Tribunal to consider. Mrs Parker's submissions did not state that a further protected disclosure relating to the patient note should be added, but that was the forceful implication made by Mrs Parker, whilst conceded the shortcomings in the pleaded application.

5. The Respondent objected to the amendment application, pointing to the extensive and detailed procedural history, including an appeal on the list of issues, the lateness in which the application was being made, the vagueness of the amendment application and the passage of time for time limit purposes.

6. When considering the amendment application, the Tribunal had regard to the guidance in the case of Vaughan v Modality Partnership [2021] IRLR 97:

> "12 The key test for considering amendments has its origin in the decision of the National Industrial Relations Court in Cocking v Sandhurst (Stationers) Ltd [1974] ICR 650 at 657B–C:
>
> 'In deciding whether or not to exercise their discretion to allow an amendment, the Tribunal should in every case have regard to all the circumstances of the case. In particular they should consider any injustice or hardship which may be caused to any of the parties, including those proposed to be added, if the proposed amendment were allowed or, as the case may be, refused.'
>
> 13 No consideration of an application for amendment is complete without a reference to Selkent. It is so familiar that it is especially easy to quote it without reflecting on the core principle it elucidates. The key passage is at Selkent Bus Co Ltd t/a Stagecoach Selkent v Moore [1996] IRLR 661, 664, [1996] ICR 836, 843D:
>
> 'Whenever the discretion to grant an amendment is invoked, the Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.'
>
> 14 ….
>
> 15 The history and central importance of this test was analysed by Underhill P, as he then was, in the, unfortunately unreported, case of Transport and General Workers Union v Safeway Stores Ltd (2007) UKEAT/0092/07, [in which he also concluded that on a correct reading of Selkent the fact that an amendment would introduce a claim that was out of time was not decisive against allowing the amendment, but was a factor to be taken into account in the balancing exercise.
>
> 16 The list that Mummery J gave in Selkent as examples of factors that may be relevant to an application to amend ('the Selkent factors') should not be taken as a checklist to be ticked off to determine the application, but are factors to take into account in conducting the fundamental

> exercise of balancing the injustice or hardship of allowing or refusing the amendment. Mummery specifically stated he was not providing a checklist at [1996] IRLR 661, 664, [1996] ICR 836, 843F:
>
> 'What are the relevant circumstances? It is impossible and undesirable to attempt to list them exhaustively.' "

7. Having balanced the respective prejudice the Tribunal refused the application insofar as it seeks to include another protected disclosure. We also had regard to the very late timing of an attempt to add another protect disclosure given the significant procedural history, seven previous preliminary hearings and appeal in arriving at this conclusion

8. For the avoidance of doubt we do not allow the patient note drafted by the Claimant to be relied on as a protected disclosure in itself. There was no proper pleaded amendment application in relation to this for the Tribunal to be able to identify which detriment or whether the dismissal was alleged to have been because or by reason of it.

9. However, having regard to the Claimant's grievance letter of the 5 November 2018, which is outlined as a protected disclosure before us in issue 2, we permit a limited amendment of paragraph 2 of the list of issues to include the additional specified words.

10. The full list of issues are as set out at Annex A to these reasons. These were clarified, updated and amended from time to time throughout the hearing.

Intermediary

11. The Tribunal was assisted throughout the hearing by intermediary Ms Power who we are very grateful for ensuring that we could take the time and appropriate breaks to engage with the Claimant when required.

12. The Claimant was able to engage with the hearing his concerns regarding being fully involved were properly addressed by the able assistance Ms Power.

13. Ms Power raised a procedural matter during the hearing relating to the Claimant speaking to his counsel, Ms Parker during the breaks whilst her giving evidence. Ms Power felt sufficiently concerned to raise matters through the clerk which we with dealt with following hearing the evidence and submissions to ensure that the maintenance of the relationship between Ms Power and the Claimant could be maintained. Ms Power stated that she felt uncomfortable by some of the discussion she overheard that she felt obliged to raise the matter with Tribunal. Mr Lomas, on behalf the Respondent applied to strike out the Claimant's claims out on the basis of the unreasonable conduct given the representations made by Ms Power. We heard from Ms Parker who stated that she is very experienced counsel, she knew her obligations to the Tribunal as well as to her client and that she did not speak about anything about the case, that discussions were personal matters which she was entitled to discuss. We take Ms Parker's word, as counsel with obligations to the Tribunal and bar standards board rule and have no reason to countermand what she said. Having said that we appreciate the difficult position that Ms Power felt she was in in raising the matter.

Evidence

14. The Tribunal heard evidence from the Claimant.

15. The Respondent called

15.1 Emma Stanford then practice manager

15.2 Dr Anwara Ali, Partner and GP

15.3 Dr Alim Uddin, Partner and GP

15.4 Dr Charlie Easmon, occupational health consultant

15.5 Dr Sadia Desai, Partner and GP

15.6 Rahana Ahmed, Senior Receptionist

16. All witnesses were subject to cross examination and questions from the Tribunal.

17. The Tribunal was provided with an agreed bundle running to 580 pages and was referred to relevant pages of a supplementary bundle prepared by the Claimant, which included a helpful chronology of key events.

Disability

18. Section 6 of the Equality Act 2010 (EqA) provides that:

> (1) A person has a disability if:
> (a) that person has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
> In determining disability status the Tribunal must take into account any aspect 15 of the Guidance on the definition of Disability (2011) and the EHRC Code of Practice on Employment (2015) which appears to be relevant.

19. The burden of proof is upon the Claimant.

20. The EqA does not define 'physical or mental impairment'. Paragraph A3 of the Guidance provides:

> "The term mental or physical impairment should be given its ordinary meaning. It is not necessary for the cause of the impairment to be established, nor does the impairment have to be the result of an illness. In many cases, there will be no dispute whether a person has an impairment. Any disagreement is more likely to be about whether the effects of the impairment are sufficient to fall within the definition and in particular whether they are long term. Even so, it may sometimes be necessary to decide whether a person has an impairment so as to be able to deal with the issues about its effects."

21. Where there is no clear medical diagnosis it may be legitimate for a Tribunal to first consider adverse effect and then to consider whether the existence of an impairment can reasonably be inferred from those adverse effects (J v DLA Piper UK LLP 2010 ICR 1052, EAT).

Normal day to day activities

22. Day to day activities are things people do on a regular or daily basis such as shopping, reading, watching TV, getting washed and dressed, preparing food, walking, travelling and social activities. This includes work related activities such as interacting with colleagues, using a computer, driving, keeping to a timetable etc (Guidance D2–D3).

Substantial adverse effect

23. The impairment must cause an adverse effect on normal day-to-day activities but it need not be a direct causal link. The adverse effect must be substantial. Section 212(1) of the Equality Act provides that "substantial" means more than minor or trivial. The EHRC Code notes that a disability is "a limitation going beyond the normal difference in ability which might exist among people".

24. It is important to consider the things that a person cannot do, or can only do with difficulty (Guidance B9). This is not offset by things that the person can do.
The time taken by a person with an impairment to carry out an activity should be considered when assessing whether an effect is substantial (Guidance B2).
Schedule 1 paragraph (5) of the Equality Act provides that an impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day to day activities if measures are being taken to correct it and but for that, it would be likely to have that effect. The Tribunal should deduce the effect on activities if medication or treatment were to cease unless it has resulted in a permanent improvement.

25. The Guidance provides at paragraph B7 "Account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities."

Effects of Treatment

26. The Guidance at paragraph B12 provides "where an impairment is subject to treatment or correction, the impairment is to be treated as having a substantial adverse effect if, but for the treatment or correction, the impairment is likely to have that effect. In this context, 'likely' should be interpreted as meaning 'could well happen'. The practical effect of this provision is that the impairment should be treated as having the effect that it would have without the measures in question (Sch1, Para 5(1)). The Act states that the treatment or correction measures which are to be disregarded for these purposes include, in particular, medical treatment and the use of a prosthesis or other aid (Sch1, Para 5(2)). In this context, medical treatments would include treatments such as counselling, the need to follow a particular diet, and therapies, in addition to

treatments with drugs. (See also paragraphs B7 and B16.)"

Long term effect

27. Schedule 1 paragraph 2(1) of the EqA provides that the effect of an impairment is long term is it has lasted for at least 12 months, is likely to last for at least 12 months or is likely to last for the rest of the life of the person affected.

28. Schedule 1 paragraph 2(2) provides that if an impairment ceases to have a substantial adverse effect, it is to be treated as continuing to have that effect if that effect is likely to recur. In SCA Packaging Ltd v Boyle 2009 UKHL 37, the House of Lords ruled that "likely to" in this context means "could well happen" rather than "more likely than not".

29. Where a person has an impairment with recurring or fluctuating effects, the effects are to be treated as long term if they are likely to recur beyond 12 months (Guidance C6). If a person has separate episodes of an impairment each of which last less than 12 months the issue is whether these are discrete episodes which are not connected by an underlying condition or whether these short separate episodes are connected as part of a long term underlying condition the effects of which are likely to recur beyond the 12-month period.

30. Whether a person has an ongoing underlying condition and the likelihood of recurrence of its effects must be judged at the relevant time and not with the benefit of hindsight. An employment Tribunal should disregard events taking place after the alleged discriminatory act but prior to the Tribunal hearing.

31. Disability status must be determined having regard to the circumstances at the time of the discriminatory act (her dismissal) and to the evidence available at that time (Cruickshank v VAW Motorcast Ltd [2002]CR 729; McDougall v Richmond Adult Community College 25 [2008] ICR 431). The issue of disability status cannot be determined with the benefit of hindsight and it is not strictly relevant that the Claimant's position did not actually improve if was not considered likely to have been long term at the relevant time.

32. The Claimant's disabilities as set out in the list of issues were (1) cardiac infarction and (2) Mental Health-Anxiety.

33. The Respondent denied that the Claimant had a disability in accordance with the EqA.

34. The Claimant gave evidence of his disabilities by reference to his impact statement and supporting medical evidence included within the bundle.

35. We conclude the Claimant does have a disability by reason of cardiac infarction at the relevant time. The Claimant had a heart attack on 21 May 2014 and without the daily medication that he takes he would not be able to walk, run or participate in day-to-day activities such as travelling or social activities. Without medication the Claimant's mobility would severely affected and his sleep and concentration would be affected.

36. The Claimant refers to prostate cancer in his impact statement but that not a matter that we considered as a relevant disability for determination of the issues in this claim because as it was not in the issue list.

37. In his disability impact statement, the Claimant mentions that he has depression. We accept that the Claimant was diagnosed with clinical depression from 2001, he has been taking antidepressants and undertaking CBT therapy since March 2019. At paragraph 10 of the Claimant's disability impact statement he states the effect that his depression has on him. His medical records state that his depression re-occurred on 2 September 2018 and ended on 17 January 2020.

38. In February and March 2019 the Claimant had another relapse and which related to his workplace stressors. He undertook CBT and was prescribed medication that he took until June 2019.

39. On the evidence that we have considered, we conclude that the Claimant has an underlying long-term clinical condition of depression which was severe to mild. He had an underlying and condition of the depression.

40. In respect of anxiety, the Claimant was suffering from anxiety for a limited period in between February 2019 to July 2019. The medical evidence relied on by the Claimant in this regard indicates anxiety from February 2019 and that it ceased to be a relevant concern for him by May 2019.

41. The Claimant was unfit for work due to back pain, low mood, frozen shoulder and stress response at various times between March to May 2019.

42. The Claimant separately indicated to the Respondent in May 2019 that his anxiety was getting better.

43. When considering all these matters, whilst it is clear that stress could worsen the Claimant's heart condition, the medical evidence that was available does not show that the Claimant had an underlying condition which was sufficient and long-term for the purpose of stress and anxiety. Therefore, we do not conclude that the Claimant's stress/ anxiety is a self-contained stand-alone disability for the purposes EqA to found his disability discrimination complaints.

Knowledge of disability

44. In respect of the Respondent's knowledge that the Claimant had a disability cardiac infarction, there was significant dispute about whether the Claimant notified the Respondent that he had a heart condition in September 2017. The Claimant alleged that he had a mild heart attack whilst at work he was examined by a GP within the Respondent practice and was sent any to Accident and Emergency. This was disputed by the Respondent witnesses. However, the Respondent's witness Ms Stanford stated that she was aware that as at 24 October 2018 that the Claimant had referred to his heart condition in a meeting with her on that date. The Claimant also specifically mentioned his heart condition at the meeting grievance meeting that was held on 17 December 2018. In these circumstances we conclude that the Respondent, knew or ought reasonably to be expected to know that the Claimant had a disability by reason of heart condition by 24 October 2018 at the latest.

45. In respect of the Respondent's knowledge of depression and stress or anxiety we drew different conclusions given the medical evidence provided and the evidence advanced by the Respondent. We do not accept that the Claimant has established that the Respondent knew or ought reasonably to have known that the Claimant had a disability by reason of depression, or for that matter stress or anxiety.

Facts

46. The Tribunal has made the following relevant findings of fact from the evidence.

47. The Claimant was a medical doctor from Afghanistan had one year experience in a teaching hospital. He commenced employment with the Respondent in 2016 as a healthcare assistant and on 1 May 2017 he was promoted to senior healthcare assistant.

48. The Respondent is a GP practice that has six partners and employs approximately 17 members of staff. The Respondent is as part of the East End health network of GP practices who combine to employ separate network staff and share medical equipment.

49. As a senior healthcare assistant, the Claimant worked with GPs and the nursing team to provide clinical and services and management of healthcare assistants. The Claimant administered blood tests, blood pressure readings and ear syringing services as well as vaccinating patients.

50. There were two other healthcare assistants employed at the Respondent and they had to work closely with the Respondent's reception administrative staff to arrange appointments and undertake patient care.

51. As at February 2018 the Claimant had a positive working relationship with his partners and his colleagues. He was appraised the year 2017, in late February 2018, and received a rating of four, which is very good or excellent, in relation to all aspects of work including attitude, commitment, personal development, knowledge and job teamwork.

52. In September 2018, the Claimant's clinical line manager and practice nurse drafted an internal protocol relating to the future vaccine administration referring to a patient specific direction (PSD). This stated, amongst other things that *"X (insert name of the HCA) is permitted to give the influence about vaccination under the PSD designations*".

53. Concerns about this protocol were discussed with the Claimant, other HCAs and practice partners on 24 September 2018 because the Claimant refused to vaccinate a patient as he was specifically mentioned as the healthcare assistant under the referral.

54. Following the discussion with the practice partners the internal protocol was updated to allow for any HCA to undertake vaccination without specifically naming the HCA. The Claimant took the view that patient medicine could only be administered to someone by a particular named prescriber. Dr Uddin had checked the relevant legislation and denied that the relevant national protocol was not being followed. At

face value the internal protocol that was drafted was not being followed, as this required a named HCA. However, a named HCA was not necessary to be included by the national regulations. If the internal protocol was followed, there could have been significant inefficiencies in giving vaccinations. In particular, if the named HCA was not available, was busy or ill, then there would be no opportunity for a vaccination to be provided at all. The decision to allow a patient vaccination by a qualified HCA, without naming the actual HCA was not breach of legal obligation. However, turning patients away was a serious concern for the Respondent practice and the internal protocol was amended accordingly. At this meeting all agreed, including the Claimant, that the internal protocol was not sufficiently flexible and going forward it did not need to name the particular HCA and it was neither practical nor reasonable to name a specific HCA to undertake vaccinations given the serious operational impact that this could have had. The matter was raised and dealt with at the time and the Claimant did not raise it again as a particular concern until during his grievance a few months later.

55. The Claimant worked with an alongside Jamil Ahmed (JA). JA was the personal assistant to Dr Uddin. There was a tense relationship with between Claimant and JA as a result of a toilet incident that took place at some time previously. In short, the Claimant believed that JA had offended him and seriously undermined his privacy by opening a cubicle door whist the Claimant was using it. We do not conclude that the Claimant moved on from his upset at this incident and harboured a continuing concern regarding JA's motivations and this adversely affected how they interacted.

56. On 24 October 2018 the Claimant checked his list for patients booked to have their blood pressure taken with fitted blood pressure machines. However, there were only two working blood pressure machines. When the third and fourth patients arrived the Claimant did not have a machine to fit them and did not have any excuse to give the patients who were seriously inconvenienced. The Claimant sent a message to JA about it and JA and replied saying that he would contact patients and that for future reference he should keep telling him how many machines are available for use. The Claimant was unhappy with this and had an argument with JA about it. JA was upset and went to speak to Ms Stanford about his concerns with the Claimant. Subsequently, later that day, the Claimant also went to speak to Ms Stanford. This was at the end of the day and the Claimant raised a number of matters. This meeting was not planned but went on for over an hour and had to be brought to an end because it was approaching 7 o'clock and the building was about to be locked with the alarm set. The Claimant raised his concerns in a scattergun way, he stated in particular that the reception staff and JA did not know how to do things; he raised the matter toilet incident with JA; he stated that reception staff are not doing their jobs; that he was a heart patient; During this hour alluded to the matters including

56.1 use of blood pressure machines not been calibrated,

56.2 reception staff booking people into risky procedures such as ear irrigation,

56.3 uncoordinated use of her booking of patients with diabetes, hypertension and coronary heart disease

57. The Claimant raised these matters in a very discursive and scattergun way. We have little difficulty in finding that Ms Stanford was not at properly concentrating,

appreciating what the Claimant was actually raising as matters of concern in this meeting, other than his discontent with JA and the reception staff. Ms Stanford believed that the thrust of the Claimant's concerns were against JA not being able to effectively undertake his role and reception staff not doing their jobs properly. We do not find Miss Stanford took heed of any potential protected disclosures that the Claimant was making during this unplanned lengthy meeting.

58. Ms Stanford asked the Claimant to put his concerns in writing and following the meeting she contacted external HR to seek advice on the appropriate next steps. She was advised that there should be a mediation meeting which Ms Stanford arranged to take place on 6 November 2018. This day was already diarised as a set aside day for training and nonclinical and professional development for staff.

59. On 31 October 2018 the Claimant sent Dr Uddin a patient note stating as follows:

> The above Pt's 24 hour ABPM result is in emis. Just to reiterate the fact that the machines are removed by staff some of which are not trained to do the job properly, do not swtich the device off and as result we get more readings than the expected 48. On this occasion the machine continued to inflate after being removed while sitting my tray. Therfore, you will get around 93-98 readings.

60. In accordance with his usual practice Dr Uddin forwarded this email onto his PA, JA a few hours later with the instruction to book the patient in for an appointment with Dr Uddin.

61. Dr Uddin had no knowledge of any concerns the Claimant relayed to Ms Stanford in the meeting on 24 October 2018 when he forwarded this patient note onto JA.

62. The Claimant put his concerns to Ms Stanford in writing in a lengthy structured letter dated 5 November 2018. The Claimant stated that he had concerns about children as young as 4 and 5 being booked with an adult and they did not have the appropriate vaccines; that the ABPM machines not been properly calibrated; the way reception and book and transfer data; ear irrigation patients booked with him without approval; Diabetic, hypertensive, stroke and high-risk patients needing deadlines for HCA reviews in order to monitor treatment.

63. The mediation meeting was held on 6 November 2018. There was no written evidence concerning how the purpose this meeting was communicated to the Claimant, JA or any other attendees. The meeting commenced at 2pm. Ms Stanford, the Claimant, the reception manager and notetaker Rahana Ahmed and JA attended. The Claimant stated he was not expecting JA or Ms Ahmed to be attending that meeting. The meeting was tense and it was not effectively managed. The ground rules were not properly communicated. The attendees had different agendas and were speaking at cross purposes. To the extent that it could have been called mediation meeting, this completely failed. The Claimant accused JA as behaving like a young child and JA told the Claimant words the effect of "*you are the rudest person I have ever worked with and I hate you. It is not only me but everyone downstairs either hate you or are too scared to talk to you*" Ms Stanford asked JA to apologise to the Claimant for this statement in trying to manage the meeting. However, the object of the meeting failed. The Claimant believed that Ms Stanford was not impartial and that Ms Ahmed was attending to take the management side.

64. During the meeting JA referred to the patient note of 31 October 2019 that Dr Uddin had forwarded to him. The Claimant interpreted reference to this patient note on this occasion as an ambush and perceived it as a breach of confidentiality and breach of trust by Dr Uddin who was seeking to undermine and victimise him. We do not find that this is the case. The Claimant should not have been seeking to raise grievances against other staff in a patient note, this was not appropriate, if that was the Claimant's aim Patients, by way of any data protection requests, could have secure their patient notes.

65. In any event, the Claimant continued, we find unjustified, grievance about how Dr Uddin processed the patient note was determined by Dr Uddin's explanation and apology given in writing on 15 November 2018. Dr Uddin wrote:

> "Firstly, I would like to apologise for how you feel about Jamil having sight of the Patient Note message you sent to me. It was certainly never my intention to cause you upset or, as you mention in your letter, to inflame the situation. As a GP, I look for the medical information contained in Patient Notes sent to me by colleagues. This was what I did in this situation when I forwarded the Note to Jamil asking him to book the patient an appointment to see me. I did not realise that you were using your Patient Note to me as a way of expressing your concerns about a receptionist colleague, particularly because this was not explicitly stated. Once again, I am sorry for any upset caused to you over this issue. a dispute about it the Claimant was concerned about it."

66. By letter dated 19 November 2018 the Claimant indicated his gratitude for the apology given by Dr Uddin. He raised a number of areas of disagreement and stated:

> Therefore, I would like to save everyone time and resources by having a break from my grievances being investigated. I deep down believe they are essential to be discussed, analysed and possible solutions found for them however, I am sorry to say that I am not entirely confident that I would get a satisfactory outcome from the investigation based on what I have experienced during the past few weeks.

67. The Respondent progressed the Claimant's grievance and the Claimant remained distrustful of the Respondent. We find that the Claimant's distrust towards Dr Uddin and Ms Stanford in particular was unreasonable at this time and this remained a continuous block towards his future interaction with them.

68. A meeting to address the Claimant's 5 November 2018 grievance was arranged for 17 December 2018 following the Claimant's return from sickness absence. This meeting was also tense and was not effectively or efficiently managed. It was apparent that Dr Uddin was not skilled in managing this meeting, with someone of the Claimants forceful and uncompromising character. The Claimant was not a person who could be stopped from talking or raising points, sometimes repetitively. The Claimant stated during the meeting that he is older than Dr Uddin, he went to medical school before him. Dr Uddin sought to get the Claimant to focus on the agenda and he tried to shut the Claimant down from speaking when talking about patient note. Dr Uddin did not want to discuss this matter further as it was done and dusted as far as he was concerned. Dr Uddin tried to shut the Claimant down from talking about the internal vaccination protocol that was discussed, agreed and updated in September 2018, again Dr Uddin considered the matter resolved. This closing down of discussion topics only served to inflame the Claimant's desire to raise the matters which Dr Uddin had considered had already been appropriately resolved. The meeting ended following the Claimant saying that he was not happy about the ABPM issues,

he is a heart patient and out of breath. The Claimant was invited to read and sign the minutes of the meeting and declined to do so as he was stressed.

69. When the grievance meeting ended the Dr Uddin told the Claimant that he should make an appointment to see his GP regarding his heart problem. Dr Uddin told the Claimant that he must take sick leave until his GP provides sick note and the Claimant agreed to this.

70. On 20 December 2018, there was a telephone discussion with the Claimant and Ms Stanford. The Claimant was told to remain on sick leave until Ms Stanford had the opportunity to organise an occupational health assessment with him. It was stated that this would be done in the new year when she returned from the leave.

71. The Claimant stated that he had managed to book a GP appointment and the earliest they could give an appointment was 7 January 2019. The Claimant submitted a fit note on 7 January 2019 stating that he was fit for work. The fit note stated that the Claimant had a history of MI which was well controlled and under cardiology follow up/on appropriate medication is a history of sciatica which is currently well controlled.

72. Despite the Claimant being fit to return to work, an occupational health appointment was not able to be arranged until 16 January 2019. There were initial disagreements about the terms of referral that was agreed. The reason for referral was the Claimant mentioned he had a heart problem and that this worsens when he is under stress. The Claimant was aware there could not be an occupational health meeting unless he signed patient consent and subsequently signed the occupational health referral.

73. The Claimant saw occupational health consultant by Dr Charlie Easmon on 16 January 2019. Dr Easmon wrote a very brief report on 16 January 2019 which stated:

> "We discussed Ismail's stressors at work. Many of these were discussed at the 17 December 2018 grievance meeting and a report is due by the end of this month. His latest time off work was triggered by his sciatica and he awaits further physiotherapy.
>
> His heart condition is not the current cause of any problems and in terms of prognosis it is not likely to be.
>
> Recommendation:
>
> His GP regards him as physically fit to return to work but I have concerns about the as yet unresolved stressors at work. I advise that we have a face-to-face case conference with Ismail, his union (or other representative) you, human resources and myself as soon as possible and to use this as the basis for planning his return to work."

74. On 23 January 2019 the Claimant wrote to Dr Uddin as follows:

> "It is just to let you know that I met dr Charlie Easmon from the Health and wellness Centre last week. His questions included stressors at work for me. I told him that I preferred not to point out all factors as I was hoping that the above investigation would be concluded soon reaching a sensible solution which would work for all of us without further meetings and referrals or involving third parties.
>
> I believe he is suggesting a conference to discuss the matter where we all sit together while he would be listening to us?

> To chose to do so would be something we can decide. As they famously say" I don't want someone else's mouth to open the tie I can open with my own hands".

75. Following this letter the Claimant was contacted by telephone on 25 January 2019 in what could be classed as a without prejudice discussion. The Tribunal make no observation about the content of the discussion save for the fact that there was a discussion.

76. Matters progressed and the Claimant wrote to the Respondent on 28 January 2019 and expressing concerns about the process that had taken place so far and the non-conclusion of his grievances and the humiliation he had been subjected to.

77. At this time, the Respondent was undertaking an investigation and had questioned 8 members of staff, 4 of whom were extremely critical about their working relationship with the Claimant and their approach towards him.

78. Dr Uddin responded to the Claimant on 30 January 2019

> "The majority of the points you have raised are already under investigation as part of your grievance. As I have told you already, I will be providing you with a response on the outcome of your grievance when I have had the opportunity to conclude my investigation. This will be shortly after I have taken a witness statement from the colleague who is presently on leave, returning on 5 February. It is noted from your email how you feel. Please can I ask that you await the outcome of the grievance investigation before reaching conclusions that the process has been unfair. Certainly, do not get upset about the current situation.
>
> The without prejudice discussion regarding settlement was prompted by the fact that you stated in a previous email that you would like to reach a sensible solution without further meetings. Thank you for clarifying financial settlement is not what you want.
>
> We accept the fit note from your GP, however you yourself as a medical professional have stated on more than one occasion that the stress you have felt in meetings regarding the current situation is detrimental to your heart condition. At your formal grievance hearing you stated that you were unable to continue because you were out of breath. Whilst your own GP is of the opinion you are fit for work we would prefer it if you would remain off work until we have received the report as to your fitness for work from occupational health, and measures have been put in place to support you at work.
>
> Given the grievance investigation is still ongoing and you are still clearly upset' with some of your colleagues, I feel it's best for you to remain on paid leave until we have concluded the grievance and provided you with a response, and had confirmation from occupational health about your fitness for work. I have been concerned about the delay in receiving the occupational health report so they have been chased up. I understand that they have suggested a conference and they have been asked to provide further details as to what this entails."

79. This email of 30 January 2019 was written before the Respondent received Dr Easmon's 16 January 2019 report and recommendations which expressly stated that the heart condition was no longer an issue.

80. The Respondent concluded the investigation of the grievance and the Claimant was invited by email dated 7 February 2019 to a meeting to take place on 14 February with Dr Uddin where they would discuss the occupational health report and the Claimant could be given the grievance outcome letter.

81. On 14 February 2019 the Claimant met with Dr Uddin a brief discussion. However, there was no discussion about the occupational health report or the

grievance outcome. The Claimant was given two envelopes to read in his own time.

82. The first letter of the 14 February 2019 was the grievance outcome letter which rejected the Claimant's grievances. The Claimant appeal against this by letter dated 16 February 2019.

83. The second letter of 14 February 2019 was a letter inviting the Claimant to a workplace relationship meeting where discussions would take place about the Claimant's ability to work with others. This letter included the following

> "I have enclosed all of the information that I intend to rely on during the hearing including a time line of events which has led to this point. You will have an opportunity to give your explanations during the hearing and we will discuss any alternative employment for which you can be considered.
>
> However, it will be helpful if you could also provide a written a summary of any additional incidents that you feel have impacted on the working relationship, if any.
>
> …
>
> Whilst no decision has yet been made, I must warn you that if we are unable to find a workable solution, then we may have to consider terminating your employment."

84. By this stage there were three potential procedural streams, namely:

84.1 the required workplace stressor meeting that Dr Easmon had recommended to take place as soon as possible;

84.2 the grievance outcome and appeal;

84.3 the new matter that the Respondent was raising out of context, as far as the Claimant was concerned, for a workplace relationship meeting.

85. The Claimant, unsurprisingly, responded negatively to the invitation to the workplace relationship meeting which was due to take place on 18 February. His email of 16 February 2019, expressed concerns that he did not have sufficient time to prepare for it; expressed concerns about the bona fides of it; and expressed concerns as to whether it should be taking place at all before any and workplace stressor meeting.

86. Undeterred by the Claimant's email, the Respondent replied to the Claimant on 20 February 2019 stating that the workplace relationship would be adjourned from 18 February 2019 to 27 February and that there would be at a meeting to discuss the potential outcomes that would be possible.

87. The Claimant stated that he would not be attending a workplace relationship meeting and stated that it was inappropriate for it to occur before the grievance appeal and without any workplace stressor meeting.

88. There was a potential to arrange a workplace stressor meeting having regard to Dr Easmon's availability by 8 April 2019 but the this was not arranged.

89. A grievance appeal meeting was arranged to take place on 6 March 2019. The day before this, the Claimant went to the room of the appeal officer, Dr Ali, in order to

try and give her the documentation in support of his grievance appeal. She had previously requested that this be sent to her. The Claimant attended Dr Ali's room when she was really busy, there was no pre-planned appointment or any expectation that there would be prior discussion. Dr Ali stated, and we accept, that it would have been inappropriate to talk to the Claimant separately about the appeal outside of the appeal process. The Claimant stated that Dr Ali refused to meet with him, this is true but there was no obligation or requirement for him to speak to her, and there was no requirement for him to have attended her office at all when he could have simply sent the appeal documents in or left them at reception. The Claimants hope that he would be able discuss matters with Dr Ali in these circumstances was misplaced.

90. The grievance appeal meeting took place on 6 March 2019. Dr Ali chaired the meeting. The Claimant alleges that Dr Ali was intimidating and bullying towards him. We find that there were aspects meeting where Dr Ali did not conduct it appropriately. Dr Ali asked closed questions during the meeting, she asked the Claimant how could she trust him in relation to his handling of the APBM documentation and withheld calibration reports of 2018. Dr Ali made sarcastic observations to the Claimant during the meeting including 'so you are so concerned about patients, you can't remember the number of patients, you can't provide patients of your concerns'. We accept that the approach in relation some questioning and sarcastic overtones which were noted in the appeal notes gave the Claimant the impression that he was being poorly treated during it. However, we do not find that he was accused of stealing documents or that it was implied that he would steal documents.

91. The workplace relationship meeting was rearranged to 11 March 2019. However, on 8 March 2019 the Claimant wrote an email stating

> "I regret to say that I will not be able to attend the meeting due to the following:
>
> I am emotionally exhausted due to the three other meetings, each of which has been causing further humiliation to me. This humiliation has drained my physical and mental energy. During the appeal I drunk two litres of water in 4 hours to be only able to speak monotonously.
>
> I am a heart patient on medication, hence trying to avoid stressful and humiliating situations.
>
> …
>
> I can only rely and trust the recommendation of Dr Charlie Easmon who as a OH consultant suggested a conference meeting to sort out my work place stressors professionally. This was your first step to find out my stress and this was also the reason why I am sitting at home. Therefore, I would like to finish one thing at a time."

92. Despite this email, on 11 March 2019, there was a telephone call to the Claimant for a discussion with Heather Bailey, an external HR consultant. This is an indication that the Respondent was keen to seek to address the workplace relationship issues, contrary to the Claimant's views. We consider that that was an unreasonable step given that the Claimant clearly stated that he did not want to attend a meeting on that date. Having said that, the Claimant continued with a discussion with Heather Bailey, without Dr Uddin or Emma Stanford being present. This was, perhaps, the first time that there was an element of professionalism and proper HR management of a meeting involving the Claimant during the processes. Heather Bailey clearly explained to the Claimant the scope and extent of what was required. This discussion was fully recorded in Dr Uddin's letter of 11 March 2019 summarising the discussion that the

Claimant had with her.

93. Dr Ali provided the grievance appeal outcome on 21 March 2019. She did not uphold the entirety of the Claimant's appeal. However, she upheld the grievances relating to inappropriate booking of ear syringing appointments and overturned Dr Uddin's conclusions relating to patients 5, 7, 11 and 12 of a list of 14 patients attached to the Claimant's grievance. Dr Ali partially upheld and the Claimant's grievances relation for patients 9 and 12.

94. There was a rescheduled workplace relationship meeting for 1 April 2019. The purpose of the workplace relationship meeting was reiterated in the letter dated 25 March 2019 and that the outcome could result in termination of employment or moving to a different role. The Claimant did not attend this meeting, he was signed off sick from work and he commenced a period of sickness absence.

95. The Claimant raised concerns about not being paid full pay and only receiving statutory sick pay for the period of absence from 16 April 2019. This concern was decisively answered by the letter of Ms Stanford dated 11 April 2019 stated:

> "Our records show that you will have taken 28 days off sick in a 12 month rolling period: 10 days during the period 26 November 2018 to 11 December 2018 and a further 18 days for the period covered by your recent sick note. This total of 28 days excludes the period that you have been on medical suspension (17 December 2018 to 2 April 2019).
>
> You have chosen to condense your working hours (37.5) into 4 days per week (Monday to Thursday). Therefore, you working days per month are 17.4 days on average.
>
> As you will be aware, the Practice has a discretionary employee sick pay scheme that after one year of service will pay up to one month's basic pay in any rolling 12 month period. We will apply this scheme to you.
>
> You will continue to receive full pay until 16 April 2019. After this you will revert to Statutory Sick Pay, the current rate for which is £94.25 per week."

96. Despite the clarity of the explanation regarding sick pay, the Claimant did not accept it and constantly wrote to Ms Stanford and Dr Uddin expressing his dissatisfaction about being paid SSP. By way of an example on 28 May 2019 the Claimant wrote to Ms Stanford stating:

> "Hereby, I would like to draw your attention once again to the fact that I was UNLAWFULLY put on a SSP while I have been waiting to my case conference meeting with Dr E Charlie. Therefore, I would like to have either my full salary for the period between 16/04/19 and 21/05/19 or a legal reason before the end of May 2019 as I cannot afford to pay my bills this month despite loans.
>
> I have taken legal advice from at least 3 lawyers who have unanimously given me the same advice. should you want to discuss the above advice, I am happy to meet with you before 31/05/2019."

97. The workplace stressor meeting remained outstanding. On 9 May 2019, Ms Stanford wrote to the Claimant stating that the earliest available date that Dr Easmon could attend a workplace stressor meeting was 8 July 2019. The Claimant responded on 13 May 2019 that he was happy to wait until that date. Given the need to coordinate diaries this was an agreed delay.

98. On 22 May 2019 the Claimant stated that that he was fit for work and would be not providing any further sick notes. As he was fit to return to work his full pay was reinstated albeit he remained suspended pending the workplace stressor meeting.

99. In the meantime, the Claimant was seeking alternative employment and expressed an interest in pursuing a role with Phlebotomy UK Ltd in June 2019.

100. The workplace stressor eventually took place on 8 July 2019 and lasted an hour. The notes of that meeting are limited, they are inadequate to the extent that they provide a detailed record of what was discussed during the meeting. However, they provide a snapshot of the key points raised. It was determined that the two matters to be discussed would be:

100.1 the process involved with the grievances and

100.2 the request made by the employers to attend a mediated working relationship meeting

101. It is curious and surprising that Dr Easmon stated that the grievances had been completed and that the appeal chair decision was final. It was also surprising that Dr Easmon stated that if the Claimant does not attend subsequent workplace relationship meeting his employers may make a decision in his absence. We consider it to be curious for an occupational health consultant to comment on such matters during this meeting as they were matters which are more appropriate to have been made by a HR manager or official representing the Respondent. However, Dr Easmon gave evidence that these were his notes of the meeting and he accepted that he said those things.

102. Consequently, on the 12 July 2019 the Claimant was invited to attend a workplace relationship meeting which was arranged to take place on 18 July 2019. It was stated:

> "Please note that, given the attempts we have made to engage with you and your failure to attend the previously arranged meetings, should you or your representative fail to attend this meeting, which will be the fourth time it has been rescheduled, or you do not provide written submissions, the meeting will go ahead in your absence and I will only be able to make a decision based on the information available to me without your input. Therefore, it is very much in your interests to attend."

103. The Claimant responded on 16 July with on 3 page letter making it clear that he would not attend the meeting. He wrote that he did not trust Dr Uddin or Ms Stanford and that the whole process was unacceptable. The Claimant questioned the legitimacy of the meeting and asserted that it was unfair non-contractual and an unlawful process.

104. The meeting proceeded on 18 July 2019 in the Claimant's absence and it was and concluded that the Claimant should be dismissed. The meeting noted the following:

> "HB mentioned again that MA was not being disciplined. She acknowledged again that MA was upset by the wording included in the in the working relationship meeting invitation letters. However, MA has been reassured about this on a number of occasions plus the medical opinion is that until MA's working relationships, which are the cause of his work stressors, are resolved

> MA should remain off work. The reasons MA has given for non-attendance at this meeting were not a satisfactory.
>
> HB gets a sense that MA finds it difficult to move forward. In spite of apologies he's received for incidents that he says hurt his feelings from JA and AU and saying that he accepted those apologies, he still keeps bringing the incidents up. The fact MA has not turned up to today's meeting leaves HB of the view that MA has lost trust and faith in his employer.
>
> This meeting was never about disciplining MA. He has exhausted the relevant processes to deal with his complaints and yet he remains unsatisfied and stressed. He has had time off work, has been treated with medication by his GP and undertaken a course of CBT. Yet he still appears unable to move forward. In his absence, HB is unable to ask MA what he would suggest in terms of moving forward."

105. By letter dated 19 July 2019 the Claimant was informed that he was dismissed on the basis of breakdown the working relationship. The Claimant was given the right of appeal which he did not exercise.

106. The Claimant contacted ACAS on 4 July 19 and received an ACAS certificate on 4 August 2019. He subsequently and presented his first claim to the Tribunal on 1 September 2019. His second claim to the Tribunal, specifically alleging disability discrimination was presented to the Tribunal on 9 November 2019.

Law

Approach to evidence

107. The Tribunal considered the Claimant's detailed intermediary report that stated that the Claimant had particular difficulties areas of communication including:

107.1 Attention and concentration: Mr Arian demonstrated difficulties sustaining his attention and concentration during the assessment. He was also unable to recognise the need for a break (see section 14).

107.2 Complex question types: Mr Arian had difficulty understanding and responding reliably to grammatically complex question types. He could not consistently respond to multiple part questions, questions containing low-frequency vocabulary, tag questions and front-loaded questions (see section 18).

107.3 Retaining information: Mr Arian showed difficulty in retaining verbally presented information (see section 19).

107.4 Expressive language: Mr Arian, at times, presented as tangential. He had difficulty providing a coherent and detailed narrative. Occasionally, he found it difficult to retrieve words from his lexicon (see section 20).

107.5 Concept of time and dates: Mr Arian had difficulty referring to specific dates (see section 21).

108. When considering oral evidence based on recollection the Tribunal considered the case of Gestmin SGPS SA v Credit Suisse (UK) Ltd **[**2013] EWHC 3560 Comm, at paragraphs 15 to 22 Leggatt J on evidence based on recollection:

15. An obvious difficulty which affects allegations and oral evidence based on recollection of events which occurred several years ago is the unreliability of human memory.

16. While everyone knows that memory is fallible, I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony. One of the most important lessons of such research is that in everyday life we are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. Two common (and related) errors are to suppose: (1) that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.

17. Underlying both these errors is a faulty model of memory as a mental record which is fixed at the time of experience of an event and then fades (more or less slowly) over time. In fact, psychological research has demonstrated that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is true even of so-called 'flashbulb' memories, that is memories of experiencing or learning of a particularly shocking or traumatic event. (The very description 'flashbulb' memory is in fact misleading, reflecting as it does the misconception that memory operates like a camera or other device that makes a fixed record of an experience.) External information can intrude into a witness's memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection. Events can come to be recalled as memories which did not happen at all or which happened to someone else (referred to in the literature as a failure of source memory).

18. Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs. Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time.

19. The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.

20. Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness is asked to make a statement, often (as in the present case) when a long time has already elapsed since the relevant events. The statement is usually drafted for the witness by a lawyer who is inevitably conscious of the significance for the issues in the case of what the witness does nor does not say. The statement is made after the witness's memory has been "refreshed" by reading documents. The documents considered often include statements of case and other argumentative material as well as documents which the witness did not see at the time or which came into existence after the events which he or she is being asked to recall. The statement may go through several iterations before it is finalised. Then, usually months later, the witness will be asked to re-read his or her statement and review documents again before giving evidence in court. The effect of this process is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of the events.

21. It is not uncommon (and the present case was no exception) for witnesses to be asked in cross-examination if they understand the difference between recollection and reconstruction or whether their evidence is a genuine recollection or a reconstruction of events. Such

> questions are misguided in at least two ways. First, they erroneously presuppose that there is a clear distinction between recollection and reconstruction, when all remembering of distant events involves reconstructive processes. Second, such questions disregard the fact that such processes are largely unconscious and that the strength, vividness and apparent authenticity of memories is not a reliable measure of their truth.
>
> 22. In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.

109. In Kumar v DHL Services Ltd UKEAT/0117/17/LA HHJ Eady QC (as she then was) stated confirmed the applicability of Gestmin to Employment Tribunal proceedings:

> 18. More generally, when considering the evidence at trial, it is right that an ET should exercise caution when asked to place reliance upon recollections, particularly if given some time after the event and in the context of litigation, rather than relevant contemporaneous documents, see Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 Comm, at paragraphs 15 to 22.

110. More recent Court of Appeal guidance in this area was given in the case of Kogan v Martin and Others [2019] EWCA Civ 1645 ('Kogan'). This was a case where the judge at first instance had wrongly regarded Leggatt J's statements in Gestmin and Blue v Ashley as an "admonition" against placing any reliance at all on the recollections of witnesses. The Court of Appeal in Kogan emphasised the need for a balanced approach to the significance of oral evidence regardless of jurisdiction. At paragraph 88 of Kogan, Floyd LJ said:

> "88. … We start by recalling that the judge read Leggatt J's statements in *Gestmin v Credit Suisse* and *Blue v Ashley* as an "admonition" against placing any reliance at all on the recollections of witnesses. We consider that to have been a serious error in the present case for a number of reasons. First, as has very recently been noted by HHJ Gore QC in *CBX v North West Anglia NHS Trust* [2019] 7 WLUK 57, *Gestmin* is not to be taken as laying down any general principle for the assessment of evidence. It is one of a line of distinguished judicial observations that emphasise the fallibility of human memory and the need to assess witness evidence in its proper place alongside contemporaneous documentary evidence and evidence upon which undoubted or probable reliance can be placed. Earlier statements of this kind are discussed by Lord Bingham in his well-known essay *The Judge as Juror: The Judicial Determination of Factual Issues* (from The Business of Judging, Oxford 2000). But a proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact based upon all of the evidence. Heuristics or mental short cuts are no substitute for this essential judicial function. In particular, where a party's sworn evidence is disbelieved, the court must say why that is; it cannot simply ignore the evidence.

111. We take into account the fallibility of memory and the pressures of giving evidence. As highlighted in Kogan, we must assess all the evidence in a manner suited

to the case before us.

112. We refer to this, as throughout the hearing Mrs Parker sought to ask the Respondent's witnesses searching questions on the specific detail of events, behaviours, actions and statements that occurred over 4 years ago. Some of her questions were wholly speculative, with no evidential basis and not even part of the Claimant's case. Mrs Parker sought to imply that the Respondent witness evidence was evasive, unreliable and incredible when they stated that they could not recall or were unable to expand upon the contemporaneous notes and correspondence that was referred to. We informed Mrs Parker that in the circumstances, specifically given the passage of time, and the intervening pandemic, we were more likely to base our conclusions on the written documentation. This we did and we make no adverse findings against any witness, including the Claimant, arising from their failure to recall the detail, or in the Claimant's case his detailed and strongly held recollection that the meetings and events were other than what was contemporaneously recorded.

Protected disclosures

113. Section 43B ERA states

> **Disclosures qualifying for protection.**
>
> (1)In this Part a " qualifying disclosure " means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
>
> (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.
> (2)For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.
>
> (3)A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.
>
> (4)A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.
>
> (5)In this Part " the relevant failure ", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

114. In the case of Blackbay Ventures Ltd T/A Chemistree v Gahir UKEAT/0449/12/JOJ where it was said a Tribunal should take the following approach:

> a. Each disclosure should be separately identified by reference to date and content.
>
> b. Each alleged failure or likely failure to comply with a legal obligation, or matter giving rise to the health and safety of an individual having been or likely to be endangered as the case may be should be separately identified.
>
> c. The basis upon which each disclosure is said to be protected and qualifying should be addressed.
>
> d. Save in obvious cases if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation. It is not sufficient as here for the Employment Tribunal to simply lump together a number of complaints, some of which may be culpable, but others of which may simply have been references to a checklist of legal requirements or do not amount to disclosure of information tending to show breaches of legal obligations. Unless the Employment Tribunal undertakes this exercise it is impossible to know which failures or likely failures were regarded as culpable and which attracted the act or omission said to be the detriment suffered. If the Employment Tribunal adopts a rolled up approach it may not be possible to identify the date when the act or deliberate failure to act occurred as logically that date could not be earlier than the latest act or deliberate failure to act relied upon and it will not be possible for the Appeal Tribunal to understand whether, how or why the detriment suffered was as a result of any particular disclosure; it is of course proper for an Employment Tribunal to have regard to the cumulative effect of a number of complaints providing always they have been identified as protected disclosures.
>
> e. The Employment Tribunal should then determine whether or not the Claimant had the reasonable belief referred to in S43 B1 of ERA 1996 under the 'old law' whether each disclosure was made in good faith; and under the 'new' law introduced by S17 Enterprise and Regulatory Reform Act 2013 (ERRA), whether it was made in the public interest.
>
> f. Where it is alleged that the Claimant has suffered a detriment, short of dismissal it is necessary to identify the detriment in question and where relevant the date of the act or deliberate failure to act relied upon by the Claimant. This is particularly important in the case of deliberate failures to act because unless the date of a deliberate failure to act can be ascertained by direct evidence the failure of the Respondent to act is deemed to take place when the period expired within which he might reasonably have been expected to do the failed act. g. The Employment Tribunal under the 'old law' should then determine whether or not the Claimant acted in good faith and under the 'new' law whether the disclosure was made in the public interest.

115. More recent guidance on the proper approach to assessing whether there is a qualifying disclosure for the purposes of Section 43B is that summarised by HHJ Auerbach in Williams v Michelle Brown AM UKEAT/0044/19/OO.

> He said: "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."
>
> As a general rule each communication by the worker must be assessed separately in deciding whether it amounts to a qualifying disclosure however, where some previous communication is referred to or otherwise embedded in a subsequent disclosure, then a Tribunal should look at the totality of the communication see Norbrook Laboratories (GB) Ltd v Shaw 2014 ICR 540,

> EAT and Simpson v Cantor Fitzgerald Europe EAT 0016/18 (where the worker had failed to make it clear which communications needed to be read together) and Barton v Royal Borough of Greenwich EAT 0041/14 (where it was held that separate and distinct disclosures could not be aggregated). When reached the Court of Appeal it was held that the issue of whether disclosures could be aggregated is a matter of common sense and a pure question of fact - see Simpson v Cantor Fitzgerald Europe [2021] ICR 695].

116. To amount to a 'disclosure of information', it is necessary that the worker conveys some facts to her or his employer (or other person). In Kilraine v London Borough of Wandsworth 2018 ICR 1850, CA the meaning of that phrase was explained by Sales LJ as follows:

> "35. The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a "disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the [matters set out in sub-paragraphs (a) to (f)]". The word "information" must be read with the qualifying phrase, "which tends to show [etc]"
>
> In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1)…
>
> 36. Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a Tribunal in the light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in section 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill LJ in Chesterton Global at [8], this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief."

117. When determining whether the disclosure of information tends to show matters specified at Section 43(1) (a) – (f) in the case of **Eiger Securities LLP v Korshunova** [2017] IRLR 115 Slade J said:

> '…. in order to fall within ERA section 43 B(1)(b), as explained in Blackbay the ET should have identified the source of the legal obligation to which the Claimant believed Mr Ashton or the Respondent were subject and how they had failed to comply with it. The identification of the obligation does not have to be detailed or precise but it must be more that a belief that certain actions are wrong. Actions may be considered to be wrong because they are immoral, undesirable or in breach of guidance without being in breach of a legal obligation.'

118. The proper approach to public interest was set out in Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed 2018 ICR 731, CA where Underhill LJ said:

> 26. The issue in this appeal turns on the meaning, and the proper application to the facts, of the phrase "in the public interest". But before I get to that question I would like to make four points about the nature of the exercise required by section 43B (1).
>
> 27. First, and at the risk of stating the obvious, the words added by the 2013 Act fit into the structure of section 43B as expounded in Babula (see para. 8 above). The Tribunal thus has to ask (a) whether the worker believed, at the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable.

28. Second, and hardly moving much further from the obvious, element (b) in that exercise requires the Tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest; and that is perhaps particularly so given that that question is of its nature so broad-textured. The parties in their oral submissions referred both to the "range of reasonable responses" approach applied in considering whether a dismissal is unfair under Part X of the 1996 Act and to "the Wednesbury approach" employed in (some) public law cases. Of course we are in essentially the same territory, but I do not believe that resort to tests formulated in different contexts is helpful. All that matters is that the Tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. That does not mean that it is illegitimate for the Tribunal to form its own view on that question, as part of its thinking – that is indeed often difficult to avoid – but only that that view is not as such determinative.

29. Third, the necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the Tribunal finds were not in his head at the time he made it. Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, in principle a Tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable.

30. Fourth, while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it: otherwise, as pointed out at para. 17 above, the new sections 49 (6A) and 103 (6A) would have no role. I am inclined to think that the belief does not in fact have to form any part of the worker's motivation – the phrase "in the belief" is not the same as "motivated by the belief"; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it.

119. At paragraph 37 Underhill LJ stated that factors to consider in determining public interest could include:

"(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"

120. **Section 47B ERA states:**

Detriment

(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.

(1C)For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

(1D)In proceedings against W's employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—

(a)from doing that thing, or

(b)from doing anything of that description.

(1E)A worker or agent of W's employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if—

(a)the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act, and

(b)it is reasonable for the worker or agent to rely on the statement.

But this does not prevent the employer from being liable by reason of subsection (1B).

(2). . . This section does not apply where—

(a)the worker is an employee, and

(b)the detriment in question amounts to dismissal (within the meaning of Part X).

(3)For the purposes of this section, and of sections 48 and 49 so far as relating to this section, " worker ", " worker's contract ", " employment " and " employer " have the extended meaning given by section 43K.

121. When considering detriment in the Court of Appeal case of Jesudason v Alder Hey Children's NHS Foundation Trust [2020] EWCA Civ 73, Sir Patrick Elias stated:

"27. In order to bring a claim undersection 47B, the worker must have suffered a detriment. It is now well established that the concept of detriment is very broad and must be judged from the view point of the worker. There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment. The concept is well established in discrimination law and it has the same meaning in whistleblowing cases. In Derbyshire v St Helens Metropolitan Borough Council (Equal Opportunities Commission intervening) [2007] ICR 841, para 67, Lord Neuberger of Abbotsbury described the position thus: "67. In that connection, Brightman LJ said in Ministry of Defence v Jeremiah [1980] ICR 13, 31A that 'a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment'.

122. For unfair dismissal, section 98 ERA states

General

(1)In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a)the reason (or, if more than one, the principal reason) for the dismissal, and

(b)that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2)A reason falls within this subsection if it—

(a)relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b)relates to the conduct of the employee,

(c)is that the employee was redundant, or

(d)is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3)In subsection (2)(a)—

(a)"capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b)"qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a)depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b)shall be determined in accordance with equity and the substantial merits of the case

123. For automatic unfair dismissal by reason of making a protected disclosure section 103 ERA states:

Protected disclosure

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

124. Section 13 of the Equality Act 2010 (EqA) states:

13 Direct discrimination

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

125. Section EqA states:

> **Discrimination arising from disability**
>
> (1)A person (A) discriminates against a disabled person (B) if—
>
> (a)A treats B unfavourably because of something arising in consequence of B's disability, and
>
> (b)A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
>
> (2)Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

126. Section 123 EqA sets out the time limits:

> **Time limits**
>
> (1)Subject to section 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.
>
> (2)Proceedings may not be brought in reliance on section 121(1) after the end of—
>
> (a)the period of 6 months starting with the date of the act to which the proceedings relate, 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.
>
> (4)In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
>
> (a)when P does an act inconsistent with doing it, or
>
> (b)if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

127. In respect of the Claimant's unlawful discrimination claims, the Tribunal had regard to the summary of the law regarding time limits and extension of time at paragraphs 30-41 provided by Jackson LJ in the case of Aziz v FDA which sets out a helpful summary. We also considered the guidance of Robertson v Bexley Community Centre (t/a Leisure Link) that the extension of time is the exception rather than the rule.

128. The Tribunal needs to consider the balance of prejudice between the parties when considering whether it is just and equitable to extend time and the factors in the case of British Coal Corp v Keeble where Mrs Justice Smith held:

> "*The EAT also advised that the Industrial Tribunal should adopt as a check list the factors mentioned in Section 33 of the Limitation Act 1980. That section provides a broad discretion for the Court to extend the limitation period of three years in cases of personal injury and death. It requires the court to consider the prejudice which each party would suffer as the result of the decision to be made and also to have regard to all the circumstances of the case and in*

particular, inter alia, to (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 plaintiff acted once he or she knew of the facts giving rise to the cause of action; (e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action. The decision of the EAT was not appealed; nor has it been suggested to us that the guidance given in respect of the consideration of the factors mentioned in Section 33 was erroneous."

Conclusions

129. In view of our findings of fact and the law set out above our conclusions are as follows:

Protected disclosures

130. We consider Claimant's protected disclosure claims first. We have set out the legal provisions above and follow the guidance in case Williams v Michelle Brown when identifying whether protected disclosures are made.

PD 1.1 - 24 September 2018 (to Dr Uddin) and 24 October 2018 (to Emma Stanford)
1.1 The Claimant said that the protocol for the flu jab was not implemented properly or monitored properly. He showed her on his computer screen the practical issues that he was experiencing with that protocol by reference to individual patient records. The Claimant cannot remember the identities of the patients or the specific issues raised.

131. The alleged protected disclosure to Dr Uddin in this regard was on 24 September 2018 during a discussion which was said to be the Claimant stated that the flu jab protocol was not being properly implemented.

132. The Tribunal considered whether that amounted to a disclosure of information and we concluded that it did. We then considered whether the Claimant believed that the disclosure was made in the public interest and we concluded that when considering with potential patients that it was made public interest. We considered whether the Claimant's belief was reasonably held. At the time he made this, on 24 September 2018 we conclude that it was reasonably held. However, we do not conclude that him maintaining this subsequently was reasonably held when matters had been explained to him.

133. When considering whether the Claimant had a reasonable belief that his disclosure tended to show that one of the matters in subsection (a) – (f) we do not conclude that the Claimant has established this. There was no breach of legal obligation or risk to health and safety to patients in failing to follow the internal protocol. Specifically there was not breach of any legal obligation or threat to patient health and safety by permitting any qualified HCA to undertake vaccinations. Further, the Claimant was aware that HCA's were gatekeepers qualified and placed to ensure that no inappropriate vaccinations were given to patients. In fact, on 24 September 2018, this is exactly what happened, the Claimant sent away a patient because his specific name was not listed as the relevant HCA on the internal protocol. As HCA it was necessary for the Claimant to comply with his professional obligations to ensure that vaccinations were properly given. There was no suggestion that HCA's were not doing this. Given this we conclude that the Claimant could not have reasonably held that the

failure to follow the internal protocol tended to show a breach of a legal obligation or threat to health and safety and as such we do not conclude that his statement made to Dr Uddin in this regard on 24 September 2018 amounted to a protected disclosure.

134. Following Eiger Securities LLP v Korshunova the fact that the Claimant considered matters to be wrong or undesirable does not elevate his concern to a breach of legal obligation. There is no doubt that in this case the Claimant considered that there were a number of things that were wrong and things that could have been done better in the Respondent. The Claimant referred to higher standards of other GP practices throughout his evidence. However, failure to meet such higher standards or practices does not translate to there being a breach of a legal obligation or threat to patient health and safety.

135. In respect of the same information said to be relayed to Ms Stanford on 24 October 2018, showing the matters on a computer screen, we do not consider that by this stage, it having been explained to him, the Claimant had a reasonably held belief. Further, for reasons given above, it did not tend to show that there would be a breach of legal obligation or threat to health and safety would result. Therefore, there was no protected disclosure in this context to Ms Stanford during the discursive meeting on 24 October 2018.

136. The fact that the Claimant was seeking to raise it again does not indicate that he held a reasonable belief, it demonstrated that the Claimant was unwilling or unable to move on from matters that had been previously agreed.

PD 1.2 24 October 2018 (to Emma Stanford): Written grievance 5 November 2018

1.2 The Claimant said that these machines had not calibrated regularly during the period until May or June 2018. He told Ms Stanford that he had enormous difficulty in convincing Mr Sambaeh Bala (Facility Manager) to get the devices calibrated. He said he had told Mr Bala he was not going to be seeing any more patients who needed ABPM investigation until these machines were calibrated. The consequence of this issue, as identified in the Claimant's disclosure was that GPs were potentially misdiagnosing people with chronic health problems. Due to lack of training of staff, for ABPM machines with you were left in trays and not switched off on using ABPM is in this date led to an excessive number of readings, such that the validity of those readings was inaccurate and unreliable, exposing the patience to further this I've missed diagnosis and neglect. [Underlined words added by way of amendment on the third day of the hearing].

137. Whilst we have found that the 24 October 2018 was an unstructured and unclear meeting, we have found that the Claimant did mention that the ABPM machines will not been calibrated. The Claimant also specifies this in his written grievance of 5 November 2018.

138. We considered that this is a disclosure of information. ABPM machines not being calibrated would have been made in the public interest given patient safety ramifications. We consider that the Claimant reasonably held this belief, and that it tended to show that a breach of a legal obligation (to have certified functioning medical equipment) and a threat to patient health and safety (arising from readings from faulty medical equipment). We consider that the Claimant reasonably held this belief and therefore conclude that this aspect of his concerns amounted to a protected disclosure. The Claimant has therefore established that the lack of calibration machines relates to a protected disclosure.

139. However, the Claimant has not established that the lack of training of reception staff in respect of ABPM machines being left in trays and not being switched off, hereby leading to an excessive number of readings amounted to a protected disclosure. There was no breach of legal obligation or threat to patient safety in this regard. Readings for machines left on did not create erroneous averages as no reading was actually produced. It could easily be seen that a machine that was left on was not taking particular reading. The Claimant was complaining that his expectations were not being met by reception staff and that he wished for them to meet his expectations. We cannot extend that to be tending to show a breach of a legal obligation or a threat to patient health and safety and therefore the amended, underlined section of PD 1.2 does not amount to a protected disclosure.

PD 1.3 Ear irrigation (to Emma Stanford on 24 October 2018 and in written grievance on 5 November 2018

1.3 The Claimant said that ear irrigation patients were booked without a prior authorisation by a clinician. He showed Emma Stanford two patient notes relating to that issue, including GP confirmation that the GP had not booked the patients for ear irrigation and was not willing for the patient to have that procedure. We have found that the Claimant mention ear irrigation appointments being booked without prior authorisation during the unstructured meeting on 24 October 2018. The Claimant also mentioned this his written grievance dated 5 November 2018.

140. The Claimant's focus of concern in this regard was booking appointments, not undertaking appointments without authorisation. We consider that there was a disclosure of information, in the public interest which was reasonably believed but it did not tend to show either a breach of a legal obligation or threat to patient health and safety. The Claimant as a HCA professional was the gatekeeper and he was able to, and did properly refuse to undertake ear syringing appointments that were not properly authorised by a GP. The Claimant was alleging that it was inconvenient sending patients away who had not been properly booked. If he, or another HCA were said to have been undertaking unauthorised ear syringing that would have amounted to a breach or threat to health and safety but that was not the case. We therefore do not conclude that the Claimant has established a protected disclosure in this regard.

PD 1.4 Chronically ill patient appointments (to Emma Stanford on 24 October 2018 and in written grievance on 5 November 2018

1.4 The Claimant said that the care of chronically ill patients including those with diabetes, hypertension and coronary heart disease was being neglected. He showed Emma Stanford a few examples on the Practice's computer record system.

141. The Claimant alleged that the care of chronically ill patients and those with diabetes, hypertension, and heart disease has been neglected and that he showed Emma Stanford a few examples of poor practice on his computer. The Claimant had his standards and approach and he was concerned about the inconvenience of patients who attended for appointments that were unable to be completed because previous bookings had not occurred. The effect of a blood test not being taken meant that it would have to be rebooked and that would have had a knock-on effect on other observations for the patient.

142. What the Claimant was raising was patient annoyance and inconvenience. However, we are required to assess whether it tended to show a breach of legal

obligation or threat to patient health. We heard evidence, and accept that where a patient has significant chronic illness or serious illness they are the control of hospital. Generally, the GPs patients were well but they were having to be monitored. There was annoyance and inconvenience for patients who would have to be booked attend again at a later date. There clearly could been greater efficiencies and better ways of doing things but we have to consider but that does not mean that what the Claimant was raising tended to show that he had a reasonably held belief that there was patient neglect, a breach of a legal obligation or threat to patient safety. Therefore the Claimant has not established a protected disclosure in this regard.

PD 1.5 Email 31 October 2018 to Dr Desai
1.5 The Claimant states that on 31 October 2018 he received a message from Dr Desal which showed her frustration regarding an investigation about diagnosing patients with high blood pressure. The Claimant states that Dr Desal email said words to the effect of "have you looked at the report its terrible". The Claimant states that in this patient's case, reception had not switched the machine off after removing it from the patient and so the machine recorded 194 readings instead of 48. The Claimant states he responded to Dr Desai via email explaining the problems, his part in the procedure and that reception does the second part of removing the machine and switching it off. The Claimant states he sent a similar message to Dr Uddin because his patient was having the same issue..

143. The Tribunal was referred to an email from Dr Desai to the Claimant on 29 October 2018 regarding blood pressure machines he left and the readings. The Claimant stated that he responded by email on 31 October 2018 expressing concerns.

144. The alleged email was not before the Tribunal. Dr Desai denies receiving any email of concern or otherwise. Had she received concerns she said would have responded to them. She evidenced that she had undertaken a search of her email inbox and referred to emails not expressing concerns from the Claimant in November 2019. She stated that there was no email of concerns from the Claimant as alleged.

145. In these circumstances the Claimant has not established that he made a protected disclosure in this regard.

146. We therefore conclude that the Claimant has established only one element of protected disclosure in relation to the calibration of the ABPM machines.

147. We then considered whether the Claimant was subjected to detriment because of making protected disclosures in that regard on 24 October 2018 and 5 November 2018.

6.1 On 31 October 2018, Dr Uddin passed a patient note he had received from the Claimant to Mr Jamil Ahmed on 31/10/18. The Claimant states this was a detriment to him because it was not necessary for Dr Uddin to do this and led to the subsequent treatment he received from Mr Ahmed.

148. In relation to the first alleged detriment, the Claimant alleges that Dr Uddin sending the patient note JA amounted to a detriment. Whilst this could amount to a detriment it could not have been a because of a protected disclosure. Dr Uddin did not know what had been discussed on 24 October 2018. Further, sending the note onto his PA was following the normal process of sending an email to his PA about a patient note. The Claimant's claim that he was subjected to detriment because of forwarding this email patient note therefore fails.

6.2 On 6 November 2018, at the informal mediation meeting held to investigate the Claimant's grievance, Mr Ahmed spoke to the Claimant in a hostile way saying "You are the rudest person I have ever worked with. I hate you. It is not only me. People in the reception either hate you or they do not want to talk to you". At the same meeting, Ms Stanford did not act in an impartial manner as she should, but chose to ask questions on Mr Ahmed's behalf. As a result, the Claimant had to request that the meeting be terminated and lost the opportunity to achieve an informal resolution to his grievance.

149. The informal mediation meeting was not professionally managed. JA and the Claimant spoke to each other in disrespectful manner, accusations were made on both sides and emotions ran out of control which precipitated the hostile comment of JA to the Claimant. The Claimant has not established that JA spoke to him in this manner because of his protected disclosures made to Ms Stanford.

6.3 On 17 December 2018, at the formal grievance meeting, Dr Uddin acted in a manner towards the Claimant which was judgmental and was defensive when discussing whether passing the patient note to Mr Ahmed was a breach of confidentiality, thereby creating a hostile environment during the meeting. Twice he asked the Claimant to leave the room during the meeting without providing a good reason for requesting this. At the end of the meeting, he and Emma Stanford asked the Claimant to sign the inaccurate notes taken during the meeting. Dr Uddin & Emma Stanford then sent him home before the end of his shift telling him that if he did not feel well he needed to see his doctor.

150. The 17 December 2018 grievance meeting with the Claimant was also not professionally managed. There were exasperated responses from Dr Uddin who believed that a number of matters being raised were repetitive and had been previously dealt with. In relation to the key matter concerning APBM machines, there was a positive discussion about this in the meeting

> Claimant: We cancelled the patients, eventually the machines were calibrated have finished with this point now. Want to move on to the next point
>
> Dr Uddin: I agree that calibration is very important for all medical equipment. Thank you for raising the point. Now you are happy the machines have been calibrated?
>
> Claimant: If I hadn't highlighted this issue is that we employ someone to look after calibration someone clinical. Sam gave me the impression he doesn't understand what calibration means.

151. The reality was that the calibration issue was not a source of any tension or difficulty. The tension arose from the distrust the Claimant had towards Dr Uddin and the inability of Dr Uddin to manage the Claimant during the difficult meeting. We do not conclude that the way in which the meeting was an held was related to the Claimants protected disclosure.

152. We have not found that the Claimant was asked twice to leave the room without providing good reason of request.

153. There were two adjournments during the meeting but the Claimant has not established that he was told to leave the meeting.

154. We accept that the notes of this meeting are more reliable than the out of context recollections and memories that the Claimant gave during his oral evidence, over 4 years after the event. We do not conclude the notes of 17 December 2018 are inaccurate notes of what happened. The Claimant was asked to sign the notes at the end of the meeting which he did not do because he was ill, and this is noted in the minutes.

155. The notes record that the Claimant said that he did not feel well and that he had a heart condition and we do not accept Dr Uddin's evidence contradicting this. The Claimant was sent home on 17 December 2018 because he manifested in the meeting that he was stressed and said he had a heart condition. This was dealt with by ending the meeting for the Claimant to get an assessment his health issue. This was not because of the Claimant's protected disclosure.

6.4 Being place on medical suspension from 17 December 2018 onwards by Emma Stanford and Dr Uddin.

156. The Claimant was placed on medical suspension from the 17 December 2018 was because of the heart condition stated during the meeting and not because of any protected disclosure.

6.5 The failure of the Respondent to bring the Claimant back into his role following the occupational health report prepared following the occupational health assessment on 16 January 2019.

157. On 20 December 2018 the Claimant was informed that he should remain on medical suspension until an occupational health report was obtained. We do not consider that the medical suspension was because of the protected disclosure, it was because of health concerns raised by the Claimant during the grievance meeting, list calibration and therefore it is not a detriment because of a protected disclosure in relation to not allowing the Claimant back to his role at and following an occupational patient health assessment.

158. On 16 January the Respondent arranged an occupational health assessment as a condition of the Claimant's return to work. It did not receive the occupational health assessment until 30 January 2019. When it was received that, the Respondent continued the Claimant suspension, not for the medical grounds for workplace relationship grounds that had arisen during the intervening investigation into the Claimant's grievance.

159. The Claimant's continued suspension was not a medical suspension from 30 January 2019, it was a workplace relationship suspension. The Respondent had medical and occupational health outcomes which stated that the Claimant heart was not the reason for his absence but that there needed to be a workplace stressor meeting as soon as possible.

160. We conclude that these were the reasons for the failure for the Claimant to be brought back to work and not the protected disclosure he made.

6.6 Suggesting in an offer made on 25 January 2019 by Dr Uddin and Emma Stanford that the Claimant should leave his employment with a termination payment and a reference. The Respondent contends that the communication made on 25 January 2019 was a without prejudice communication and therefore cannot be relied upon by way of detriment in these proceedings.

161. On 25 January 2019 there was a without prejudice discussion and we refer to it only in the context of the fact of it not the content of it. The discussion was as a result of matters raised during investigation and the Respondent's misinterpretation of the Claimant's letter of 23 January 2019 and not because of his protected disclosure

6.7 At the grievance outcome meeting on 14 February 2019 there was no discussion about the outcome of the grievance as the Claimant had been expecting. Nor was there any discussion about convening a case conference as had been recommended by Occupational Health. Instead the Claimant was told to open the envelopes he was given with the outcome of the grievance process in his own time and not during the meeting

162. It would have been good practice, but there was no communication to the Claimant that he would receive the grievance outcome in a meeting on 14 February 2019. However, there was a reasonable expectation that the occupational health report would be discussed at this time. The Claimant was told to open the envelopes separately away from the meeting. This was not the best way for Dr Uddin to have managed the communication and there should have been a discussion with the Claimant about them. However, we do not conclude that this was because of the Claimants protected disclosure that Dr Uddin considered was resolved.

6.8 The failure to uphold the Claimant's grievance in the grievance outcome letter he was handed on 14 February 2019. The grievance outcome was reached following an inadequate investigation of the issues raised in the grievance.

163. There were shortcomings and subsequently overturned conclusions made by Dr Uddin. Dr Uddin was inexperienced and insufficiently attentive to the issues raised but we do not conclude that the shortcomings were due to the Claimant's protected disclosure.

6.9 The failure to give the Claimant sufficient time to prepare for the working relationship hearing scheduled to take place on 18 February 2019, of which he was only notified on 14 February 2019.

164. We accept the Claimant's contention that Dr Uddin should not have progressed the working relationship meeting without there being a discussion about the workplace stressors. The Respondent steamrolled ahead on the workplace relationship meeting despite the Claimant's objections, reservations and concerns raised. However, we do not conclude that this was done because of the Claimant's protected disclosure. The investigation undertaken in January 2019 had raised numerous work place concerns that Dr Uddin decided to prioritise.

165. In any event the Claimant was subsequently given sufficient time and opportunity to prepare for the working relationship meeting. The Claimant expressed his concerns and it was subsequently delayed and did not take place until the 18 July 2019 in the Claimant's absence. We do not conclude that the Respondent trying to progress the workplace relationship meeting in the way it did was because of the Claimant's protected disclosure.

6.10 The Respondent's delay in convening the case conference recommended by Occupational Health on 16 January 2019 until 8 July 2019.

166. The workplace stressor conference was initially delayed and there was no explanation why it could not take place on 8 April 2019 when Dr Easmon indicated that he was available. Following 8 April 2019, it was clear that there was no potential alternative date until 8 July 2019.

167. Whilst the Respondent ought to have sought to prioritise arranging the workplace stressor meeting by 8 April as suggested. However, on this date the Claimant was on sickness absence and it transpired that the next available time diaries

could coincide to have a meeting was 8 July 2019. We do not conclude that the delay was because of the Claimant's protected disclosure.

6.11 The failure to accurately note the following meetings:

6.11.1 6 November 2018, which was noted by Rahana Ahmed;
6.11.2 17 December 2018, which was noted by Emma Stanford;
6.11.3 The OH case conference meeting on 8th July 2019, which was noted by Emma Stanford.

168. We do not consider that the way the notes were taken by any of the people concerned and the subsequent admitted omissions and corrections was because of the Claimant's protected disclosure.

169. The notes were not verbatim and were not meant to be. There were accepted omissions from the 6 November 2028 notes which were corrected and updated.

170. We accept that the notes of 17 December 2018 were accurate.

171. We are very critical of the brevity of the notes of the 8 July 2019 but do not conclude that they are inaccurate.

172. The Tribunal do not conclude that any of the people concerned took the notes in bad faith or to advanced a negative agenda towards the Claimant or that the way the notes were taken was because the Claimant made a protected disclosure.

6.12 Dr Ali refusing to meet when asked by the Claimant for a brief chat on 5 March 2019, during the Claimant's visit to the surgery to deliver his grievance appeal.

173. It was unreasonable for the Claimant to expect Dr Ali to make time for him to discuss papers that he wished to drop off with her before the appeal. We do not conclude that Dr Ali's instructions to the Claimant on 5 March 2019 to leave the papers was inappropriate and it was clearly not because of the Claimant's protected disclosure. Dr Ali was busy at the time and as appeal officer did not consider it appropriate to discuss matters with him beforehand.

6.13 The conduct of Dr Ali during the meeting on 6 March 2019, which amounted to intimidating him, insulting him and bullying him to provide short answers. Dr Ali accused the Claimant of stealing documents, namely reports on the calibration of the ABPM devices, and told those present at the meeting not to leave papers unattended during breaks. This was implying that the Claimant might steal them.

174. The meeting on 6 March 2019 was not managed well by Dr Ali. There were clear deficiencies as far Dr Ali was concerned in managing the Claimant and his tendency to speak in a repetitive and unfocused way. This resulted Dr Ali's sometimes short approach, expecting the Claimant to move on, and making comments that were at sarcastic times.

175. We have found that she questioned how she could trust the Claimant which in the context of a grievance appeal was inappropriate.

176. We do not find that Dr Ali accused the Claimant of stealing documents.

177. We do not conclude that how this meeting was managed was because of the Claimant's protected disclosure, it was simply due to Dr Ali's inability to properly manage the Claimant during the meeting.

6.14 Despite the Claimant saying to Emma Stanford and Dr Uddin on 11 March 2019 that he was not feeling well enough to discuss his employment, these individuals insisted that the Claimant speak to Ms Heather Bailey (Employment Consultant). Ms Bailey spoke at length to the Claimant about the contents of his grievances and working relationships. Given that the discussion lasted at least 60 minutes, Ms Stanford and Dr Uddin ought to have stepped in to stop the conversation given what the Claimant had told them about how he was feeling.

178. Neither Dr Uddin nor Ms Stanford were present during this meeting. We do not conclude that the meeting was arranged because of the Claimant's protected disclosure. Our conclusions for issue 6.9 above apply equally in this regard.

6.15 The failure by Dr Ali to uphold the entirety of his grievance appeal in the grievance appeal outcome letter on 21 March 2019.

We do not conclude that Dr Ali's grievance conclusion, upholding some of the Claimant's concerns was because of the protected disclosure.

6.16 Being invited by Dr Uddin to a working relationship meeting to be held on 1 April 2019 (with the potential that the Claimant could be dismissed at this meeting) instead of being invited to a case conference to deal with his work-stressors as had been identified by Dr Easmon in occupational health on 16 January 2019.

179. The conclusions for 6.10 above apply equally in this regard. This was not because of a protected disclosure.

6.17 By being put on SSP on 16 April 2019 by Emma Stanford, when he should have continued to receive full pay until the case conference had occurred.

180. With the SSP the Claimant was paid in accordance with the Respondent contractual practices. It was not because of his protected disclosure.

6.18 The case conference meeting on 8 July 2019 was conducted in a prejudicial manner by Dr Easmon. Ms Stanford and Dr Uddin who also attended the meeting did not attempt to find out the Claimant's work related stresses during the meeting. Instead they tried to put words into Dr Easmon's mouth about the implications of the extent of the breakdown in working relationships. Dr Uddin told the case conference that no-one likes working with the Claimant.

181. The 8 July 2019 case conference meeting Dr Easmon managed it in a matter of fact nonchalant way. The meeting notes were brief, and his trespass to HR matters was surprising. However, we do not conclude that the way the meeting was run or what was said at the meeting was because of the Claimant's protected disclosure.

6.19 Dr Uddin conducting the meeting on 18 July 2019 in the Claimant's absence.

182. Dr Uddin conducting the 18 July 2019 meeting was inevitable. By this time the Respondent tried to have the meeting on four separate occasions. The Claimant did not want to attend the meeting. There was an impasse. This was not because of protected disclosure, it was because there was a need to get resolve the impasse.

183. Therefore all the Claimant's claims for protected disclosure under section 47B

ERA fail and are dismissed.

Section 103A dismissal

184. We considered whether the Claimant was dismissed by reason of the protected disclosure. We do not conclude that this is the case. The Respondent has established that it dismissed the Claimant due to a breakdown of the working relationship. Therefore the Claimant's claim for automatic unfair dismissal under section 103A ERA by reason of protected disclosure fails and is dismissed.

Disability discrimination

185. We have concluded that the Claimant is a disabled by reason of cardiac infarction. The Respondent was aware of this by 24 October 2018 at the latest.

186. We have not concluded that the Claimant has established that he has a self standing disability by mental health anxiety and we have concluded that, in any event the Respondent did not know or could be reasonably expected to know that he had such a disability.

187. Therefore, we focus only on the matter of cardiac infarction.

Section 13 EqA claim

188. We considered whether the Claimant has been less favourably treated because of his heart condition by concerning the decision to send the Claimant home from work on 17 December 2018. Being sent home was clearly related to the Claimant's heart condition but not because of it. We therefore do not conclude that this amounted to less favourable treatment because of the Claimant's heart condition, any comparable employee stating that they felt unable to continue with a meeting due to ill health would have been likely to be sent home.

189. Further, we do not consider that the Claimant was subject to detriment in this regard. We do not consider that a reasonable person could have considered this to be a detriment. It was objectively both a supportive and reasonable thing to do in the circumstances.

190. The Claimant's claim for direct discrimination therefore fails and is dismissed.

Section 15 EqA claim

191. For issues12.1 and 12.2 when considering the Claimant's section 15 EqA claim and we take a different view. Sending the Claimant home on 17 December 2018 for being checked out following a stressful meeting was a reasonable thing to do. However, telling the Claimant on 20 December 2018 not to return to work until he had an occupational health assessment was unfavourable treatment related to his disability. If he did not have a heart condition, he would not have been medical suspended.

192. The Claimant was asserting that from 7 January 2019 that he was ready to return to work and his GP had confirmed this. The Respondent was not allowing him to return.

193. Therefore we conclude that the Claimant was unfavourably treated by reason disability the purposes of section 15 EqA by continuing to medically suspending which was less favourable treatment arising from his disability. The Claimant's heart condition remained a relevant factor in the Respondent's decision to medically suspend the Claimant up to receipt of Dr Easmon's occupational health report of 30 January 2019. However, Dr Easmon's report emphatically stated that the Claimant's heart condition is no longer an issue, and there was a continuation of the suspension, evidently no longer related to the Claimant's heart condition. The suspension was then on the basis of workplace relationship issues.

194. Therefore the Respondent discriminated against the Claimant contrary to section to the extent the Claimant was discriminated against by reason of section 15 EqA by medically suspending him, against his wishes from the period between 20 December 2018 through to 30 January 2019.

195. The Respondent has not shown that the continuation of the medical suspension and pending occupational health what was proportionate means of achieving a legitimate aim. The Claimant was seeking to return to work, he stated he was fit to return and the Respondent could have brought back to work and given him duties, reduced hours, limited contact with other employees he was in disagreement with.

196. The Claimant's section 15 EqA claim under issue 12.3 fails. The delay in implementing Dr Easmon's recommendations, that was received on 30 January 2019, did not arise in consequence of the Claimant's heart condition which was no longer relevant.

197. The Claimant's section 15 EqA claim under issue 12.4 relating to payment of SSP also fails. The Claimant's relevant absence was not heart related, it was low mood, pain and stress reaction.

Time limit

198. When considering the section 15 EqA claim that the Claimant has established on the facts, the medical suspension from 20 December 2018 to 30 January 2019 we considered the time limit under section 123 EqA.

199. The Claimant is required to bring a claim within three months of the act complained of. With issue 12.1 and 12.2, the only disability claim he has established, this related to the time between 20 December 2018 and 30 January 2019. The Claimant therefore ought to have contacted ACAS to pursue a disability discrimination claim by 29 April 2019.

200. The Tribunal accept that the Claimant was ill during the initial time period and he was undergoing CBT and taking medication. However, in May 2019 the Claimant stated that he was able to work, on the 28 May 2019 he wrote to the Respondent stating that that he had taken legal advice from 3 lawyers, and in June 2019 he was enquiring with agencies about working elsewhere. The Claimant was also able to write lengthy emails expressing his disagreement with the Respondent's actions throughout this time. However, the Claimant did not contact ACAS until 4 July 2019 and even having then received the ACAS certificate on 4 August 2019 he but did not bring his first claim until claim 1 September 2019, which focused on whistleblowing.

201. The Claimant presented a second complaint on 9 November 2019 expressly bringing disability discrimination complaints.

202. When considering whether it is just and equitable to extend time in the circumstances we conclude that the balance of prejudice favours the Respondent. The Claimant has not convinced us that it is just and equitable to extend time. The Claimant did not contact ACAS until outside the time limit, none of the Claimant's internal grievances referred to disability as an issue for the Respondent to clarify and consider contemporaneously, and this claim was not clarified until after receipt of the second claim on 9 November 2019.

203. In these circumstances the Tribunal does not have jurisdiction to deal with the Claimant's disability discrimination complaint which is therefore dismissed.

Unfair dismissal

204. We accept that the Respondent has established a potentially fair reason for dismissal, namely some other substantial reason, the breakdown in the relationship between the parties. The Claimant had deep distrust of particular Dr Uddin and Ms Stanford. At the later stages there was some justification for the Claimant's concerns given the processes that the Respondent sought to adopt.

205. There were three processes running at the same time. The first was what we consider to be reasonable was the Dr Easmon workplace stressor meeting but this did not take place until after repeated attempts by the Respondent to hold a workplace relationship meeting despite the Claimant's concerns.

206. The workplace stressor meeting process should reasonably have been the focus and given the fact that was first in time and was expressed by Dr Easmon as being necessary to take place as soon as possible. However, the Respondent was seeking to proceed and address the workplace relationships meeting with threats of potential termination or alternative work. During this time, the Claimant was stating that he was stressed and his grievance appeal process had not been completed.

207. We consider that the processes that the Respondent undertook, including the manner of its communication with the Claimant from the period of February 2019 to be unreasonable. It was a back to front process which and contributed to the relationship break down and entrenched positions. A reasonable approach from the Respondent would have been to firstly consider the workplace stressor meeting, as suggested by Dr Easmon, then conclude the grievance appeal before considering the workplace relationships.

208. For the Respondent to proceed as it did, with the character of the Claimant it was inevitable that there would be continued tension and disagreement. The Claimant was not prepared to let matters lie. The Claimant did not attend the meeting on 18 July 2019 and it is surprising that he did resign and claim constructive dismissal. However, this was a dismissal by the Respondent. T

209. Whilst the Respondent has established a potentially fair reason for dismissal, the relationship breakdown we conclude that the underlying basis of the workplace relationship breakdown was affected by the procedural unfairness thereby contributed

to the breakdown rendering the dismissal of the Claimant to be unfair.

210. We considered what would have happened had the Respondent follow a fair procedure, i.e. held a timely workplace stressor meeting first, before the grievance appeal and then addressed the workplace relationship issues. We conclude that there was a high likelihood that dismissal would have taken place in any event. The Claimant does not let matters lie. Amongst other things, he still very concerned about the Dr Uddin patient note, when there is no real issue there, he is still very upset with JA about the toilet incident, he is still unhappy with the internal vaccine protocol that was raised and addressed in September 2018 and he is still unhappy about being paid SSP despite it being explained why this was appropriate. We conclude that the Claimant would not have been prepared to move on from his underlying grievances and concerns where the Respondent did not agree with his view. We therefore consider that there would have been a 75% chance that the Claimant would have been fairly dismissed in any event.

211. The Claimant did not appeal against his dismissal and we will consider whether it is appropriate to make any adjustment to compensation when dealing with remedy.

212. The Respondent will also seek to make submissions on any just and equitable reduction to compensation on the basis of conduct that has come to light since the Claimant's dismissal.

213. A remedy hearing will be listed in due course.

Acting Regional Employment Judge Burgher

23 August 2023

Annex A Final list of issues

Protected Disclosure - Section 438 and Section 47B of the Employment Rights Acts 1996

1. The Claimant alleges he made the following protected disclosures:

   1.1 The Claimant said that the protocol for the flu jab was not implemented properly or monitored properly. He showed her on his computer screen the practical issues that he was experiencing with that protocol by reference to individual patient records. The Claimant cannot remember the identities of the patients or the specific issues raised.

   1.2 The Claimant said that these machines had not calibrated regularly during the period until May or June 2018. He told Ms Stanford that he had enormous difficulty in convincing Mr Sambaeh Bala (Facility Manager) to get the devices calibrated. He said he had told Mr Bala he was not going to be seeing any more patients who needed ABPM investigation until these machines were calibrated. The consequence of this issue, as identified in the Claimant's disclosure was that GPs were potentially misdiagnosing people with chronic health problems. Due to lack of training of staff, for a BPM machines with you were left in trays and not switched off on using a BPM is in this date led to an excessive number of readings, such that the validity of those readings was inaccurate and unreliable, exposing the patience to further this I've missed diagnosis and neglect. [Underlined words added by way of amendment on the third day of the hearing].

   1.3 The Claimant said that ear irrigation patients were booked without a prior authorisation by a clinician. He showed Emma Stanford two patient notes relating to that issue, including GP confirmation that the GP had not booked the patients for ear irrigation and was not willing for the patient to have that procedure.

   1.4 The Claimant said that the care of chronically ill patients including those with diabetes, hypertension and coronary heart disease was being neglected. He showed Emma Stanford a few examples on the Practice's computer record system.

   1.5 The Claimant states that on 31 October 2018 he received a message from Dr Desal which showed her frustration regarding an investigation about diagnosing patients with high blood pressure. The Claimant states that Dr Desal email said words to the effect of "have you looked at the report its terrible". The Claimant states that in this patient's case, reception had not switched the machine off after removing it from the patient and so the machine recorded 194 readings instead of 48. The Claimant states he responded to Dr Desai via email explaining the problems, his part in the procedure and that reception does the second part of removing the machine and switching it off. The Claimant states he sent a similar message to Dr Uddin because his patient was having the same issue.

The Claimant states this was a qualifying disclosure under ERA 96 s.43B(1) (b) and (d). It contained Information tending to show that the Respondent were failing or likely to fail to comply with a legal obligation to which they were subject. Further, the disclosures contained information tending to show that the health or safety of patients

registered with the Respondent has been, is being or is likely to be endangered. The Claimant states that the disclosures were made in the public interest of 13,500 patients registered at the practice.

The Respondent denies that the 5" disclosure, along with the other four disclosures, are protected disclosures in accordance with the Employment Rights Act 1996.

2. The Claimant raised his concerns at 1.1 above verbally on 24 September 2018 with Dr Uddin and raised his concerns at 1.1-1.4 above verbally on 24 October 2018 to Emma Stanford and via a written grievance which was handed to Emma Stanford on 5th November 2018.

3. Are the alleged disclosures relied upon in 1.1-1.4 disclosures of information?

4. Are the alleged disclosures relied upon in 1.1-1.4 disclosures that in the reasonable belief of the Claimant, tended to show one of more of the following:

    4.1 That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject - Section 43B(1)(b) ERA 1996: namely to have a protocol for every procedure, to implement that protocol, and to monitor whether the protocol is effective or whether It could be improved in the best interest of the patients.

    4.2 That the health and safety of any individual has been, is being or is likely to be damaged - Section 43B(1)(d) ERA 1996;

    4.3 That information tending to show the lack of calibration of the ABPM machines has been, or is likely to be deliberately concealed - Section 43B(1)(f) ERA 1996.

5. Are the alleged protected disclosures relied upon in 1.1-1 .5, disclosures that in the reasonable belief of the Claimant were made in the public interest?

6. Did the Claimant suffer detriments within the meaning of Section 47B of the Employment Rights Act 1996 in the following respects:

    6.1 On 31 October 2018, Dr Uddin passed a patient note he had received from the Claimant to Mr Jamil Ahmed on 31/10/18. The Claimant states this was a detriment to him because it was not necessary for Dr Uddin to do this and led to the subsequent treatment he received from Mr Ahmed.

    6.2 On 6 November 2018, at the informal mediation meeting held to investigate the Claimant's grievance, Mr Ahmed spoke to the Claimant in a hostile way saying "You are the rudest person I have ever worked with. I hate you. It is not only me. People in the reception either hate you or they do not want to talk to you". At the same meeting, Ms Stanford did not act in an impartial manner as she should, but chose to ask questions on Mr Ahmed's behalf. As a result, the Claimant had to request that the meeting be terminated and lost the opportunity to achieve an informal resolution to his grievance.

    6.3 On 17 December 2018, at the formal grievance meeting, Dr Uddin acted in a manner towards the Claimant which was judgmental and was defensive when discussing whether passing the patient note to Mr

Ahmed was a breach of confidentiality, thereby creating a hostile environment during the meeting. Twice he asked the Claimant to leave the room during the meeting without providing a good reason for requesting this. At the end of the meeting, he and Emma Stanford asked the Claimant to sign the inaccurate notes taken during the meeting. Dr Uddin & Emma Stanford then sent him home before the end of his shift telling him that if he did not feel well he needed to see his doctor.

6.4 Being place on medical suspension from 17 December 2018 onwards by Emma Stanford and Dr Uddin.

6.5 The failure of the Respondent to bring the Claimant back into his role following the occupational health report prepared following the occupational health assessment on 16 January 2019.

6.6 Suggesting in an offer made on 25 January 2019 by Dr Uddin and Emma Stanford that the Claimant should leave his employment with a termination payment and a reference. The Respondent contends that the communication made on 25 January 2019 was a without prejudice communication and therefore cannot be relied upon by way of detriment in these proceedings.

6.7 At the grievance outcome meeting on 14 February 2019 there was no discussion about the outcome of the grievance as the Claimant had been expecting. Nor was there any discussion about convening a case conference as had been recommended by Occupational Health. Instead the Claimant was told to open the envelopes he was given with the outcome of the grievance process in his own time and not during the meeting

6.8 The failure to uphold the Claimant's grievance in the grievance outcome letter he was handed on 14 February 2019. The grievance outcome was reached following an inadequate investigation of the issues raised in the grievance.

6.9 The failure to give the Claimant sufficient time to prepare for the working relationship hearing scheduled to take place on 18 February 2019, of which he was only notified on 14 February 2019.

6.10 The Respondent's delay in convening the case conference recommended by Occupational Health on 16 January 2019 until 8 July 2019.

6.11 The failure to accurately note the following meetings:

6.11.1 6 November 2018, which was noted by Rahana Ahmed;

6.11.2 17 December 2018, which was noted by Emma Stanford;

6.11.3 The OH case conference meeting on 8th July 2019, which was noted by Emma Stanford.

6.12 Dr Ali refusing to meet when asked by the Claimant for a brief chat on 5 March 2019, during the Claimant's visit to the surgery to deliver his grievance appeal.

6.13 The conduct of Dr Ali during the meeting on 6 March 2019, which amounted to intimidating him, insulting him and bullying him to provide short answers. Dr Ali accused the Claimant of stealing documents, namely reports on the calibration of the ABPM devices, and told those present at the meeting not to leave papers unattended during breaks. This was implying that the Claimant might steal them.

6.14 Despite the Claimant saying to Emma Stanford and Dr Uddin on 11 March 2019 that he was not feeling well enough to discuss his employment, these individuals insisted that the Claimant speak to Ms Heather Bailey (Employment Consultant). Ms Bailey spoke at length to the Claimant about the contents of his grievances and working relationships. Given that the discussion lasted at least 60 minutes, Ms Stanford and Dr Uddin ought to have stepped in to stop the conversation given what the Claimant had told them about how he was feeling.

6.15 The failure by Dr Ali to uphold the entirety of his grievance appeal in the grievance appeal outcome letter on 21 March 2019.

6.16 Being invited by Dr Uddin to a working relationship meeting to be held on 1 April 2019 (with the potential that the Claimant could be dismissed at this meeting) instead of being invited to a case conference to deal with his work-stressors as had been identified by Dr Easmon in occupational health on 16 January 2019.

6.17 By being put on SSP on 16 April 2019 by Emma Stanford, when he should have continued to receive full pay until the case conference had occurred.

6.18 The case conference meeting on 8 July 2019 was conducted in a prejudicial manner by Dr Easmon. Ms Stanford and Dr Uddin who also attended the meeting did not attempt to find out the Claimant's work related stresses during the meeting. Instead they tried to put words into Dr Easmon's mouth about the implications of the extent of the breakdown in working relationships. Dr Uddin told the case conference that no-one likes working with the Claimant.

6.19 Dr Uddin conducting the meeting on 18 July 2019 in the Claimant's absence.

7. Did the Claimant suffer any of the detriments outlined in 6.1-6.19 above on the ground that he had made the protected disclosures identified in 1.1-1.5?

Automatic Unfair Dismissal s103A Employment Rights Act 1996

7.1 Was the reason for dismissal or, if more than one, the principal reason for the dismissal is that the Claimant made the protected disclosures identified in 1.1-1.5?

Disability Discrimination - Section 13 and 15 of the Equality Act 2010

8. The disabilities that the Claimant relies upon are: (1) Cardiac Infarction (2) Mental Health - Anxiety. The Respondent currently denies that the Claimant had a disability in accordance with the Act.

9. Did the Claimant have a physical and/or mental impairment which lasted or likely to last for 12-months and, did the impairment have a substantial and long-term adverse effect on the Claimant's ability to carry out normal day-to-day activities?

10. The act of direct disability discrimination (section 13) the Claimant relies on is as follows:

    10.1 Dr Uddin's decision to send the Claimant home from work on 17 December 2018.

11. Did the Respondent treat the Claimant less favourably because of his disability then it would treat others? The Claimant relies on a hypothetical comparator.

12. The acts of discrimination arising from disability (section 15) the Claimant relies on are as follows:

    12.1 Dr Uddin's decision to impose a medical suspension on the Claimant on 17 December 2018.

    12.2 The Respondent failing to allow the Claimant to return to work following the occupational health consultation on 16 January 2019.

    12.3 The delay by the Respondent to implement the consultant's recommendations made on 16 January 2019.

    12.4 The Respondent moving the Claimant on 5 April 2019 from being on medical suspension to being on sick leave and then only paying SSP from 16 April 2019.

13. Did the Respondent treat the Claimant unfavourably because of something arising in consequence of the Claimant's disability?

14. If so, can the Respondent show that the treatment was a proportionate means of achieving a legitimate aim?

15. Did the Respondent know, or could not reasonably be expected to know, that the Claimant had a disability? The Claimant says that the Respondent had known about his cardiac issue since September 2017 and his mental health issues since December 2019 when it was decided to make a referral to occupational health and following receipt of the occupational health report on 30 January 2019.

Unfair Dismissal - Section 98 of the Employment Rights Act

16. What was the reason for dismissal?

17. The Respondent states that the reason for dismissal was the Claimant's capability and/or some other substantial reason, potentially fair reasons.

18. Did the Respondent follow a fair and reasonable disciplinary procedure?

19. If not, had the Respondent have followed a fair and reasonable disciplinary procedure would the outcome have been the same?

20. If so, should any financial award be reduced accordingly?

21. Was the decision taken to dismiss the Claimant with notice fair and reasonable in the circumstances?

22. Did the Claimant contribute to his dismissal by his actions?

23. If so, should any financial award be reduced accordingly?

Time Limits

24. Are the complaints of detriment for making protected disclosures in time? This will require the Tribunal to consider whether the detriments or any of them constitute an act extending over a period, and whether they form part of a series of similar acts. If the complaints are out of time, was it not reasonably practicable to issue proceedings in time and if so were they issued within a reasonable time thereafter?

25. Are any of the complaints of disability discrimination out of time? If so, is it just and equitable to extend time?