

APPENDIX ONE TO THE TRIBUNAL'S JUDGMENT – THE FINAL LIST OF ISSUES

APPENDIX ONE TO THE TRIBUNAL'S ORDERS OF 23 OCTOBER 2023

IN THE LONDON SOUTH EMPLOYMENT TRIBUNAL

Case No. 2301822/2020 & 2305071/2020

A

Claimant

AND

THE FORWARD TRUST

Respondent

**LIST OF REMAINING ISSUES FOR ALL CLAIMS AS AMENDED BY EJ WRIGHT 140922
AND AS FURTHER AMENDED ON 9TH OCTOBER 2023 BEFORE EJ EVANS AND AGAIN ON 20 and 23 OCTOBER 2023.**

[Items with a strike-through were withdrawn by email on Sunday 15.10.23 at 06.05 and highlights to show amendment of allegations]

The Tribunal has considered this list of issues. As discussed at the previous hearing, the claimant was not permitted to add further allegations. All he was permitted to do, was to give information in respect of allegations 19.1 xv and xvi (it is noted that resulted in a further 6 bullet point and 16 documents referred to in respect of allegation 19.1 and 24 bullet points in respect of allegation 19.2 xvi). The claimant was also informed the Tribunal would consider striking out any allegation which was vague or undated.

The claimant appears to have annotated the respondent's draft list of issues, however that document is not in a format which can sensibly be responded to.

Having reviewed the draft list of issues, the Tribunal is concerned a detriment has not been established in relation to some of the allegations. For example, it is not clear how the respondent appointing the Burdett Consultancy (16.2.9.ii) can be a detriment.

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Besides jurisdiction/out of time issues, there appears to be an issue with causation. For example, the first alleged protected disclosure relates to right to work documents and the claimant's actions on 23/10/2019 (1.3.1), yet the one claimed detriment which follows that is a failure to uphold the claimant's right to work complaint (11.3), the link between the two is not clear.

If the claimant could have brought a claim in the 1st but did not do so and raised them in the 2nd ET1, he may be barred for advancing those claims (called estoppel). The respondent may plead the defence of *res judicata* ('a matter judged'). Or in this case, the defence would be a matter which could and should have been raised in the 1st ET1.

To establish what claims were presented and when, the Tribunal has set out a short timeline, taken from Employment Judge Mason's order of 30/4/2021:

7/3/2016	start date
23/10/2019	first claimed protected disclosure regarding right to work checks
16/12/2019	claimant's email regarding a suspended and dismissed colleague
18-23/12/2019	claimant absent due to ill health
6/1/2020	claimant contacts health and safety
14/1/2020	claimant suspended
28/1/2020	claimant says further allegations added
4/2/2020	investigation meeting
6/2/2020	claimant raises a grievance
9/3/2020	claimant says further allegations added

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11/3/2020	claimant contacted Acas (period of conciliation from 11/3/2020 to 7/4/2020) with the result that any act/omission before the 12/12/2019 is out of time (subject to it being a continuing act)
28/4/2020	grievance meeting
29/4/2020	disciplinary meeting
5/5/2020	1 st ET1 presented
11/6/2020	claimant summarily dismissed
29/6/2020	claimant contacted Acas (period of conciliation from 29/6/2020 to 29/7/2020) with the result that any act/omission before 12/5/2020 is out of time
July 2020	Appeal hearings
10/9/2020	2 nd ET2 presented.

For all text coloured purple, the allegation will need to have been pleaded in the 1st ET1 presented on 5/5/2020.

For all text coloured dark red, the allegation will need to have been pleaded in the 2nd ET1 presented on 10/9/2020.

The authority of [Chandhok v Tirkey 2015 ICR 527](#) made it clear that the ET1 is not initial document can then be expanded upon. It needs to set out the essential case to which the respondent is to respond. The EAT said:

[A] system of justice involves more than allowing parties at any time to raise the case which best seems to suit the moment from their perspective. It requires each party to know in essence what the other is saying, so they can properly meet it; so that they can tell if a tribunal may have lost jurisdiction on time grounds; so that the costs incurred can be kept to those which are proportionate; so that the time needed for a case, and the expenditure which goes hand in hand with it, can be provided for both by the parties and by the tribunal itself, and enable

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care to be taken that any one case does not deprive others of their fair share of the resources of the system. It should provide for focus on the central issues. That is why there is a system of claim and response, and why an employment tribunal should take very great care not to be diverted into thinking that the essential case is to be found elsewhere than in the pleadings.'

This was echoed in [Adebowale v ISBAN UK Ltd EAT 0068/15](#) when the EAT said the claim must set out with sufficient clarity so as not to befuddle the best efforts of an Employment Judge when considering it:

'In my judgment the construction of an ET1 is influenced by two factors: the readers for whom the ET1 is produced, and whether the drafter is legally qualified or not. The ET1, whether it is drafted by a legal representative, or by a lay person, must be readily understood, at its first reading, by the other party to the proceedings (who may or may not be legally represented), and by the [employment judge (EJ)]. The EJ is, of course, an expert, but (as this litigation shows) should not be burdened by, or expected by the parties to engage in, a disproportionately complex exercise of interpretation. The EJ has the difficult job of managing a case like this, and the EJ's task will not be made any easier if this Tribunal imposes unrealistic standards of interpretation on him or on her.'

In respect of some allegations, judicial proceedings immunity can extend to correspondence during the course of legal proceedings.

Allegations which have been struck through (~~struck through~~) have been struck out for the reason stated.

Automatically Unfair Dismissal:

1. Was the reason or principal reason for the Claimant's dismissal for making a protected disclosure (s.103A ERA)?
 - 1.1 Did the Claimant make one or more protected disclosures as set out (at 1.3) below?
 - 1.2 The Claimant relies on the following subsections of s.43B(1) – detailed in 1.3) below;
 - 1.3 The alleged disclosures the Claimant relies upon are as follows:

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Disclosure no.	Date(s), means, and recipient of disclosure	Summary content	s.43B(1) subsection
13	7.1.20, email to JB	Alleging deficit in staffing leading to unnecessary overtime, overwork, ill-health and IT risk	(b)

1.4 If the Claimant made the alleged disclosures:

- (i) did C disclose information that he reasonably believed tended to show that the requirements of (b), (d) and/or (f) as detailed above were made out?
- (ii) did C reasonably believe that the disclosure was in the public interest?
- (iii) Did C make the disclosure to his employer or some other responsible person per s.43C?

1.5 If the Claimant made protected disclosures and the reason or principal reason¹ for his dismissal was because he made protected disclosure(s), the dismissal was automatically unfair.

2. Was the reason or principal reason² for the Claimant’s dismissal for asserting a statutory right (s104 ERA) or connected to his entitlement to rights under the WTR (s101A ERA)?

2.1 Did the Claimant assert his statutory rights and/or raise issues on 6 January 2020 regarding his rights under the WTR?

2.2 If the Claimant asserted his statutory rights and/or raised issues on 6 January 2020 regarding his rights under the WTR and the reason or principal reason for his dismissal was because of this, the dismissal was automatically unfair.

3. If the Claimant was automatically unfairly dismissed how much compensation is it just and equitable to award the Claimant having regard to:

- 3.1 mitigation or any failure on the part of the Claimant to take reasonable steps to mitigate his loss;
- 3.2 any blameworthy or culpable conduct on the part of the Claimant (s122(2) and 123(6) ERA);
- 3.3 PID: any reduction (up to 25%) on the basis the disclosure was not made in good faith?

¹ If the reason is the claimant making protected disclosures, then the reason cannot also be asserting a statutory right – it must be one or the other.

² See 1 above and where allegations 2.1 and 2.2 are said to be protected disclosures (1.3.2 and 1.3.3).

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“Ordinary” Unfair Dismissal:

4. If the Claimant was not automatically unfairly dismissed, what was the principal reason for dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) ERA?
 - 4.1 The Respondent asserts that it was a reason relating to the Claimant's conduct which is a potentially fair reason.
 - 4.2 If the principal reason for dismissal was a fair one, was the dismissal fair or unfair in accordance with section 98(4) ERA, and, in particular, did the Respondent in all respects act within the so-called “band of reasonable responses”?

5. If the Claimant was unfairly dismissed and the remedy is compensation, should any compensation awarded be adjusted to reflect:
 - 5.1 mitigation or any failure on the part of the Claimant to take reasonable steps to mitigate his loss;
 - 5.2 the possibility that the Claimant would still have been dismissed at the EDT or have been dismissed in time anyway (Polkey v AE Dayton Services Ltd [1987] UKHL 8);
 - 5.3 any blameworthy or culpable conduct on the part of the Claimant (s122(2) and 123(6) ERA) ?

Wrongful dismissal (Breach of Contract)

6. How much notice was the Claimant entitled to? The Claimant says he was entitled to three months³.
7. Did the Claimant fundamentally breach the contract of employment by an act of so-called gross misconduct?
8. If so, did the Respondent affirm the contract of employment prior to dismissal?
9. If the Claimant was wrongfully dismissed, how much is he entitled to by way of damages caused by the breach of contract? Should any damages be adjusted to reflect mitigation?

³ Does the respondent agree this is the notice period?

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PID detriment:

- 10. Did C make one or more of the protected disclosures detailed in 1.3 above?
- 11. Did R subject C to the following detriments relied upon by the Claimant:

11.1a suspending the claimant on 14/1/2020;

11.1b failing to address the disclosures during grievance and appeal hearings.

Detriment no.	Date	Perpetrator (if known)	Act/omission – detriment
5	11.6.20	AsiP	Removed or re-stated C's references (in AsiP's outcome letters) to allegations of discrimination, harassment and bullying
6	24.8.20	Mike Trace	Failure to address the suggestion that C's protected disclosures were being covered up by staff in his outcome letters
7	11.6.20	AsiP	Failed to address C's protected disclosures
8	24.8.20	Mike Trace	Failed to address and removed reference to C's protected disclosures in outcome letters

- 12. If the Respondent subjected the Claimant to any of the above detriments, was this done on the ground that he had made one or more protected disclosures?
- 13. If so, how much compensation is it just and equitable to award the Claimant having regard to:
 - 13.1 the infringement to which the complaint relates;
 - 13.2 any loss which is attributable to the act or failure to act, which infringed the Claimant's right (s49(2) ERA 1996);
 - 13.3 any just and equitable reduction on the basis the act or failure to act was caused or contributed to by action of the Claimant (ss 49(4) and (5) ERA);
 - 13.4 any reduction (up to 25%) on the basis the disclosure was not made in good faith?

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Disability Discrimination:

14. It is conceded C was a disabled person by virtue of HIV, Narcolepsy and/or depression. The state of and timing of R’s knowledge remains an issue.

Direct Discrimination (s.13 EqA):

15.1 C says that R subjected him to the following treatment:

Number	Date	Perpetrator	Act/omission – treatment
1	14.1.20 and 9.3.20	JB/GB	i. Decision to suspend ii. Insufficient investigation iii. Decision to dismiss
2	11.6.20	AsiP	(ii) Insufficient investigation (iii) Decision to dismiss
3	June 2019 – Jan 2020 (revised to July 2019 to Jan 2020)	JB	i. Refusing C the opportunity to recruit more staff; ii. increasing workload pressure (amount and deadlines) iii. blaming C for IT problems
6	14.1.20 31.3.20 01.4.20 20.4.20	JB/GB	Restricted access to mailbox and/or personnel record

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7	10.2.20 19.2.20 09.3.20	GB	Removed all information on C's health from investigation meeting notes
8	9.3.20	BB	No mention of health/disability in investigation notes, no investigation of these as mitigatory factors
9	24.8.20	Mike Trace	Removed reference to JB's 'discriminatory acts' at appeal hearings
10	23.3.20	C.Thatch, GB, LC	I. failure to provide OH report when requested II. amended HR records so no longer matching payslips to cover up III. deleted entries from outlook calendar and emails which mentioned health and/or overtime
11	18.12.19 10.3.20 to 11.6.20	JB FBall GB AsiP	Failed to record C as sick on HR system
12	30.3.20	GB	Provided his HIV and disability information to staff without prior consent and informing C that he had ??? [presumably this should read HIV?]
13	29.4.20 - 06.05.20	Fay Ball	Refused to hold a grievance hearing at start of May 2020, instead delaying it; and spoke to C in an angry and sarcastic manner.
14	27.7.20 31.7.20 24.8.20	Mike Trace	Insufficient investigation and outcome which blamed C
15	27.7.20 - 24.8.20	Mike Trace	Trivialising disability: by analogising with a dentist visit <u>(this is a reference to what MT said at the disciplinary appeal meeting on 31 July 2020 as set out at page 2620)</u>

15.1.16 to 15.1.20 post date the 2nd ET1 and 15.1.21 is governed by judicial proceeding immunity.

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15.2 Was that treatment “*less favourable treatment*”, i.e. did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others (“comparators”) in not materially different circumstances? The Claimant relies on the following comparators:

- (i) Ms. Elspeth Holmes, Finance Director; Which comparators relate to which allegation?
- (ii) Ms. Caroline Thatcher; and “
- (iii) A hypothetical comparator, being a person without the Claimant’s disabilities in not materially difference circumstances.

15.3 If so, was this because of the Claimant’s disability and/or because of the Claimant’s disability more generally?

Discrimination arising from disability (s.15 Eq A):

- 16.1 Did the following things arise in consequence of C’s disability?
- i. Having a ‘breakdown’ in Head Office on 17.7.2019;
 - iii. Inability to telephone line manager when off sick in December 2019;
 - vii. Emotional and panicked state prior to grievance hearing of 28.4.2020
 - xi. Needed companions to speak for C at start of Grievance hearing;

16.2 C says R treated him unfavourably as follows:

Number	Date	Perpetrator	Act/omission – treatment
1b	June 2019 onward (now revised to July 2019 onward)	JB	JB refused backfilling of missing staff

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2a	17.12.2019 – 24.8.20	JB, GB, HG, BB, Fay Ball, AsiP and M. Trace	i. Failed to consider C’s grievances and health; and ii. proceeded with disciplinary process, sanction and dismissal without sufficient investigation
3	19.12.19; 20.12.19	JB	i. Threatening and accusatory email; ii. failure to hold a return to work meeting iii. rejected C’s stated reason for absence
6	January to August 2020	JB, GB, FB, AsiP, MT and external investigator (BB)	Subjected C to disciplinary proceedings This would need to be pleaded in both ET1s
8	December 2019	JB	Delayed suspension 4 weeks until 1 days before C’s annual leave
9	February 2020	(i) BB	(ii) removed mentions of health from investigation
10	January to August 2020	GB, BB, AsiP, Fay Ball and Mike Trace	Continued disciplinary proceedings without adjustments and measures needed to safeguard health This would need to be pleaded in both ET1s
25	23.12.19 – 14.1.20	JB	Refused a RTW interview
26	c. 20 th March 2020	GB	Lost or destroyed OH report and denied having any record of it

Did R treat C unfavourably in any of these ways?

[16.2.14-16.2.22 all post date the 2nd ET1.](#)

16.3 If so, did the Respondent treat the Claimant unfavourably because of the thing(s) arising in consequence of his disability?

16.4 If so, has R shown that the unfavourable treatment was a proportionate means of achieving any of the following legitimate aims **[NOTE:**

PER THE DECISION OF EJ RAMSDEN – THE CLARIFICATION OF LEGITIMATE AIMS IS TO BE FOUND AT DB 674-6]:

- i. To uphold the Sickness Absence Policy;

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- ii. To uphold a standard notification procedure for absence;
- iii. To ensure that line managers are made aware, directly and promptly, of any non-attendance at work so that work can be covered;
- iv. To ensure the effective and smooth running of the business and/or area of work affected by absence;
- v. To ensure that work is delivered, and health and safety standards are maintained;
- vi. To ensure that swift and appropriate health and welfare support is offered to employees who become unwell and are unable to work;
- vii. To ensure that employees who are unable to work due to sickness are not unnecessarily disturbed whilst they are unwell and to ensure that their recovery is aided by not working or being expected to work;
- viii. To ensure that reasonable management instructions are followed;
- ix. To ensure confidential and sensitive information is disclosed on a need-to-know basis;
- x. To ensure the trust and confidence within the employment contract is maintained, in particular, including the express term of confidentiality;
- xi. To uphold and promote the Code of Conduct policy;
- xii. To uphold and promote the Confidentiality and Information Sharing policy;
- xiii. To ensure compliance with Data Protection Act duties;
- xiv. To reduce to the lowest level possible the risk of legal challenge arising from an unauthorised disclosure of information;
- xv. To uphold and promote the Information Security and Communications Technology policy;
- xvi. To ensure adequate protection of all IT assets and data;
- xvii. To reduce to the lowest level possible the risk of unauthorised access or attempts to access a computer system;
- xviii. To reduce to the lowest level possible the risk of deliberate unauthorised disclosure, alteration, deletion or use of data;
- xix. To reduce the risk of legal challenge;
- xx. To encourage the maintenance of high standards of behaviour;
- xxi. To encourage cohesion within the workforce;
- xxii. To disincentivise inappropriate communication and encourage appropriate communication;
- xxiii. To encourage knowledge of and compliance with the Company's policies dealing with behaviour at work;
- xxiv. To ensure the accountability of managers.

16.5 Alternatively, has the Respondent shown that it did not know, and could not reasonably have been expected to know, that the Claimant had the disability?

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Reasonable Adjustments (s.20, 21 EqA):

18.1 Did the Respondent not know, and could it not reasonably have been expected to know, that the Claimant was a disabled person?

18.2 Did the Respondent have the following PCP(s):

- i. Sickness absence policy;
- ii. Non-recording of hearings;
- iii. Permitting emailed notification of sickness absence;

18.3 Did any such PCP put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled at any relevant time, in that:

- i. (ref PCP I above) Impossibility in complying with notification requirements due to sleepiness or effects of medication [18.2.i](#) and [18.2.iii](#)
- ii. (ref PCP ii above): Greater difficulty in note-taking, greater difficulty in concentrating, reduced memory [18.2.ii](#)

18.4 If so, did the Respondent know, or could it reasonably have been expected to know, the Claimant was likely to be placed at any such disadvantage?

18.5 If so, were there steps that were not taken that could have been taken by the Respondent to avoid any such disadvantage? The burden of proof does not lie on the Claimant; however it is helpful to know what steps the Claimant alleges should have been taken and they are identified as follows:

- i. Hold a full return to work meeting following December 2019 absence;
- ii. Not disciplining C for disability related absence/lateness;
- iii. Ensuring C was not disciplined for disability related conduct;
- iv. Refer to OH after 17.7.19, 28.1.20, 11.3.20, 27.4.20;
- v. Allow requests to be referred to OH;
- xv. Allowing recording of meetings;
- xvi. Allowing more breaks in meetings to agree notes as meeting progressed;

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18.5.vi to 18.5.xiv and 18.5.xvii to 18.5.xxv are not relevant to the PCP claimed.

18.6 If so, would it have been reasonable for the Respondent to have to take those steps at any relevant time?

Harassment related to disability (s.26 Eq A):

19.1 Did R engage in conduct as follows:

- i. JB, by emails of ~~17th, 18th and 24th July 2018~~ and 19th December 2019: accusing C of unauthorised absence and threatening disciplinary action ~~18.6.18~~, 29.8.19, 19.12.19, 20.12.19;
- ii. 10th June 2019: FD (Elspeth Holmes) 'screamed' at C;
- viii. JB and C.Thatch: selecting Sanika as C's liaison (11th September 2019), despite broken relationship;
- ix. On 19th December 2019: JB timed the sending of emails to coincide with C's absence;
- xi. 14th January 2020: JB refused to discuss matters at the suspension meeting;
- xiii. 26.2.20: Asking C if he still required annual leave; and asked C to accept investigation outcome report whilst C was on annual leave;
- xv. February and March 2020: GB, JB and BB: fraudulently created multiple documents:
 - 05-02-2020 GB supplied "Lorna Cox - Communication.docx"
 - 09-03-2020 GB supplied electronic investigation inc. appendix and later C received a printed version of these by post 12-03-2020:
 - A8 Signed Statement from Anjum Arshad (AJ).pdf
 - A52 AJ Facebook Messenger Screenshots 3.1.2020.pdf
 - A19 CT & PR email exchange from 13 December.mht
 - A53 Email HG formal complaint re CT.pdf
 - A30.2 Copy of [CT] SignIns_2019-12-16_2019-12-23
 - A32 RE Whereabouts 28 August 2019.mht
 - A13 Additional information MM 13 Feb 2020.pdf
 - A47 Reported IG breach but document remains in CTs email.pdf
 - A49 Email to External Parties containing attachments.pdf
 - A50 Emails from CT demonstrating unprofessional communications.pdf
 - A54 Scan of Text messages between CT and Anjum Arshad (AJ)

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- 30-04-2020 GB supplied electronic version of A53, "Complaint.msg"
- 30-04-2020 GB supplied spreadsheet titled, "Cascade Overtime Submissions & Approvals.xlsx"
- 23.04.2020 GB supplied a different A53, "FW Complaint.msg"
- 13-05-2020 F.Ball supplied answers to witness questions:
 - General Questions for the Data Team - JG answers.docx
 - Questions for all IT TEAM - Temi answers.docx
 - Questions for Hayley - Answers.docx
 - Questions for Janet - Answers.docx
 - Responses - Caroline Scott.pdf

- xvii. 30.3.20: GB lied to C saying that he had contacted the OH provider who had no record of/report in relation to C;
- xviii. 30.3.20: GB informed C that GB had disclosed C's HIV and disabilities to AsiP without consent;
- xix. GB deliberately timed the email of 27.4.20 to arrive at 21.53 to maximise adverse impact on C;
- xx. 28.4.20: F.Ball sending too many emails immediately prior to first grievance hearing;
- xxii. 6.5.20: inappropriate behaviour by F.Ball at grievance hearing, namely refusal to discuss adjustments further, and confirming that advice had been taken from a solicitor;
- xxiii. Ignored C's complaint emails of 6.5.20 (the perpetrators are said to be FB and AP and the emails are at pages 5059 and 5060);
- xxiv. 15.5.20: allowing C only 24 hours to feedback on notes from hearing (the perpetrator is said to be FB, the email was added to the bundle by consent at pages 5327-5329);
- xxviii. 9.6.20: AsiP's response to C's email of 6.6.20, denying inappropriate behaviour and OH;
- xxix. F. Ball continuing to communicate with C by email after 9th June 2020 despite being told that such communication would be considered by C to be harassment;
- xxx. Failure to seek medical input 11.3.20 – 11.6.20;
- xxxi. AsiP: deciding to dismiss without opening/reading C's email of 27.5.20 until 24.7.20 at 20.15;
- xxxii. M.Trace demeaning C's disabilities by describing them as being similar to having an anaesthetic at the dentists (this is a reference to what MT said at the disciplinary appeal meeting on 31 July 2020 as set out at page 2620);
- xxxiii. Failed to address disability status, in the disciplinary and grievance appeal outcomes;
- xxxiv. 24.8.20: M.Trace saying that IT had been "much better" under the management of the Interim Head of IT;
- xxxv. 24.8.20: M.Trace confirming he had instructed JB to delay suspension pending finding a replacement member of staff;

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- xxxvi. 24.8.20: M.Trace blaming C’s professional judgment as reason that adjustments would not help;
- xxxvii. 24.8.20: M.Trace was dismissive of C’s disabilities;
- lix. ~~Reduced recognition award June 2018;~~
- lx. ~~Mr Biggin’s attendance at C’s home address on 19th July 2018;~~
- lxi. ~~Emails suggesting absence was unauthorised June 2018;~~
- lxii. Refusal to ‘backfill’ staff and commencement of investigation ~~June-July 2019~~ (the perpetrator is said to be JB)

19.1.xxxix to 19.2.lviii post date the 2nd ET1 and 19.1.lxiii to 19.2.lxvii are too vague allegations.

- 19.2 If so was that conduct unwanted?
- 19.3 If so, did it relate to the protected characteristic of disability?
- 19.4 Did the conduct have the purpose or (taking into account the Claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

Victimisation (s.27 EqA):

20.1 Did the Claimant do a protected act as follows:

1	<u>23.10.19</u>	<p>On 21st October 2019, an employee (“TO”) presented 3 documents to the Respondent to establish her right to work in the UK and HR sought advice from solicitors.</p> <p>On 23rd October 2019, the Claimant says he raised with JB and HR his concerns about external solicitors reviewing these documents which he says caused unnecessary stress and amounted to discrimination on grounds of race. He was unhappy with the response and “escalated” this complaint in November 2019 and again on 31 December 2019, when he says he made a “formal complaint”.</p>
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4	Emails of 1.5.20, 4.5.20 and 6.5.20	Claiming protection and right to adjustments per Equality Act
5	By email of 27.4.20, verbally on 28.4.20 and 6.5.20 and restated on various occasions thereafter	Alleging unlawful discrimination

20.1.1 to 20.1.5 are permitted at this stage to the extent they were pleaded in the 1st ET1 where the dates of emails pre-date the 1st ET1.

20.2 Did R subject C to any detriments as follows:

- i. JB adding a second complaint from HG on 14.1.20;
- ii. JB constructing grounds for suspension 17.12.19;
- iv. JB adding an allegation, to be investigated, of failure to adhere to sickness absence procedure 28.1.20;
- v. GB manipulating investigation notes by removing mention of C's illness and entering disputed notes;
- vi. GB, F.Ball and AsiP failing to correctly record reason for C's absence of 10.3.20 – 11.6.20;
- vii. (9th and/or 30th March 2020): GB disclosed C's HIV and disability without consent/told C that GB had done this;
- xii. By GB, BB, AsiP, M.Trace: removed references to C's health/conditions in investigation and decision letters;
- xiii. **On 26.5.20, made contact with C via Mary Woodman (a former HR employee)(the perpetrator is said to be JB);**
- xlii. Delayed response to June 2019 grievance, and offered no right of appeal in letter dated 31.10.2019, sent to C 19.12.2019;
- xliii. Refused RTW interview 23.12.19, 7.1.20,14.1.20;
- xliv. Arranged meeting of 14.1.20 under false pretences/suspended without warning;
- lii. Failure to provide clarity on disciplinary allegations 14.1.20 onward (to dismissal);
- liii. Addition of an allegation to be investigated 28.1.20, 9.3.20;
- liv. Inappropriate appointment of Bernie Burdett as investigator and her removal of references to C's health in her report;
- lv. Accusation of gross misconduct at investigation meeting
- lvi. **Deliberately relied upon incorrect sickness absence dates (perpetrator is said to be GB prior to receipt of the investigation report and other afterwards). The reference to incorrect sickness absence dates is to the 17 to 20 December 2019);**
- lvii. Failed to provide a payslip for January and February 2020 on time;

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- lviii. Failure to mark absence from 10.3.20 as sickness and obscured true reason for C's 1st request (dated 10th March 2020) for rescheduling of meeting (perpetrator is said to be GB from 10 March 2020 to 28 April 2020 and after that FB and AP). The claimant says the true reason was "obscured" in respect of his 1st request to reschedule because it was due to medical appointments and not because he wanted the meeting date changed;
- lix. There was no risk assessment ref; regarding the claimant's health not when planning of adjustments for from meeting of 4.2.20 meeting and the respondent refused to seek medical input. (The perpetrator is said to be GB initially and then FB and AP);
- lx. Proceeded with two allegations of gross misconduct 9.3.20;
- lxi. Initially (on 3rd and 6th April 20) refused requests to reschedule meetings (disciplinary 6th and grievance 7th meetings) and failed to test video conferencing;
- lxii. Refused to record meetings despite health issues and imposing unreasonable deadlines for agreement of minutes;
- lxiii. Dismissed without sufficient investigation or cause;
- lxv. Lost/destroyed OH (2016) report, and denied (on 30th March 2020) having any record of it;
- lxvi. Delayed provision of documentation requested 6.2.20;
- lxvii. Disclosure of HIV status without consent and then criticised C about sensitivity to this issue (C contends they were so criticised in the grievance appeal outcome letter);
- lxviii. Covered up health issues/disabilities and protected acts by failing to mention them in the disciplinary and grievance outcome letters and in the disciplinary and grievance appeal outcome letters.

20.3 If so, was this because the Claimant did a protected act and/or because the Respondent believed the claimant had done, or might do, a protected act?

Breach of WTR 1998, reg 30(1)(a):

21. Breach of WTR, Reg 30(1)(a)

21.1 Did the Respondent deny the Claimant the following rights:

- (i) To a daily rest period of not less than 11 consecutive hours (Reg 10). The Claimant says during the 20 day period 9 – 28th September 2019 there were 12 occasions when he was not given 11 consecutive hours daily rest period;

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- (ii) To an uninterrupted weekly rest period of not less than 24 hours (Reg 11). The Claimant says he had only one period of 24 hours uninterrupted rest during the 20 day period 9 – 28th September 2019?

21.2 If so, how much compensation is it just and equitable to award the Claimant having regard to the Respondent's default and any loss sustained by the Claimant as a result?

22. Detriment for exercising WTR rights: s.45A ERA

22.1 Did the Claimant allege that the Respondent infringe his rights pursuant to WTR [in his email of 6 January 2020 to Abigail Gray \(page 1371\)](#)?

22.2 If so, did the Respondent subject the Claimant to any of the following detriments because of this allegation:

- i. By JB: suspension and disciplinary proceedings;
- ii. Ignored C's complaints [in his email of 6 January 2020 to Abigail Gray and in his grievance letter of 6 February 2020 \(page 1526\)](#) about breach of WTR [in respect of daily and weekly rest in the letters setting out the outcome of the grievance and the grievance appeal \(the perpetrators are said to be AP and MT\)](#);
- iii. Blamed C for breach of WTR [in the letters setting out the outcome of the grievance and the grievance appeal \(the perpetrators are said to be AP and MT\)](#);
- ~~iv. June 2018 – January 2020: by JB – threat to job security/pressure to work excessive hours;~~
- ~~v. By JB: increasing workload pressure on C by refusing to backfill staff and setting unrealistic project deadlines;~~
- vi. (by JB, AsiP and M.Trace) Grievance and grievance appeal outcomes: portraying C as if he had no line manager/holding C accountable for overtime and TOIL usage;
- vii. JB, GB: data destruction/deletion to cover up WTR breaches;
- viii. Prevented C from accessing HR records (payroll overtime) [by removing his access to cascade](#);
- ix. Failure to acknowledge statutory rights to breaks and days off;

The claimant elsewhere pleads these detriments are as a result of him making protected disclosures or are as a result of him pursuing his rights under the Equality Act 2010. There is therefore a causation issue.

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Unauthorised Deductions: s.13 ERA

23. Did the Respondent make unauthorized deductions from the Claimant's wages and if so, how much was deducted and is to be paid to the Claimant?
24. Was the Claimant paid less in wages than he was entitled to be paid and if so, how much? The Claimant says he is entitled to have been paid salary during the period 12 to 15 June 2020 as he did not receive the dismissal letter until 15 June.
[How much does the claimant say he is due?](#)