EMPLOYMENT TRIBUNALS

Claimant: Mr Phil Parry
Respondent: University of Surrey
Heard at: Reading
On: 19, 20, 21, 22, 23, 26, 27, 28, 29, February 1 and 4 March 2024
Before: Employment Judge Gumbiti-Zimuto
Members; Mrs F Potter and Mrs F Tankard

Representation
Claimant: In person
Respondent: Mr S Allen (solicitor) and Ms M Knott (paralegal)

JUDGMENT having been sent to the parties on 5 April 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This is an unhappy case. The claimant is a person whose disability had clearly infected his workplace relationships and ultimately resulted in him losing a job role he enjoyed and wanted to continue in. The result has been that not only has the claimant suffered the injurious effects on his health because of what happened to him during this unhappy period between September 2019 to December 2021, but his family has also suffered significantly from the loss of the claimant's income something that was continuing up to the date of the claimant's statement and may be continuing. Happily, the claimant now has new employment.

2. While even the hardest of hearts cannot but have sympathy and be moved by the plight of the claimant and his family because of what they have been through, whether the claimant receives recompense under the law is not a matter of sympathy, but a matter decided by the findings of fact that we make as applied to the relevant statutory provisions.

3. In this case they are the sections 94, 108 and 111 of the Employment Rights Act 1996 (unfair dismissal), sections 43A, 47B, 48 and 103A of the Employment Rights Act 1996 (detriments and dismissal because of making protected disclosures), sections 6, 15, 20 and 21, 26 and 27 of the Equality Act 2010 concerning disability discrimination, section 10 Employment Relations Act 1999 (right to be accompanied at a disciplinary/grievance, sections 92 and 93 Employment Rights Act 1996 (failing to provide a written statement of reasons) and section 8 Employment Rights Act 1996 (failure to provide a written pay statement).

4. At the start of the proceedings before us the claimant withdrew his complaint pursuant to section 8 Employment Rights Act 1996.

5. The Tribunal heard evidence from the claimant, the respondent relied on the evidence of Mr Andrew Miles, Mr Ed Nelson, Mr Sam Hillage, Ms Sarah Legget, Mr Adam Child, Mrs Chloe Fabien, Mrs Caroline Bradley, Mrs Tuo Li, Mrs Karen Field, Mr Gary Gould, Mr Patrick Degg and Mrs Lucy Evans. All the witnesses produced statements which were taken as their evidence in chief. We were provided with a surfeit of documents many of which were duplications; sadly this was the result of problems arising between the parties in respect of the process of preparing a trial bundle. The Tribunal was provided with a trial bundle, containing 1742 pages of documents, a supplementary bundle containing 76 pages of documents, and a 'claimant's version final hearing bundle' containing 1303 pages of documents. From these various sources we made the findings of fact which we considered necessary to reach a decision on the issues which have to be decided in this case.

6. The claimant has brought three claims 3301133/2021 (disability discrimination claims) on the 12 February 2021, 3323581/2021, on the 15 December 2021 (unfair dismissal and interim relief application) and 3303245/2022 on 9 March 2022 (PID detriment and other statutory claims) claims. There have been many preliminary hearings and applications in the lead up to this final hearing. At preliminary hearings before EJ Eeley on the 4 January 2022, then at a further preliminary hearing over 2 days preliminary on 20 and 21 June 2022, the entirety of the claimant's claims in these proceedings were set out, issues that we have to decide in this case.

7. In the way that the case has been presented by the parties, not all of those issues have been engaged upon by the claimant and the respondent. There is no evidence upon which we can conclude that complaints based on section 10 Employment Relations Act 1999 (right to be accompanied at a disciplinary / grievance, sections 92 and 93 Employment Rights Act 1996 (failing to provide a written statement of reasons) can succeed because we have been provided with no evidence about them. The evidence has not been produced and no argument has been made by the claimant that these matters have been the subject of breach by the respondent. In those circumstances we conclude that these complaints are not well founded and are dismissed.

8. In respect of the claims on which the parties have engaged we make the following findings of fact.

9. The claimant's wife is a disabled person within the meaning of the Equality Act 2010. The details of her condition are not in themselves relevant in this case and we say no more about them.

10. The claimant was diagnosed with Clinical Depression and Anxiety when he was 21, and explained that, with inconsistent degrees of success, he manages his mental health disorder by taking medication, that has changed from time to time, as prescribed by his GP.

11. The claimant began working at the University of Surrey in September 2013, as an Admissions Administrator. At the point of dismissal, the claimant was employed as a Programmes Officer in the Faculty of Arts and Social Science. The claimant enjoyed his work and was keen to build a career.

12. The claimant's wife's health started to deteriorate from November 2014 progressing into 2015. This led to the claimant from time to time having to take annual leave to accompany his wife to hospital appointments and to help at home with the children. At this time the claimant considers that he was given support by his team leader who commented that the claimant's mental wellness was suffering, leading in May 2015 to the claimant being referred to occupational health (p695). The OH report, which centred around the fact that the claimant was taking time off work to take care of his wife, made the recommendation that the claimant be allowed to continue the *"flexible "carer" working arrangement"* and *"on an ad hoc basis slightly later start time due to dropping children off to school".* Up to this point in time the claimant says that he had been supported by his team leader with understanding and reassurance that he was allowed to take annual leave or to finish early at short notice and importantly that he didn't need to explain himself to numerous members of staff if he suddenly had to leave or if he was late for work. The team leader managed it, making sure there was cover and that the rest of the team knew these events would occur. The claimant says, *"The OH referral was to provide additional help if required, and further reassurance to ease my anxiety*."

13. In February 2016 the claimant moved from admissions to work in the Faculty of Arts and Social Sciences (FASS) as a Programmes officer.

14. In early 2017 the claimant disclosed to Gary Gould (GG) manager for FASS Programmes that when he was in the Admissions department he had been referred to OH and a flexible approach to managing his work-life balance had been adopted and this flexible approach worked well for the claimant.

15. GG states he asked the claimant and the Admissions department for the email or letter setting out details of the claimant's arrangement but he was not provided with one. GG took advice from HR and was provided with a letter from HR dated 16 February 2017 (p986).

16. The claimant's wife suffered another flare-up in December which resulted in the claimant taking time off at short notice.

17. The claimant thought that he should have been referred to OH but was told that the claimant he could not be referred to OH on the basis of his wife's health problems (as had occurred in 2015) and so he sought advice from HR (p696). Andrew Miles referred the claimant to the letter of 16 February 2017 and stated that if the claimant's wife's condition was having an adverse impact on the claimant's own health he would arrange another referral to OH for the claimant.

18. In October 2018 the claimant registered with the centre of wellbeing and attended counselling.

19. Also in October 2018 the claimant received the second of two parking charge notices (PCNs) from the University of Surrey's private parking provider (Horizon) for failing to display a valid permit. For five years the claimant had had a parking permit without any issue.

20. However the claimant had got into the habit of leaving the permit resting on the dashboard in the mornings. The claimant explains that the first PCN was a result of it sliding from the dashboard, and the second was because of the sticky tape failing to hold it in place for the whole day. The claimant's wife was the registered keeper of the car. The respondent's transport department obtained the claimant's wife's details from DVLA and released that information to a third-party debt collection company representing Horizon and University of Surrey. This led to the debt collection company sending letters addressed to the claimant's wife threatening court action and demanding payment.

21. The claimant entered into correspondence with the respondent's transport department in particular Mr Ed Nelson about the PCN.

22. The claimant also wrote to the Vice Chancellor Max Lu and Chair of The Council Michael Queen (22 July 2019) and this resulted in a meeting on 9 August 2019 when the claimant met with Michael Queen and following which the claimant decided not to pursue the matter further.

23. On 9 October 2019, the claimant accompanied his wife to Croydon Civil Court for a hearing. This was followed by a period where the claimant sank into depression and was signed off from work for a period of time, returning to work three weeks later.

24. In about November/ December, GG announced to his team that he was taking up a new position overseeing all three faculties and Karen Field would be taking over as the new Programmes manager.

25. In December 2019 the respondent circulated information about new parking arrangements at the university. There was a requirement for the claimant to make an application for a new permit.

26. Before the university closed for Christmas 2019, the claimant gave some assistance to a parent of a 1st year student concerning "retrospective" temporary withdrawal from the university.

27. In January 2020, the claimant became aware that the retrospective withdrawal for

the student had been refused. The claimant entered into an exchange of emails with colleagues in assessments who had rejected the application. This led to the claimant having, what the respondent called, "*a frank conversation"*. The conversation become quite loud. So much that Caroline Bradley had to tap the claimant on the shoulder and make him aware that he was disturbing the peace of the office.

28. A complaint was made about the claimant arising from this issue. The claimant was called into a meeting with Karen Field and Caroline Bradley.

29. In the meeting Karen Field spoke about department processes and stated that it was not the claimant's place to question how other departments run those processes. The claimant explained his actions and accepted that the way he presented the issues was wrong.

30. Following the meeting Karen Field wrote to the claimant:

> "Further to our chat this morning, I just wanted to reassure you that this was just an informal chat this was not a warning, however <u>if I do receive any further reports/incidents this would most likely lead to disciplinary action</u>.
>
> I understand that you are passionate about looking out for the students but we must remember that we are not able to promise students anything that we can't deliver, or give students our opinions on University matters. By promising students something that we are not 100% sure can be delivered, (or that the decision will be down to another department and out of our hands) we are raising the expectation and hopes of that student, if the decision is not favourable to the student they are going to be disappointed it could have the opposite effect of what you originally intended, this could then result in an appeal or complaint.
>
> I am aware of complaints that have been upheld because the student has been promised something that could not be delivered.
>
> When dealing with colleagues to be mindful to be respectful and polite, we all work towards the same goal of giving students the best student experience and often this happens across departments, I appreciate some situations can be frustrating or demanding especially at busy periods but we all need to work together with a positive attitude. I wouldn't want to hear of any further incidents where I hear reports of raised voices or arguments especially in the office where students at the helpdesk could have been within earshot. I appreciate you explained that you didn't realise it was quite so loud but just bear this in mind going forward.
>
> If there is any way you feel that Caroline or myself can help or

> support you with any issue or guidance please don't hesitate to ask there is almost always one of us available and we would be more than happy to assist."

31. About the meeting and subsequent email the claimant says in his witness statement: "*I couldn't believe I was being threatened with disciplinary on the account of something that didn't happen and where there was no evidence to suggest it did."*

32. The conclusion of the Tribunal is that the claimant is wrong to characterise this meeting and the subsequent email as threat of disciplinary action, the claimant was being given advice about his conduct and given a warning that similar conduct would "*most likely lead to disciplinary action*." In our view it is not correct to characterise this as being threatened with disciplinary action.

33. On 27 January 2020 the claimant submitted a parking application. He was asked to provide proof of address and the vehicle registration, but he instead submitted an objection, stating it was *"to protect my position and my wife's data."*

34. On 6 February the claimant received an email informing him that his application for a parking permit was declined.

35. On 10 February 2020 the claimant had a brief meeting with Karen Field and explained how unwell his wife was. The claimant's view was that upon taking over from Gary Gould, Karen Field was rigid when the claimant required flexibility to deal with his domestic issues.

36. The claimant considered that the way that the respondent had collected information pursuant to the parking permit application process was unlawful. The claimant believed that there was no proof the university had completed a Data Protection Impact Assessment (DPIA) which he understood was a legal requirement. The claimant believed that the only option he had to resolve matters was to raise a grievance and, on the 13 February 2020, (p796) he did so.

37. At the point of raising his grievance the claimant was not well enough to work and was signed off sick until April 2020.

38. On 27 February 2020 the implementation of the new parking scheme was stopped.

39. On 2 March 2020 the claimant attended the grievance investigation meeting with Mr Sam Hillage.

40. In March 2020 COVID lockdown began.

41. In April 2020 the claimant returned to work due to COVID lockdown he

worked from home.

42. The claimant states that he was behind everyone else in acclimatising to the new way of working and that by May / June, he was still finding the adjustment hard but he found that Karen Field's style of micromanaging added further stress for him.

43. The claimant gives the following example: "*KF responded late Friday evening to a student email, copying me in. She informs the student that programme administrators are experiencing a high volume of emails, and to be patient. If a response is not received by Tuesday morning, she will follow it up. Ignoring the weekend, the student was being asked to be patient for a day. After sending this advice, KF then sends me a separate email in which she asks, "How is your workload?"*"

44. The claimant considers that Karen Field's style of "*micromanaging*" meant she constantly wanted to know what the claimant was doing. To address this the claimant wanted to communicate with Karen Field via email only.

45. The claimant felt that communicating with Karen Field had been difficult before the lockdown, and stated that he now found that working from home it *"felt almost impossible*".

46. During COVID lock down the claimant was emotionally affected by the world events at that strange time. The claimant was hesitant about talking to Karen Field as he did not feel confident in her ability to understand his mental health, or home life. The claimant informed HR about his communication and privacy issues relating to Karen Field. The claimant explains in his witness statement that: "*Sometimes my home-life meant a delay in logging on or providing updates on tasks. Communicating via email allowed me to inform KF of personal matters but maintain emotional control and protect my family from overhearing things or seeing me upset*."

47. The claimant was referred to OH. The claimant told OH that "*using emails as the only means of communication with the employer has been for the fact that he wanted to have all the correspondences to be documented, and also having all his household at home due to COVID lockdown, he had not been comfortable to discuss the sensitive issues via phone or on video calls, when he could be heard by his family."*

48. The OH Report made a number of recommendations. These included in respect of communication issues that: [Management] "*may wish to agree an appropriate means of communication to conduct these dialogues."* The OH report also recommended a stress risk assessment and a Display Screen Equipment (DSE) risk assessment. The claimant states that these were not acted upon but we note that they were not an issue for the claimant at the time or later.

49. The claimant was due to return to work in the office from about September. On the 11 September, days before the claimant was due to

return to the office, he received an email confirming the rota system would continue as normal for the Help Desk. The claimant was aware from having had attended online COVID training that hot-desking was not encouraged.

50. The claimant felt that a rota system which includes the whole office sharing one workstation was an unnecessary risk; was increasing (not decreasing) the risk of spreading the virus; and that this was going against Government advice which was to reduce risk to the lowest level achievable.

51. The claimant raised his concerns and asked if a risk assessment had been conducted.

52. The claimant didn't feel ready to return to the office and instead of returning to work in September 2020 the claimant was once more signed off sick.

53. On 14 September the claimant spoke to Caroline Bradley about his COVID concerns and stating that he wanted to delay his return to the office.

54. In his witness statement the claimant also states that: *"The same day I was due to return to the office, we had deadlines to upload CSV files for Timetabling. I wasn't sure if my PC would be set up. I had been absent from the office more than everyone else, and my parking grievance was still unresolved."*

55. The claimant sent an email to Karen Field. The email read as follows:

> "Hi Karen
> I am contacting you to advise of my delay in returning to the office. The delay is only one day and with no students on site, presents no department disruption. I have a meeting with academics via zoom tomorrow and will need to leave early, therefore remaining at home allows me to focus on my work. With concerns regarding risk management, and my return to the office being different to most, I appreciate your understanding with this."

56. The claimant was informed by Karen Field that she expected everyone to be back in the officer per rota from Monday 14 September 2020.

The claimant wrote back on the 15 September 2020; the email was also copied to Gary Gould and Caroline Bradley:

> "Hi Karen
> I'm really disappointed in your response and understanding of what is expected. I am aware that pressure is not to be put on staff returning to work. You have not taken into account my reasons nor personal situation, once again.

> Gary I am really sorry but I would like this matter escalated to a grievance. Karen has caused me unnecessary distress on more than one occasion. Ignoring a duty of care and my wellbeing."

57. On 16 September the claimant wrote to Sarah Leggett in the following terms: "*I enjoy working at Surrey. It might be in a low-level position, but I take pride in supporting the students and academics here, and doing my job to the highest level. I can't do my job to that level right now due to how I have been treated. My mental and physical health is continually affected, and that isn't right."*

58. On 18 September the claimant was sent a version of the General Risk Assessment. His comments on that are that "*It is not digitally signed, not official and contains one additional point regarding "Reception desks.*" The claimant considers that Gary Gould was attempting to give the impression a risk assessment on reception desks had been carried out when in fact it hadn't.

59. On 19 September the claimant raised a grievance.

60. On 1 October the claimant attended the online grievance meeting, led by Adam Child. The claimant complains that at times he thought Adam Child seemed unsure of the questions he asked and that it all felt less professional than the meeting with Sam Hillage.

61. On 15 October the claimant finally received the outcome of Sam Hillage's investigation into the grievance raised on 13 February 2020. None of the complaints were upheld. The claimant criticises the report stating that it consisted of three pages and the report came with no evidence; Ed Nelson was the only person interviewed, and the claimant was not provided with a copy of the minutes or the opportunity to challenge anything said.

62. The claimant appealed the finding that the handling of his permit application was processed fairly and in a way that was consistent with the guidelines. On 16 October the claimant submitted an appeal in which the claimant made various criticism of the handling of the investigation.

63. On 23 October the claimant received confirmation of Adam Child's investigation into the grievance raised on 19 September 2020. None of the complaints were upheld. The claimant criticises the report saying that it had no supporting evidence provided with it. The claimant found the content of Adam Child's report upsetting. The claimant stated the report used language, which was offensive, and made unfounded accusations. On 28 October 2022 the claimant submitted an appeal.

64. On 12 November the claimant had an OH meeting via telephone. This resulted in an OH report (p725). The report stated that the claimant was not fit for work, that the respondent should keep in contact with the claimant while he was off work; that in the long term there should be flexible working for the claimant; before a return to work there should be a further referral to OH for advice on the support needed for the claimant on his return to work; that consideration should be given

to giving the claimant a parking permit; and that there should be consideration of mediation.

65. On 16 December the claimant received confirmation of the outcome of his appeals into the grievances. The claimant was critical of the outcome of the grievance appeals. The claimant pointed out that to reach their decision the panel did not consider it necessary to conduct any interviews, apart from the one with him; the conclusions arrived at were reliant on a variety of documents, some of which were not disclosed.

66. On 23 December 2020 the claimant contacted ACAS for the purpose of early conciliation.

67. On 5 January 2021 the claimant had an occupational health appointment after which it was stated that the claimant would be fit to return to work from the 11 January 2021. A phased return to work was suggested and it was recommended that the claimant be given permanent support for flexible working. The report also stated as follows:

> "Mr Parry benefits from maintaining balance between his workload, well-being activities and caring commitments at home. In the absence of such balance, his stress and anxiety can increase, triggering further episodes of depressive flare ups and functional impairment. Regular one to one meetings with management to discuss the concerns and solutions, in particular in relation to workload, are recommended."

68. The claimant's OH report was addressed to and seen by Caroline Bradley. On 11 January the claimant returned to work and met with Caroline Bradley, who went through the points on an action plan.

69. On about 15 January 2021 the claimant met with Sarah Leggett to discuss his situation. During the conversation Sarah Leggett informed the claimant that the University wanted to support the claimant and enable a positive working environment, whether or not the claimant chose to pursue legal action, that the University was keen to try mediation as a first step if the claimant was willing to engage. Sarah Leggett also stated that she would seek further information about the University health and safety risk assessment policy and tried to give the claimant reassurance this it was taken very seriously.

70. The claimant produced an action plan which he sent to Sarah Leggett(p1369).

71. On 3 February 2021 the period of early conciliation came to an end and on 12 February 2021 the claimant submitted his first ET claim.

72. On 1 February 2021 the claimant saw a copy of the help desk rota. Mrs Tuo Li's role included managing the helpdesk and creating a rota for covering the helpdesk. The claimant wrote to Mrs Tuo Li stating that he would not be sitting at the helpdesk but stated that he was happy to cover from his own workstation. The claimant however accidentally sent his email to "all".

73. This resulted in Sarah Leggett writing to the claimant stating that this was not an appropriate way to bring up his concerns. Sarah Leggett stated that her view that the respondent was acting responsibly in relation to health and safety matters and had responded to the claimant's concerns in detail whenever he had raised them. She further stated that all staff were being kept up to date in relation to risk assessments following a review by their Health and Safety professionals. The claimant was told that he was expected to support the help desk rota from 15 February and informed that this was a reasonable management instruction.

74. Mrs Tuo Li denied that she had been actively reporting back to Karen Field about the claimant's timekeeping, level of work activity in the office, and not wearing a mask at his desk. The claimant's absence at a team meeting via Zoom was highlighted. She explained that it was her role to manage the helpdesk and during Covid as managers were not all in the office at the same time. She kept an eye on the office.

75. On 21 February the claimant sent an email to Matthew Purcell, Adam Child and Lucy Evans explaining why he would like risk assessments carried out. (p1395)

76. The claimant reported that he was not attending work on 23 February. It was not clear to managers whether the claimant was off sick.

77. The claimant received an email from Adam Child which he considered was aggressive and making demands that that the claimant attend a meeting on 25 February 2021. (p1403) The Tribunal view is that this was not an aggressive email and that it set out reasonable management instructions.

78. Sarah Leggett wrote to the claimant asking to refer him back to OH for a follow up with the physician because from a management perspective some of the behaviours the claimant was exhibiting, emails he was sending and his interactions with managers were causing concern for the claimant's wellbeing and mental health. She explained that there was a need to address these matters, because it was not sustainable to work together in such a manner for all involved, including the claimant.

79. She also went on to say that the claimant's health and safety concerns were being addressed, and that Matthew Purcell agreed to meet with the claimant to go through the new risk assessments. She also stated that the claimant's attendance at a management meeting on 25 February 2021 was to establish a way forward.

80. The claimant complained about this email being sent to him while he was on sick leave. The claimant did not attend the meeting on the 25 February 2021.

81. On 25 February 2021 the claimant sent an email to various people including the director of HR, Mr Will Davies, and Lucy Evans.

82. The claimant said that since his return to work his request for a risk assessment to be carried out in the office due to his COVID concerns had been opposed

without good reason and that not taking reasonable steps to manage his concerns had resulted in an increase in stress, and a trigger for the mental health disability the claimant suffered from. The claimant referred to the approach taken by Adam Child as aggressive and stated that he would not attend the management meeting. The claimant asked that the executive board, which had a responsibility for promoting equality, health and safety and fairness, should urgently review the actions of Adam Child, Sarah Leggett and Gary Gould.

83. Lucy Evans replied to the claimant's email stating that it was her assessment that Adam Child, Gary Gould and Sarah Leggett had acted reasonably in managing the situation, and that their request to meet with the claimant was intended to be supportive with the aim of trying to establish a positive way forward. She urged the claimant to meet with them to have the opportunity to discuss a referral to OH so that they could understand the claimant's current mental health, and reasonable adjustments for the claimant's disability. (p1417)

84. Lucy Evans and Sarah Leggett shared a 5-Step plan for managing the claimant (p1478).

85. The claimant met with Sarah Leggett on 2 March. During the meeting the claimant clarified his need for an informal approach to flexible working, to help him do his job, manage his own mental health, and support his wife. The claimant explained how he found it difficult to communicate with Karen Field and set out his concerns regarding health and safety and the lack of understanding or awareness regarding the Equality Act.

86. On 3 March the claimant met with Karen Field and they discussed his concerns about the help desk, risk assessment, and what support he needed i.e. his need to leave early or take annual holiday at short notice.

87. On 4 March Karen Field sent the claimant a risk assessment from Gary Gould which related specifically to the claimant's work area. The claimant expressed some concerns about the risk assessment; these concerns were conveyed to Gary Gould.

88. On 10 March the claimant received an email from Karen Field addressing the claimant's hours of work.

89. The claimant stated that Karen Field required that "*any changes need to be requested via a flexible working form."* This is not what the Tribunal understood was intended by the email. The reference to "*the flexible working form*" we understood to mean that if the claimant wanted a permanent change to his *"normal working pattern*" i.e. either 8:30am to 5:00pm or 9:00am to 5:30pm the form needed to be used. No form was required if an emergency arose, as Karen Field explained in her email:

> "however, if you need to leave early/change hours for any reason this would still need to be requested and agreed with your Team Leader/Line Manager beforehand so that we can ensure workloads

> are covered, all staff in the office would have this flexibility if an emergency situation were to arise." (p1464)

90. Sarah Leggett, who is copied into the email exchange, explains to the claimant how the situation might work. It is clear from her email that the claimant's understanding of what Karen Field is saying about flexibility is wrong. (p1462)

91. On 12 March 2021 Adam Child sent the claimant an email which summarised his understanding of the current position. The claimant stated that Adam Child's emails were "triggering and always seemed to include accusations", followed with a referral to OH. The Tribunal do not consider that the content of the email is unreasonable or the fact that it is written is an unreasonable management action in the light of all the circumstances known to the respondent at the time, which included that the claimant was disabled by reason of his mental health. (p1472)

92. Around 17 March 2021 the claimant informed Karen Field that an issue with his daughter meant he might need to take emergency leave.

93. On 21 April 2021 Tuo Li asked the claimant to sit on the helpdesk. He declined. On 26 April 2021 the claimant and Karen Field subsequently met and discussed the claimant's continuing concerns about working on the helpdesk. The discussion resulted in an agreement that adjustments would be made for the claimant to enable him to be on the help desk rota. In her email of 27 April 2021 Karen Field recorded what was agreed as a "reasonable adjustment":

> "I would like to recommend that as a reasonable adjustment to helpdesk duties for you going forward would be that when you are scheduled on the helpdesk rota and for coverage on the helpdesk to assist our students would be to answer fasshelp emails from your own desk with the phones being diverted to your phone and if a student/Academic/customer comes into the helpdesk during your session that you will assist the student/Academic/customer from behind the screen on the helpdesk, standing behind the screen provides the best protection for you and the person you are assisting, this would eliminate the need for you to actually sit on the helpdesk which I hope this will help you with any anxiety experienced by having to sit on the helpdesk in regards to the current Covid situation.
> This will be reviewed once Government restrictions are relaxed or when a higher footfall of students/Academics/customers are recognised in the helpdesk to ensure that the adjustment is working for you and for our customers (students/Academics/colleagues)."

94. On 3 June 2021 the claimant had an appointment with a private therapist who agreed to take the claimant on. The claimant informed his managers and HR about forthcoming appointments with the therapist.

95. On 21 June 2021 the claimant met with his new team leader Miss Chloe Fabien.

96. The claimant and Chloe Fabien, over a period in person and by email, discussed the time that the claimant took off work to attend therapy sessions. Chloe Fabien questioned how long and how often the sessions were and the amount of time off that the claimant would need to attend the sessions. The result of this extended discussion was that the claimant and his therapist agreed that the claimant's sessions would be moved to a time after work hours.

97. In about June 2021 Karen Field sent an email to all staff asking that they sign up for graduation. Chloe Fabien's view was that doing shifts during graduation was part of the claimant's role. By 12 July 2021 the claimant had not signed up for any shifts during graduation and he had been asked to do so by Robyn Chant.

98. Chloe Fabien took up this issue. She wrote to the claimant asking him if he had received exemptions to attend events such as graduation/registration, stating that the only arrangement she was aware of was for the helpdesk she explained that: "*if you are exempted for anything else it is not a problem with me but I believe this should be explicitly put in writing due to the nature of our work."*

99. The claimant's response was as follows:

> "I'm not sure what you mean by exemptions.
> We were asked to volunteer and due to various reasons I did not put my name forward. No one has spoken to me leading up to graduation and made it known that helping at these events is compulsory. Karen is fully aware of my concerns regarding health and safety, my mental health condition and the equality act. By continuing to ignore the fact I have a disability in how I am treated, the University is actively discriminating against me."

100. On 13 July the claimant's wife was unwell, his daughter was self-isolating and due to parking restrictions imposed during graduation, he advised Chloe Fabien that he would need to leave early. This then descended over the next day into a back and forth of emails which revealed the strain in the relationship between the claimant and his managers. These emails are at pages between (p1517) and (p1520). The exchanges concluded with an email from Chloe Fabien containing the following sentence: "*It is clear to me that you are not seeking my approval and instead you are bullying me in doing what you want to do, I find this extremely disrespectful."*

101. On 15 July 2021 the claimant received an email from Adam Child. The claimant describes this email as insisting that the claimant attend OH. What the email in fact said on this is as follows:

> "I understand that you have recently contacted Caroline and indicated that you are not willing to engage with Occupational Health (OH). As advised yesterday, we require you to engage with the Occupational Health process as a matter of urgency. We remain very concerned that you are not fit for work. The OH referral will seek to understand:
> • Your current fitness for work

> • Your current state of health and any update on treatment progress
> • A review of your responsibilities (we will give them a copy of your job purpose) and ask for specialist advice as to whether we need to consider any further reasonable adjustments
>
> I am aware of your previous reluctance to attend OH when we last requested a few weeks ago. Our reason for asking you to re-engage with the OH service is a genuine attempt to better understand the reasons relating to why you don't want to undertake parts of your role (helpdesk and graduation being recent examples), in order for us to consider what further reasonable adjustments might be…
> We need your consent for the OH referral.

102. The claimant pointed to parts of the email where it stated concerns about *"suggestions of discrimination and bullying within the team"*, and the claimant's "*persistent allegations*" his "*interactions/emails continue to be disrespectful*". The claimant described this as aggressive and confrontational. The Tribunal do not agree and refer to a passage of the email which we consider sets out its purpose clearly:

> "I am very concerned about the clear breakdown in relationships between you, your colleagues and managers. We take your persistent allegations of disability discrimination very seriously. We also take events yesterday seriously which resulted in you leaving the office without providing explanation or seeking permission from a manager. I am also extremely concerned by continuing suggestions of discrimination and bullying within the team, and some of your interactions/emails with colleagues continue to be with a disrespectful approach." (p1529)

103. The claimant wrote to Adam Child on 16 July *asking "if you will consider a private meeting with me".* Adam Child replied as follows:

> "Thank you for your email. I would be happy to meet with you as noted in my previous email. I would however like the support of the HR team at the meeting to ensure we have access to the necessary advice to agree an appropriate way forward. You would be very welcome to bring someone to accompany you too if you would find that helpful.
> I am on campus and available at 12pm tomorrow to meet in person. Caroline will provide a calendar invite with a location for us this morning. I look forward to seeing you then."

103. There followed an exchange of emails in which the claimant displayed a paradoxical attitude, where on the one hand he wanted an "informal approach" but also stated that "I do not wish to further involve innocent parties into a legal matter". Adam Child remained open to meeting with the claimant and explained clearly why he wanted to have HR support for the meeting. (p1538)

104. The email exchange concluded with Adam Child writing to the claimant in the following terms:

> "I made clear in my message to you on Thursday that it was considered a matter of some urgency that we made arrangements to meet and that it is considered a reasonable management instruction to do so. It is apparent on the basis of our email exchanges today that you are not willing to meet in the way I have outlined. The offer of a meeting tomorrow at 12pm still stands with me and a representative from HR or Gary Gould. This would provide an opportunity to discuss potential ways forward in the interests of all involved.
> However, in the absence of that discussion taking place, under the current circumstances and in the light of recent events I'm afraid I have no option but to make a referral to the disciplinary process. I have informed HR and they will begin making arrangements shortly."

105. On 20 July the claimant and Gary Gould had a face to face conversation that lasted about 2hrs.

106. On 29 July 2021 the claimant was informed by Gary Gould during a Teams call that a collective grievance had been raised against him. Gary Gould subsequently sent an email detailing the collective grievance and an invitation to attend an investigation meeting.

107. The claimant sent an email to Caroline Bayliss (HR) requesting independent mediation or ACAS to conduct any investigation. The claimant was subsequently told by HR that Matt Cooling had been appointed to carry out the investigation.

108. Soon after the claimant was signed off due to "stress at work".

109. On 23 August the claimant made contact with Mr Michael Queen, chair of the council, making him aware of the conduct of senior management. Michael Queen responded declining to be involved in "individual" cases.

110. On 24 August the claimant's wife called Lucy Evans and asked for all contact with the claimant to stop.

111. In a letter dated 27 August the claimant was invited to a rearranged collective grievance investigation, with Matt Cooling.

112. On 31 August Gary Gould completed a management referral request to OH which was sent to the claimant for his consent.

113. On 13 September the claimant spoke to Dr NJ Cordell from OH as a result of which a direction was given that all contact from HR would cease for 6-8 weeks to allow time for the claimant to recover.

114. On the 4 October the claimant had a telephone appointment with OH physician.

115. On 19 October the claimant received documents from the data protection team at the university,pursuant to a subject access request he made earlier in the year.

116. On 22 October the claimant attended the Welfare and phased return meeting which was conducted via teams. The OH physician was present, along with Gary Gould and Caroline Bayliss. The claimant was advised that the disciplinary/grievance investigation into his conduct would take place.

117. On 27 Oct11ober the claimant's wife took him to A&E to speak to the mental health crisis team.

118. On 28 October Will Davies considered that the claimant was unfit for work and agreed that he would not be permitted to return until assessed by OH.

119. On 1 November the claimant had a meeting with the OH Physician.

120. On 9 November the OH report considered the claimant unfit to return to work.

121. The claimant was invited by Lucy Evans to a meeting to discuss the "ongoing unresolved situation".

122. On 24 November Andrew Miles invited the claimant to attend an employment meeting about a breakdown in relationships.

123. On 1 December the claimant received an email from Andrew Miles chasing for a response regarding attending the employment meeting. 7 December the claimant contacted the police.

124. On 9 December 2021 a employment meeting took place at which the decision was made to dismiss the claimant.

125. 10 December it was explained to the claimant that the meeting went ahead on the 9 of December, and the claimant's employment contract had been terminated.

Protected disclosures

126. Part IVA of the Employment Rights Act 1996 (ERA) deals with the concept of a protected disclosure. Section 43A defines a protected disclosure as a qualifying disclosure as defined in section 43B, which is made in accordance with any of sections 43C to 43H.

127. A qualifying disclosure, as defined in section 43B(1), is a disclosure of information, made in the public interest, which in the reasonable belief of the worker making it, tends to show, one or more of the states of affairs listed in section 43B(1)(a) to (f). The states of affairs include, that a criminal offence has been committed is being committed or is likely to be committed, that a person has failed is failing or is likely to fail to comply with any legal obligation

to which he is subject, and that the health and safety of any individual has been is being or is likely to be endangered.

128. The disclosure must be of "information". "Disclosure" must be given its ordinary meaning, however, the reference to disclosure of information shall have effect in relation to any case where the person receiving the information is already aware of it, as a reference to bringing the information to his attention.

129. The worker need only have a reasonable belief that the information tends to show the matter in question. The belief may therefore be mistaken - either as to the factual state of affairs, or as to the legal consequences of a given state of affairs - provided that it is reasonably held. Further, the worker need not believe that the information definitely shows that the state of affairs exists so long as they reasonably believe that it tends to show it.

Qualifying disclosures alleged by the claimant

130. In a letter to Michael Queen:
    (a) Parking fines were being issued without legal grounds for doing so
    (b) There had been breaches of GDPR when obtaining details of vehicle ownership.

131. In his grievance 13 February 2020 the claimant stated that there had been breaches of GDPR, data protection law and rights of individuals had not been respected.

132. While the Tribunal is sceptical that the evidence produced substantiates a qualifying disclosure in respect of these matters we recognise that the respondent conceded that these were protected disclosures and therefore we do not seek to go behind that admission on the basis that to do so would deprive the claimant of possibly adducing the evidence to make good his contention that there was a protected disclosure as alleged.
133. In his grievance 1 March 2020 the claimant disclosed that the investigation into the parking system problems was not going to be carried out and the true situation concealed.

134. This is an allegation but there is no true disclosure of information. The mere making of an allegation about the likely future legal position is insufficient, unless some concrete factual information is also conveyed.

135. In the grievance dated 19 September 2020 the claimant made disclosures regarding the inadequacy of the respondents COVID 19 risk assessments and procedures. While there was a clear difference of view between the claimant and the respondent about the risk assessments there is no evidence that there was a disclosure of any information by the claimant beyond the clear expression of the claimant's view that there had not been proper risk assessments. What the evidence disclosed was that the claimant objected to working on the helpdesk because he did not consider that the respondent had carried out a proper risk assessment. The respondent took a contrary view,

engaged with the claimant on the matter and in time the claimant simply did not accept the correctness of the respondent's figures.

136. The Tribunal in any event do not consider that the claimant's disclosures, such as they were, are in the public interest. The claimant was concerned about his own circumstances which arose out of his anxiety about his personal health and his desire to provide proper support for his family. These matters were all personal matters and the claimant was not in our view acting in the broader public interest.

137. Although the list of issues refers to a potential fifth protected disclosure the parties have not identified it.
Dismissal

138. Was the claimant dismissed because he made a public interest disclosure? For the reasons we set out below our conclusion is that the claimant was not dismissed because of making a public interest disclosure. The claimant was dismissed because his relationship with his managers and other colleagues had broken down.

Alleged detriments

139. *Failing to give the claimant flexibility thereby preventing the claimant from leaving work early or taking short notice annual leave.* The evidence that we have heard gave no instance disputed or otherwise where the claimant was alleged to have been refused the opportunity to leave early or denied the ability to take short notice annual leave.

140. *Require the claimant to complete written application in order to be allowed to leave work early.* The Tribunal found that this did not occur: for the reasons we have set out earlier the claimant was not required to do this. The claimant in our view has simply misunderstood what was required of him.

141. *(a) Require the claimant to carry out helpdesk tasks while sitting at the helpdesk rather elsewhere near to but not at the desk. (b) Withold permission for the claimant to respond to helpdesk tasks by email.* This was not a detriment to the claimant as the claimant simply refused to do the helpdesk duty at the relevant time. Then from about April 2021 the respondent agreed the claimant could perform the helpdesk tasks away from the help desk. There is no evidence presented to us that the claimant was refused permission to carry out helpdesk tasks by email. In April 2021 the adjustments would in any event have meant that any such restriction was otiose.

142. *(a) Fail to remove the claimant from the helpdesk rota. (b) Fail to implement OH health recommendations for adjustments.* There was no detriment to the claimant being on a helpdesk rota because he always made it clear that he would not work on the helpdesk. The claimant had adjustments made after discussion with managers. There is no evidence that the respondent failed to carry out OH recommendations, the respondent was always willing to engage with the claimant and discuss specific adjustments. The difficulty that the

respondent had was that the claimant did not make specific adjustment requests for the respondent to either be able to accommodate or refuse.

143. *Constantly monitor the claimant's work and pick up minor faults in his work.* The claimant has alleged that Tuo Li had monitored his work. The Tribunal's conclusion is that this was not established by the evidence. The evidence of Tuo Li, that was unchallenged by cross examination, but we recognise that should not be taken as the claimant accepting the evidence, was that she did not actively report back on the claimant but during Covid as managers were not all in the office at the same time, she kept an eye on the office. We have considered this evidence critically but accept the evidence that she gave on this matter.

Discrimination arising from disability

144. The respondent accepts that the claimant is a disabled person. The Tribunal concluded that the respondent was aware of the claimant's disability of anxiety and depression from 16 November 2020.

145. It is not in dispute that the claimant's application for a parking permit on 6 February 2020 was refused. The Tribunal is doubtful that this was necessarily unfavourable treatment it was not a desired outcome, and the parties have approached this case on the basis that this was unfavourable treatment, so the Tribunal accept that the claimant not obtaining a parking permit was unfavourable treatment.

146. We have gone on to consider whether the refusal of the parking permit was unfavourable treatment because of something arising in consequence of the claimant's disability. We are referred to the matters listed in in section 1.2 of the case summary set out in the record of a preliminary hearing of the 4 January 2022. The matter that is said to apply is set out at 1.2.2 of the said case summary.

147. Section 1.2.2 concerns the claimant's *"anxiety regarding providing the documents requested for the parking permit application and failure/refusal to provide the requested documents*".

148. In his evidence the claimant said that: "*The key difference between me and my colleagues was the amount of anxiety I had about providing the data/documents being demanded, and the concerns I had raised the year before regarding the previous parking provider."* The claimant also points out that in considering his application Ed Nelson "*could have dropped by the office or called, provided a temporary parking permit, or accepted alternative documents."*

149. In our view the evidence simply does not establish that the claimant's unfavourable treatment was because of something arising in consequence of the claimant's disability, but even if it did, the treatment was a proportionate means of achieving a legitimate aim, namely allocating parking at the University fairly in accordance with the University policy.

150. The claimant alleges that *"Threatening the claimant with disciplinary action on 10 January 2020*" was unfavourable treatment.

151. Earlier in our judgment, at paragraph 32 above, we stated that: "The conclusion of the Tribunal is that the claimant is wrong to characterise this meeting and the subsequent email as threat of disciplinary action, the claimant was being given advice about his conduct and given a warning that similar conduct would "*most likely lead to disciplinary action*." In our view it is not correct to characterise this as being threatened with disciplinary action." We do not think this action taken as a way of management of the claimant is unfavourable treatment.

152. If we are wrong not to characterise this as a threat of disciplinary action and therefore unfavourable treatment, there is no evidence that the making of such a threat was because of something arising in consequence of the claimant's disability. The claimant, in the view of the manager, had not acted accordingly in his dealings with a student and her mother and had overstepped the mark in terms of his duties. Further, the claimant's behaviour towards another colleague was also part of the reason why the claimant was being advised as to his conduct by his manager. There is no evidence that the claimant's disability had any impact on how he behaved in this instance even from the claimant's own perspective. Even if the evidence is such that it might have been appropriate to draw an inference that the way that the claimant reacted to the manager's statement was because of his disability, what the evidence does not show is that what was done by the manager was because of something arising in consequence of the claimant's disability, however, even if it did. The treatment was a proportionate means of achieving a legitimate aim, namely managing the claimant by advising him as to the scope of his role and his behaviour towards colleagues.

153. The claimant alleges that there was unfavourable treatment by "*Refusing to be flexible with the claimant by refusing to continue the arrangement in place under his previous manager where there was an understanding that he could leave early or take holiday at short notice when his wife was ill from February 2020 onwards"*.

154. The conclusion of the tribunal is that this alleged unfavourable treatment never occurred. There is no evidence of an occasion when this alleged change in the understanding operated so that it caused the claimant a detriment.

155. The claimant alleges the unfavourable treatment of "*Refusing to be flexible with the claimant by allowing alternative means of performing his role on the helpdesk from 14 September 2020 onwards."*

156. The conclusion of the Tribunal is that there was an agreement from April 2021 that the claimant could perform his duties on the helpdesk in an adjusted way. Prior to that the claimant had during the relevant time simply refused to perform the helpdesk duties and he was neither punished nor compelled into doing so.

157. The claimant alleges the unfavourable treatment of *"Refusing to be flexible with the claimant by refusing to permit him to communicate with Karen Field solely in writing / via email (throughout lockdown / working from home 2020)."*

158. The conclusion of the Tribunal is that it is not unfavourable treatment to require the claimant to communicate with his fellow workers in a normal way. There was no bar to the claimant communicating in any particular way. The claimant, unreasonably in our view, wanted to be allowed to opt out of normal communications. We note that the evidence showed that the claimant considered that Karen Field's style of "*micromanaging*" meant she constantly wanted to know what the claimant was doing. To address this the claimant wanted to communicate with Karen Field via email only. There is no evidence presented that this was something arising in consequence of the claimant's disability.

159. The claimant alleges unfavourable treatment of *"Refusing to be flexible with the claimant by refusing to delay the claimant's return to the office by one day."*

160. The claimant was refused the facility of returning to work one day later than others. The claimant gave different reasons why this should have been the case. The Tribunal do not consider that there is any evidence to support the conclusion that this was unfavourable treatment of the claimant. The claimant does not explain that his disability was the reason why he should be allowed to return to work one day later. Requiring the claimant to return to work with others was on the evidence before us a perfectly rational and reasonable decision by the respondent. The claimant did not articulate a reason which would have made it clear that such an approach by Karen Field was not rational, disproportionate, or not a legitimate management instruction.

161. The claimant alleges unfavourable treatment in "*The way the respondent dealt with the claimant's grievance and appeal in respect of the parking permit issue. The claimant says that the respondent failed to interview Gary Gould, failed to make any reference to his wife's disability in the grievance report and failed to follow legitimate reasonable lines of enquiry."*

162. The claimant alleges unfavourable treatment in *"The way that the respondent dealt with the grievance investigation and appeal in relation to the claimant grievance against Karen Field. The report does not refer to the claimant's or his wife's disabilities, uses clumsy and offensive language and makes allegations which are unfounded."*

163. The claimant disagreed with the outcome of the grievances and appeals but he did not spell out in terms why the outcome was unfavourable treatment. The mere fact that the grievance came to a conclusion that the claimant objected to does not mean that the claimant was subjected to unfavourable treatment. Even if it was unfavourable treatment, it would have to be shown that the outcome was because of something arising in consequence of the claimant's disability. There is no basis for this established by the evidence presented. In any event, the Tribunal would need to be persuaded that the unfavourable treatment was not in order to achieve a legitimate aim. We observe that the

evidence presented to us did not suggest that the conclusions of the grievances and appeals were wrong or otherwise conducted in a way that was otherwise wrong, improper or unfair, disproportionate or illegitimate.

164. In section 7 of the case summary as set out in the Record of Preliminary Hearing of the 20 and 21 June 2022 the claimant also set out further complaints about discrimination arising in consequence of disability.

165. The claimant alleges unfavourable treatment of "*Applying consistent pressure on the claimant to perform a task (at the helpdesk) which the claimant believed increased the risk of COVID 19 infection and which was not part of his job description. Refusing to be flexible with the claimant by allowing alternative means of performing his role on the helpdesk (from February 2021 to July 2021).*"

166. The claimant has not proved this alleged unfavourable treatment. To the extent that the claimant says it is not part of his job description the matter is misconceived. The claimant can be asked to perform actions which are not specifically listed in the job description so long as they are reasonable in the context of the employment contract. The matter is also misconceived because the claimant in the period from April 2021 was allowed adjustments to the performance of the role in ways that must have met his concerns as he agreed them. Prior to that date the claimant simply refused to perform the task as directed by management.

167. The claimant complains that he was subjected to unfavourable treatment by the respondent constructing and implementing a 5-step proposed plan to dismiss the claimant. This was not unfavourable treatment. An employer is entitled to make a plan for the management of an employee. In any event this was not a plan to dismiss the claimant, although the dismissal of the claimant was a possible outcome.

168. Failing to look into matters raised by the claimant and his request for help. The respondent instead devised the 5 point plan to lead to the claimant's dismissal. The Tribunal conclude that the claimant has not shown that this was a way that the respondent acted. The respondent acted in response to the claimant's circumstances. For significant periods the claimant did not assist the respondent by cooperating with managers.

169. The claimant complains that he was subjected to unfavourable treatment by the respondent "*Seeking consultation with occupational health about the claimant without the claimant's prior knowledge or consent; taking part in that consultation and discussing "chronic embitterment" with regards to the claimant.*"

170. The evidence shows that there was reference to the claimant having chronic embitterment. Sarah Leggett explained this in her evidence: "*I read about chronic embitterment in one of your reports and I would have wanted to follow up to educate myself on what it means I am not a mental health practitioner I have never come across this before so wanted a conversation to find out what*

it was". The evidence additionally showed that the response of OH was to remind the respondent that the claimant's permission was required for any consultation with the OH physician.

171. The claimant complains that he was subjected to unfavourable treatment by the respondent: *"Chloe Fabien expressing disapproval of the claimant attending disability therapy/ treatment during working time and making intrusive requests for details (July 2021)"*

172. The Tribunal are unable to accept that the characterisation of this issue bears any relationship to the evidence that we heard in the case. We do not consider that this matter has been made out.

173. The claimant complains that he was subjected to unfavourable treatment by the respondent: "*Informing the claimant that he must obtain written exemption from volunteering to help at graduation."*

174. The Tribunal for the reasons set out earlier in our judgment do not accept that this was a matter which was established by the evidence presented.

175. The claimant complains that he was subjected to unfavourable treatment by the respondent: "*Monitoring the claimant continuously, talking about him and reporting him for minor performance issues. These issues were not raised or discussed with the claimant and so he was unable to address them*".

176. The Tribunal have concluded that this did not happen, and we refer once more to the evidence of Tuo Li.

177. The claimant complains that he was subjected to unfavourable treatment by the respondent: "*Refusing to be flexible with the claimant by refusing to continue the arrangement in place under the previous manager where there was an understanding that he could leave early or take holiday at short notice when his wife was ill."*

178. The evidence that the Tribunal heard did not suggest that there was a difference in fact in the treatment of the claimant over time. The claimant did not give any evidence of any occasion when the arrangement that he claims was in place before would have given him an outcome different from that which occurred on any occasion.

179. The claimant complains that he was subjected to unfavourable treatment by the respondent: "*Emailing the claimant's personal email account when the claimant was off work with stress and ignoring the risk of causing further harm notwithstanding the concern expressed by the claimant's wife and GP*."

180. The claimant was contacted by the employer from time to time when the claimant was off sick. We do not consider that the evidence showed a level of contact with the claimant that was excessive and amounted to unfavourable treatment.

181. The conclusion of the Tribunal is that the claimant has not been able to show that he suffered any unfavourable treatment or that such treatment as might arguably be considered unfavourable was because of something arising in consequence of a disability.

Failing to make reasonable adjustments

182. The Tribunal is satisfied that the claimant has established the PCPs that are relied on at paragraphs 1, 2, 3 and 5 of 2.2 of the case summary. The Tribunal is not satisfied that the claimant has proved the PCP at 4. The alleged PCP is not a provision criterion or practice, it is a list of the different ways that a person has to communicate with others when working from home.

183. The PCP: *the requirement to provide documentary proof of car ownership as part of the application process for a parking permit.* This did not create a substantial disadvantage to the claimant. The claimant has not produced evidence from which we could conclude that it was a substantial disadvantage. The claimant could have provided the evidence sought but he did not want to do so because of his concerns about data protection.

184. The PCP: *All staff to work set hours*. *Requests to alter hours to be made in writing by the flexible request form.* The claimant has shown no basis for a conclusion that the requirement applied in circumstances where the claimant needed ad hoc flexibility at short notice. The requirement to use the flexible request form did not apply to the circumstances that applied to the claimant. The form was required for changes to the contractual terms not ad hoc needs such as the claimant had from time to time. The requirement to work set hours did not result in a substantial disadvantage to the claimant.

185. The PCP: *All staff on the helpdesk rota must actually sit at the helpdesk to carry out the tasks.* The claimant has not shown that there is any substantial disadvantage to the claimant because he either ignored any instruction to work on the rota or from April 2021 there was an adjustment made for the claimant so that he did not need to sit at the helpdesk.

186. The PCP: *All staff expected to be back working in the office on the same day (14 September 2021).* The claimant has not given any evidence to suggest that he was at substantial disadvantage. The claimant gave a variety of reasons why he should be allowed a delay in return to work. The stated reasons did not relate to the claimant's disability and in any event they were not substantial. If there was any adjustment to be made by delaying for one day, it is difficult for the Tribunal to understand what disadvantage arising from the disability would have been removed by waiting a day.

(Second list of issues)

187. PCP: *A practice of asking or requiring employees to attend "Employment Meetings" in person*. The claimant was asked to attend an employment meeting in person but the claimant has not shown that this was a PCP. He merely showed that this is what happened. In any event if it was a PCP the claimant has not shown that he suffered any substantial disadvantage as a

result of the meeting being in person. The claimant did not request that the meeting take place in another way nor is there any basis for concluding that had he asked it would have been refused.

188. PCP: *Requiring employees to sit at the helpdesk to carry out certain tasks.* The claimant has not produced evidence to prove that this was a PCP that was applied by the respondent. In any event the claimant has not shown that he suffered any substantial disadvantage as a result of such a PCP. The claimant's evidence was that he was concerned about sitting at a desk that others had sat at and this arose out of his concerns around spreading the COVID virus. The claimant simply refused to do it. There was in any event from April 2021 an agreement that adjustments would be made to how the claimant worked on the helpdesk.

189. PCP: *Requiring all staff to help with graduation ceremonies*. The evidence did not prove that this was a PCP. On the contrary the claimant's positive case was that there was no requirement for him to do so.

190. PCP: *Requiring all staff to work set hours and to request any flexibility regarding hours in writing via flexible request form.* For the reasons previously stated the claimant has not proved the PCP as he alleges.

191. The claimant's complaints about failing to make reasonable adjustments are dismissed for those reasons.

Victimisation

192. A person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act. A protected act is bringing proceedings under the Equality Act; giving evidence or information in connection with proceedings under the Act; doing any other thing for the purposes of or in connection with the Act; making an allegation (whether or not express) that A or another person has contravened the Act.

193. The claimant in the list of issues that states that he did a protected act within the meaning of section 27 Equality Acy 2010. The claimant purports to rely on his correspondence by email with Ed Nelson in 2019 as a protected act. The claimant has not referred us in evidence to any protected act. The claim of victimisation pursuant to section 27 Equality Act 2010 is not well founded and is dismissed.

Harassment

194. The claimant has listed a number of matters at section 9.1 of the case summary of the 20 and 21 June 2022.

195. For reasons previously stated we concluded that the matters at 1, 2, 7 and 8 did not occur as the claimant alleges and are not proved.

196. In respect of the matters at 3, 4, 5, 6, 9 and 10 to the extent that these occurred we do not consider that it was harassment. In reaching this conclusion we have regard to the provisions of section 26(4) Equality Act 2010 which provides that: *"In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account (a)the perception of [the claimant]; (b)the other circumstances of the case; (c)whether it is reasonable for the conduct to have that effect."* There was no harassment of the claimant that was related to a protected characteristic.

Ordinary unfair dismissal

197. What was the reason for the claimant's dismissal? The dismissal letter stated that: *"the panel's unanimous finding was that there has been an irretrievable breakdown in relationships, trust and confidence between you and the University, that there was no prospect of these being repaired, and that it follows that it is not possible for your employment at the University to continue."*

198. The claimant's case is that the reason for his dismissal was because of a protected disclosure or alternatively because of his disability. The Tribunal have already given their reasons as to why the claimant's dismissal was not because of making any protected disclosure.

199. The Tribunal recognise that the reason that the claimant was dismissed was because of the breakdown in relationship between the respondent and the claimant. This came about because of the claimant's situation in the period from about September 2019 until his dismissal. The claimant's disability in our view infected the claimant's relations with his colleagues and was an important component in the claimant's behaviour which led to the claimant being subject to the employment meeting on 9 December 2021.

200. The Tribunal considers that the dismissal was because of something arising in consequence of the claimant's disability. We have then gone on to consider whether dismissal of the claimant was a proportionate means of achieving a legitimate aim. This is a matter that the respondent has to prove.

201. We have also considered whether dismissal was in all the circumstances reasonable having regard to the reason for dismissal.

202. The respondent's account of representations on behalf of the claimant as to whether they should proceed or postpone is that they took advice from OH about whether they should proceed and the advice was that they should proceed.

203. The claimant was informed of the decision to proceed and invited to produce any additional evidence for the panel or to be represented at the hearing.

204. The claimant was informed that dismissal was a possible outcome of the meeting.

205. The respondent gave the claimant's case careful and detailed consideration. The conclusion reached by the respondent was that there had been an irretrievable break in the relationship between the respondent and the claimant. The panel concluded that the breakdown from the university's perspective "*the last two years have had a significant deleterious impact on numerous colleagues at all levels, and that these colleagues are also likely to believe that working relationships are beyond repair."*

206. The Tribunal noted that the claimant's challenge was that the meeting on the 9 December did not take place. Otherwise, the claimant did not challenge the rationale for the decision. We recognise however that the claimant was not accepting the correctness of the evidence of Patrick Degg. However, the problem it presents to the Tribunal is that the evidence given by Patrick Degg about what was considered by the panel and the steps taken was in effect unchallenged.

207. We recognise that the procedure followed by the respondent did not have the benefit of the claimant's contribution but taking all circumstances into account we consider that that the respondent acted reasonably in adopting the procedure that it did.

208. We have come to the conclusion that the claimant's dismissal was a proportionate means of achieving a legitimate aim, namely ending an employment relationship that had broken down and was having a deleterious effect on other colleagues. For the same reasons we have come to the conclusion that the claimant's dismissal was within the range of responses of a reasonable employer.

209. The claimant's complaints are not well founded and are dismissed.

_____
Employment Judge Gumbiti-Zimuto

Date: 15 March 2024

Sent to the parties on: 18 April 2024

For the Tribunals Office