EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Michal Kloczkowski	**v**	Ikea Distribution Services Limited

Heard at: Cambridge **On:** 12 – 15 February 2024 & 28 February 2024 (in chambers)

Before: Employment Judge L Brown

Members: Ms C Smith and Mr D Sagar

Appearances

For the Claimant: In person

For the Respondent: Ms Barrett, Counsel

RESERVED JUDGMENT

The Judgment of the Tribunal is:

1. By a unanimous decision the Claimant's claim for unfair dismissal contrary to s.94 of the Employment Rights Act 1996 ("ERA") fails.

2. By a majority decision the Claimant's claim for harassment contrary to s.26 of the Equality Act 2010 ("EqA") fails.

REASONS

Introduction

1. The Claimant presented his claim to the Tribunal on 22 October 2021. ACAS Conciliation was started on 19 August 2021 and concluded on 24 September 2021.

2. There have been two Preliminary Hearings in relation to Case Management. The details of those Hearings are set out in their own minutes and Orders.

Evidence Used

3. The Claimant gave evidence and called Karolis Bartasevicius in support of his claim.

4. The Claimant also filed written Witness Statements of a number of Witnesses on his behalf, the contents of which were not disputed by the Respondent and therefore the Claimant did not call them to give oral evidence. The written Witness Statements were by the following individuals:-

    4.1. Andrew Kauman – who referred to a Statement he made about 'Virus Isolation' on 18 February 2021.

    4.2. Colin Toogood – he gave a Statement about gatherings at Middleton's Road in Yaxley, Cambridgeshire, where protests took place about Government Policy in relation to Covid-19.

    4.3. Jane Merry – who provided a Statement again about meeting in Yaxley, Cambridgeshire, every Sunday at 10am.

    4.4. John O'Looney – who gave evidence about his experience as a Funeral Director during Covid-19 and what the Government said to him about the treatment of deceased people in his Funeral Home.

    4.5. Samuel Eckert – he made a Statement about being the owner of a website known as www.samueleckert.net/isolate-truth-fund/.

    4.6. Ursula Young – she gave evidence about attending Freedom Rallies in Peterborough on Sundays at 10am.

5. The Respondent called the following Witnesses:-

    5.1. Barbara Harrison;

    5.2. Julian Heley;

    5.3. Paul Bishop;

    5.4. Roger Thomson; and

    5.5. David Spence.

6. We also had a bundle running to 1187 pages before us.

Issues in this Case

7. The full issues are set out below in the conclusions section of this Judgment, but in summary form the issues this Tribunal had to decide were as follows:

   7.1 Was the Claimant Unfairly Dismissed?

   7.2 Harassment

      7.2.1 Whether the Claimant was harassed for a reason related to his philosophical belief that,

      "Everyone is entitled to all the rights of freedom expressed in Human Rights and the universal declaration of Human Rights"

      And

      "The UK Government is using Covid-19 to control people and take their rights and freedoms away from them".

Findings of Fact

8. The facts of what occurred in this case are largely not in dispute.

9. The Claimant commenced his employment with the Respondent on 10 September 2007 until his employment was terminated on 1 July 2021.

10. The Claimant worked in the department known as "In-Bound" when he joined the Respondent and was then promoted to the position of "Area Responsible".

11. On 17 April 2021, the Claimant took a two week holiday from work and travelled to Poland and then to Italy. He returned to the United Kingdom on 29 April 2021 and returned to work on 3 May 2021, four days later. He did so at a time when travel outside the UK was restricted and a 'traffic-light' system was in place for self-isolation from whichever country you had returned from. The Claimant stated in his Statement of Case that when he returned to work on 3 May 2021 he did so with no symptoms of Covid-19 or any other illness and this was not in dispute.

12. On 3 May 2021, the Claimant's Team Leader Julian Heley was told by Phil Mullan by Teams (page 166) that there were strong rumours concerning the Claimant's non-isolation upon returning from holiday in Europe. Phil Mullan told Julian Heley [Para.4 WS JH] that when he challenged the Claimant about this on the morning shift at the time, that the Claimant denied this allegation. The Claimant gave no evidence about this and we therefore find he did initially deny the allegation.

13. Set out at paragraph 5 of Mr Heley's Witness Statement is a reference to the Claimant's Facebook "story" which contained images from Italy. Tom

Fletcher, a co-worker of the Claimant was referred to in relation to employees becoming aware of the Claimant's Facebook story.

14. Julian Heley then went to speak to the Claimant who replied with words as stated at paragraph 6 of Mr Heley's Statement that,

> *"It is no business of Ikea what I do whilst on holiday"*

15. Mr Heley went on to say in paragraph 7 of his Witness Statement that whilst ordinarily this would be true, they were in the midst of a global Covid pandemic and as everyone knew, there were strict rules governing travel at the time. He said,

> *"Furthermore, the rules on self-isolation are well known and all over the media on a daily basis"*

16. It was not in dispute, and we find, that the Claimant was well aware of the strict rules governing travel at the time and that he knew he had to self-isolate on return from the countries he had travelled to, these being Poland and Italy. At paragraph 59 of his witness statement it says as follows:-

'On 29 April 2021, Liam Smith from NHS Track and Trace called the Claimant and said that if he hung up, he will be prosecuted. If he does not self-isolate, he will be prosecuted.'

And at paragraph 61,

'Liam Smith from NHS informed the Claimant about The Health Protection (Coronavirus, International Travel) (England) Regulations 2020. The Claimant pointed out that the regulation had not gone through both houses of parliament, was not an act, and was not a part of common law. The Claimant expressed that he did not feel obliged to follow it.'

17. Mr Heley, at paragraph 8 of his Witness Statement, then referred to strict measures in the warehouse implemented to protect co-workers (page 169 – 200 and Policy on Face coverings page 201 – 205). He also referred to guidance in the logistics area being provided (page 206). He also referred to regular risk assessments being undertaken in order to ensure that they were protecting co-workers as far as possible (page 207 – 239).

18. On 3 May during the afternoon shift, the Police then arrived at the Respondent's site looking for the Claimant, following what Mr Heley described as at paragraph 10 of his Witness Statement as, *"a tip off that he had travelled to Poland."*

They asked the Respondent for the Claimant's address and telephone number which was provided. Rebecca Rayner of the Respondent made a formal Statement as requested by the Police, by email dated 25 May 2021 (page 101 – 104). It was set out that due to the Police making a formal request under the general Data Protection Regulations they were duty

bound to comply with the Police request and this was not in dispute at the Hearing.

19. At paragraph 12 of his Witness Statement, it is set out that it is Mr Heley's understanding that the Claimant was prosecuted and fined in relation to this incident. This was not in dispute at the Hearing. In the Claimant's Statement of Case, (page 15) it said at paragraph 7 that,

> *"The Claimant didn't pay the fine for not self-isolating following the travel and the Police didn't do anything about it. If self-isolating is required by law, why didn't the Police do anything about it? If the Police didn't do anything about it, why the Respondent did what they did by dismissing the Claimant?"*

20. We found the assertion by the Claimant in his ET1 Form that the non-enforcement of the fine somehow meant the Respondents were not entitled to take action against the Claimant and ultimately dismiss him to be irrelevant.

21. On the 3 May 2021, the Claimant advised Mr Heley that the police had visited him at home and that he felt intimidated and stressed and that he would not be at work the following day.

22. Roger Thomson instructed Mr Heley to suspend the Claimant on 4 May 2021. The instruction by Mr Thomson to suspend the Claimant took place prior to the text received by Mr Heley from the Claimant. The Claimant was then suspended on 4 May 2021 during a Teams meeting (page 85 – 86). The Claimant was advised that the allegations were as follows:-

    22.1. Potential gross misconduct by breaching site and national and Covid Regulations relating to travel and isolation; and

    22.2. Breach of the Health and Safety at Work Act 1974.

23. The Respondent then commenced the Formal Investigation pursuant to their Policy (page 50 – 55). Appendices of information were prepared in order for Mr Heley to undertake the Investigation (page 108 – 109).

24. Mr Heley then investigated the travel requirements and restrictions currently in place for Poland and Italy (paragraph 18 of his Witness Statement). He said he also addressed Government Guidance for travel at the time (page 240 – 298). He recited that Government Guidance said the Claimant needed to have a genuine reason to travel abroad and that they had no indication of any such genuine reason for travelling abroad and that it would be critical for him to address this when speaking with him (paragraph 19 of his Witness Statement).

25. Mr Heley refers to assessing all the Quarantine Guidance (paragraph 20 of his Witness Statement) and referred to various documents such as:

    25.1. the "Quarantine Guidance" (page 299 – 307);

    25.2. Guidance "Entering the UK" (pages 308 – 309);

25.3. "Travel Advice" (page 312 – 319);

25.4. "Travel Abroad: Step by Step" (page 324 – 332);

25.5. "Covid-19 Response – Spring 2021" (page 333 – 384);

25.6. "Foreign Office Advice on Travel to Poland" (page 385 – 397);

25.7. "Foreign Office Advice on Travel to Italy" (page 398 – 410);

25.8. "Advice for the Polish Border Guard" (page 411 – 446);

25.9. "The Italian Ministry of Health" (page 447 – 480); and

25.10. "The Health and Safety at Work Act 1974, Section 7" (page 481).

26. Mr Heley set out that (paragraph 21 of his Witness Statement) the Claimant was only allowed to leave the UK if he had a reasonable excuse (page 240) and that it was illegal to:-

26.1. Leave the UK from England without a reasonable excuse; and

26.2. Be at an embarkation point where you can travel outside of the UK (Airports, Ferry Terminals and International Rail Hubs) for the purposes of travelling outside of the UK without a reasonable excuse (page 241).

27. Mr Heley set out in his Witness Statement that none of the exemptions listed in the Regulations applied to the Claimant's circumstances and that the Claimant had serious questions to answer as to why he had travelled abroad, apparently illegally and then failed to isolate upon his return, also illegally. He said he had potentially broken the law and placed fellow co-workers at serious risk of infection. He referred to the fact that (paragraph 23 of his Witness Statement) they had co-workers with relatives abroad whom they could not visit, some of whom were seriously ill. He also referred to an enormous sense of fear in the workplace regarding the possible spread of the virus and its repercussions for both co-workers and their families.

28. Mr Heley set out in his Witness Statement the various interviews he conducted of the co-worker colleagues of the Claimant. He gleaned from Tom Fletcher that some of the Claimant's colleagues were friends of the Claimant on Facebook and had seen his images of him abroad and that Tom Fletcher had spoken to him about this and that the Claimant had admitted it [Para 25 and 26]. Mr Heley referred to Tom Fletcher being upset by the Claimant's actions [Para 27]. He also referred to interviewing Leon Danile (paragraph 28 of his Witness Statement) (page 91 – 94) where a reference was made to,

"The Claimant was not thinking of others with respect to his behaviour".

29. Other colleagues were also interviewed who also confirmed, having seen the Claimant's Facebook posts and these were Rico Deluca, who was also said to be,

> *"unimpressed with the Claimant's behaviour as he felt that it had endangered colleagues and their families"*

(paragraph 32 of his Witness Statement).

30. Mr Heley said it was clear that a pattern was beginning to emerge regarding the dissatisfaction amongst co-workers in relation to the Claimant's behaviour.

31. In addition to interviewing other employees, such as Emile Aleksiev, Mr Heley also interviewed another colleague of the Claimant, Krzysztof Kowalewski. Reference was made to the Claimant having made his views known about PCR tests not being reliable despite admitting that he had to take a PCR test in Italy (paragraph 34 and 35 of his Witness Statement). It was said the Claimant was seeking to influence others in that,

> *'I think he was challenging every single person at work, even Barabara on Talk 2, and he has posted on Yamer about PCR tests and was also seeking to heavily influence others who were becoming uncomfortable with his views"*

32. Various comments by colleagues were recited by Mr Heley in his Witness Statement (paragraphs 36 and 37). In particular he said that Phil Mullan, when confronting the Claimant, and when the Claimant had denied it and then when pushed by Mr Mullan, said that the Claimant became aggressive and stated,

> *"You are all sheep, you're doing what the government tells you"*

(page 164).

33. He added further,

> *"Coronavirus isn't as bad as the government are making out"*

(page 164).

34. Mr Mullan concluded that the Claimant had no respect for others in the warehouse or their safety (paragraph 38 of his Witness Statement), but that he had not yet heard the Claimant's side of the story.

35. He interviewed the Claimant on 11 June 2021 by Teams. The notes were taken by Rebecca Rayner (page 121 – 138). The Claimant chose not to be accompanied. Throughout the whole interview in reply to every question that was put to the Claimant, he simply declined to reply and said,

> *"No comment"*

36. The Claimant, therefore in the view of this Tribunal, completely failed to co-operate with the Respondent and their Investigation and was obstructive. One exception to the *"no comment"* response to most of the questions was when asked if he accepted that he had put anyone at risk he replied,

> *"I haven't done anything to put anyone at risk"*

(paragraph 41 JH Witness Statement).

37. In relation to one other question put to him, the Claimant when asked about mask wearing sought to draw an analogy to slaves and prisoners in the U.S who the Claimant said were made to wear masks (page 128). The Claimant was given an exemption from having to wear a mask in the workplace after he objected to wearing it, and this was not in dispute. The reason for this was the Claimant advised the Respondents it made him feel anxious and this was never challenged.

38. When the Claimant was asked about the Health and Safety at Work Act 1974 by Mr Heley (paragraphs 45 and 46 of his Witness Statement) and when asked how the Respondent should react to a co-worker who could be found to have breached this section, after a long pause the Claimant replied,

> *"You should dismiss the co-worker"*

(page 133).

39. Mr Heley went on to say that the Claimant, however, did not accept he had breached the Health and Safety at Work Act 1974, nor put anyone at risk. Mr Heley said he had to disagree and that in his view the Claimant's actions had potentially put all co-workers at risk.

40. Mr Heley concluded his Statement by stating he found the Claimant to be uncooperative, uncaring about the safety of his colleagues, amongst other things, and steadfast in his views that he had done nothing wrong, that he had travelled illegally by going abroad to Poland and Italy, and the Claimant was steadfast in his views that he did not have to self-isolate upon his return from Europe, and nor did he think he had breached the Health and Safety at Work Act 1974 (paragraph 51 of his Witness Statement). He concluded as a result the Claimant had been involved in a police investigation which represented a clear breach of mutual trust and confidence concerning a reputational risk to IKEA.

41. Following the Investigation Meeting an Investigation Check List was drawn up (page 108 – 111), a brief chronology (page 112 – 115) and an Investigation Summary (page 116 – 120).

42. Roger Thomson was then asked to Chair the Disciplinary Meeting that was convened following the Investigation. He was a Warehouse Manager who had worked for the Respondent since 2018.

43. Prior to the Disciplinary Hearing taking place, the Claimant raised a Grievance. The Grievance raised by the Claimant was about a comment made about him by a co-worker during the investigation by Mr Heley. In particular, the Grievance submitted by the Claimant on 27 May 2021 (page 492 – 493) related to the Claimant's co-worker Tom Fletcher. The Claimant believed that Tom Fletcher was the co-worker who had reported him to the Police for refusing to self-isolate on return from a trip to Poland and it was a mandatory requirement (paragraph 8 of his Witness Statement).

44. In particular, however, the Claimant complained that during the Investigation Tom Fletcher had allegedly called the Claimant an *"idiot"* and accused him of,

> *"the usual spiel for the anti-covid brigade".*

45. The Grievance Hearing took place on 3 June 2021 by Teams. When the Claimant was asked what he wanted from the Grievance process he said he wanted Tom Fletcher to be dismissed. The Claimant also said that the things said about him by Tom Fletcher amounted to gross misconduct by Tom Fletcher (page 493).

46. Mr Bishop set out in his Witness Statement that firstly, Tom Fletcher had provided the Police with a Witness Statement regarding the Claimant's alleged breach of Lockdown Rules (paragraph 15 of his Witness Statement). He set out, the police then approached the company for details of the Claimant's name and address and the dates he had been absent from work and confirmation he had been out of the country. He said as far as he was aware, the Respondent was under a duty to provide such information as the police had made a formal GDPR request.

47. In relation to the comments made by Tom Fletcher, Mr Bishop upheld the Grievance. He said at paragraph 20 of his Witness Statement, that while he did not agree with the Claimant's views he felt technically that,

> *"I had to uphold it as it was a breach of the Ikea Code of Conduct"*

(page 68).

48. As a result of this Grievance being upheld, Tom Fletcher was given an informal reprimand for describing the Claimant in a derogatory way.

49. In relation to the Claimant's second allegation (page 495) this was a complaint that Tom Fletcher had said in his Witness Statement,

> *"I tried to look through his Facebook but couldn't find a story but I did come up with something"*

50. There was also a reference in the grievance to,

> *"He also took a screenshot of my Facebook story on 4 May 2021 and sent it to Julian Heley via email, appendix 11. By doing so he breached the Protection from Harassment Act 1997, s.2A subsection 3, subsection (d) and*

(g) (monitoring the use by a person on the internet, email or any other form of electronic communication, watching or spying on a person)."

51. In relation to this allegation, in his Witness Statement (paragraph 22) Mr Bishop said that this allegation made no sense as Tom Fletcher would not have been able to access the Claimant's Facebook page if access had not been granted by the Claimant of the Claimant's Facebook page, or if the Claimant's Facebook page was not set to full public access. He said that Facebook was a public social media platform.

52. In relation to this allegation, we noted that this did not form part of the List of Issues in relation to harassment. However, the Grievance itself was integral to the Claimant's general sense that he had been unfairly dismissed. We find that an employee accessing the Claimant's Facebook page had no bearing on the decision by the Respondent to dismiss the Claimant, and was not a relevant issue in this claim.

53. The Disciplinary Hearing then took place on 24 June 2021 by Teams, and it was conducted by Roger Thomson. During the meeting the Claimant raised GDPR issues in relation to the provision of his name and address to the police.

54. At paragraph 12 of Mr Thomson's Witness Statement, he referred to having to,

"Continually had to bring the Claimant back to the matters before us, not his beliefs on the Covid crisis generally."

55. During the Hearing before this Tribunal, the Claimant continually put in cross examination his views that Covid-19 did not present a genuine public health crisis for the Respondent's employees or the general public at large. This Tribunal also had to continually bring the Claimant back to the issues before this Tribunal which were whether the Respondent had applied its policies to the Claimant in relation to his behaviour and fairly dismissed him and whether or not the application of such policies amounted to harassment of him. Despite us continually reminding the Claimant that this Tribunal was not an arena for a general debate about whether the Government Regulations, being implemented by Ikea, were justified by scientific evidence at the time, he insisted on continually debating this point and would not take direction from this Tribunal about the relevance of his views and other people's views about Government Policy on Covid during the pandemic.

56. We therefore find that the Claimant, during the Disciplinary Hearing, did continually debate his views on the Covid crisis generally instead of concentrating on the allegations against him. In particular, at paragraph 13 of the Witness Statement of Mr Thomson, he said that the Claimant made an absurd comparison between Ikea complying with Government Guidance and people stating at the Nuremberg War Trials that,

"They were just following orders"

57. The Claimant was cross examined about this and it was put to him that he was comparing the Respondent's Policies with that of the Nazis. The Claimant did not deny that this was something he had said during his Disciplinary Hearing and we find that he did. We found this was an offensive comparison to make about the Respondent's Policies by comparing them to the Nazis.

58. During the Disciplinary Hearing it was said that the Claimant persisted in stating his views that the wearing of masks was harmful. Mr Thomson stated that the proposition was and remained ridiculous in his view (paragraphs 14 and 15 of his Witness Statement) and that they were bound to follow Government Guidance and they had produced comprehensive Guidance of their own and it was not for the Claimant, or anyone else, to act as though it did not apply to them.

59. We found that of course the Respondents were duty bound to follow Government Guidance on the Covid-19 pandemic and it was not for the Claimant to challenge the Respondent in deciding to follow Government Policy and to ask them to justify it to him. This was unreasonable, high handed and absurd in the view of this Tribunal.

60. Mr Thomson stated that the Claimant told him during the Disciplinary Hearing that travelling was,

> *"never illegal"*

(page 544).

61. When he was referred to the "Traffic Light System" that was produced by the Government during the pandemic, the Claimant stated during the Disciplinary Hearing that,

> *"This traffic light system is not based on any scientific basis"*

(page 544).

62. In short, we found the Claimant refused to accept that the law, and government regulations on travel during the pandemic, applied to him and that was a stance maintained throughout by the Claimant during the hearing before us.

63. At paragraph 18 of Mr Thomson's Witness Statement, it was said that the Claimant refused point blank to comment on whether he had travelled outside of the UK and returned to site on 3 May 2021, or whether he adhered to the Rules in place during the pandemic. We found the Claimant was obstructive during the disciplinary hearing. He clearly admitted in his ET1 Form to having undertaken such travel and it was not clear to us why the Claimant, during the disciplinary hearing, did not simply admit to that fact.

64. During the disciplinary hearing, the Claimant told Mr Thomson that it was no business of Ikea what he did out of work and said to him,

"I will just tell you that straight to your face"

(page 546).

65. He asserted that he had put no one at risk and asserted that,

"Asymptomatic spread is non-existent"

66. Mr Thomson stated it was impossible to enter into any meaningful dialogue at all about the allegations as the Claimant was totally insistent he had a right to do what he wanted, the law was wrong and that Ikea should be making their own decisions and not following the law. We found the Claimant maintained that stance in the Hearing before us which involved, amongst other things, stating that *"the law of the sea"* meant that he could travel wherever he liked. It was never clear to this Tribunal what legislation he was referring to.

67. The Disciplinary Hearing was then adjourned and was re-convened on 1 July 2021. During the adjourned Hearing the Claimant repeated his position that,

"Ikea should be doing its own research"

(paragraph 29 of his Witness Statement).

68. Mr Thomson stated he was unwilling to revisit this point as it was frankly preposterous that they should ignore the law when it did not suit someone's purpose. He also referred to the fact of the Respondent providing his details to the police and that he supplied details of the Regulations that covered this and the Claimant 'reluctantly' accepted this [Para 30 WS].

69. The Claimant had sent to the Respondent articles and links as to why they should not be following Covid Guidelines laid down by the Government and why he should not have to either (page 557 – 558). Mr Bishop said the Claimant had no intention of listening or agreeing to the reasonable proposition, which was in essence that Ikea were obliged to follow Government Guidance on keeping employees safe in the workplace [Para 32].

70. The Claimant continued to make assertions about mask wearing. However the Claimant himself had been told he was exempt from wearing a mask and it was irrelevant to the allegations against him.

71. Mr Thomson concluded by saying that having considered all the evidence, having regard to their duty of care and to the safety of their employees (paragraph 38 – 42 of his Witness Statement) that the Claimant had not followed the procedures of the Respondents when he took annual leave and when he returned to the workplace on 3 May 2021, without self-isolating for the required mandatory ten days self-isolation period upon return from an 'amber' country.

72. He went on to say he had no option but to terminate the Claimant's employment with the Respondent, having displayed a total disregard for the safety of others and this was not something that would be tolerated at any time, never mind during the largest pandemic most of them had ever seen or may see (paragraph 44). He also said he displayed no sense of contrition or remorse and continued to almost *"lecture the company"* on how to run the factory and that it should ignore Government Guidance and the law (paragraph 45 of his Witness Statement).

73. The Claimant was therefore dismissed for gross misconduct by letter on 1 July 2021.

74. One complaint by the Claimant about his dismissal was that he had less than 24 hours' notice of the reconvened Disciplinary Hearing on 1 July 2021. We found that the Disciplinary Hearing that took place on 1 July 2021 was a meeting that had been convened to advise him of the outcome of the Disciplinary Hearing that had already taken place on 24 June 2021. We did not therefore find that the Claimant had been given insufficient notice of the Hearing on 1 July 2021 when being advised of the outcome of the previous Disciplinary Hearing. The Respondents accepted that the Teams link for this Outcome Meeting was sent the day before (page 1145), but it was explained the Claimant would also have received the invitation letter by post and that the Claimant had the Disciplinary Pack from 18 May 2021 in any event (page 99). We also noted that the Claimant agreed in cross examination that he did have adequate time to prepare for 24 June 2021 Disciplinary Hearing. We found that no additional matters needed to be addressed at the final meeting on 1 July 2021 and it was therefore simply an Outcome Meeting.

75. In any event, we find the Claimant was given an opportunity to appeal. His appeal included his complaints about his second Grievance Outcome (page 573 – 574).

76. This Tribunal found that the investigation and the disciplinary process was thorough and reasonable. The fact of the Claimant travelling abroad and this being in breach of the regulations on travel at that time was not in dispute, i.e. that he did not self-isolate when he returned for the required ten days.

77. It was never in dispute that the Respondent had an obligation to take reasonable care for the Health and Safety of others at work in accordance with its written Policy on this (page 39). It was also not in dispute that the Respondent's Disciplinary Policy dealt with any failure to observe Safety Regulations (page 54), and also dealt with breaking any statutory Rule or Regulation potentially causing injury or danger or bringing the company into disrepute (page 55) and that this would be treated as gross misconduct.

78. The Respondent's Code of Conduct also required the Claimant to follow internal and external Health and Safety requirements (page 71). It was also never disputed that the Health and Safety at Work Act 1974 applied to the Claimant, although the Claimant did assert that it only applied to

'transmissible diseases' and in effect argued that that did not apply to his actions. The basis of this assertion was never clear to this Tribunal.

79. The Claimant confirmed during cross examination that he was trained on the provisions of the Health and Safety at Work Act 1974 as part of his Annual Refresher Training.

80. We find that the Claimant's actions in travelling abroad and returning to the workplace without quarantine for ten days, did put his co-workers at risk in that they could have caught Covid which could have had severe consequences for clinically vulnerable co-workers. We also found he expressed no remorse. When the Claimant was cross examined on whether he had ever tried to reassure his employer that he would not do that again, he responded with words to the effect of,

"Why would I say that?"

81. He asserted throughout, unreasonably in the view of this Tribunal, that the Respondents should have conducted a scientific investigation into the existence, or otherwise, of asymptomatic spread of Covid-19. When this Tribunal explained to him that this was not a Covid enquiry that we were undertaking, but that we were simply looking at the application of Ikea's Policies to him as an employee of theirs prior to his dismissal, he refused to accept this point. As a result, after warnings not to cross-examine witnesses on the scientific evidence he had found on the internet, about Covid 19, were ignored, I prevented further cross-examination on this issue as it was entirely irrelevant to the decision of this Tribunal.

82. The Claimant also complained that the Investigation was not conducted by someone different to his immediate Line Manager. Mr Heley explained that the Covid-19 pandemic meant circumstances were not normal, fewer Managers were available and he undertook the Investigation to maintain the day to day operation of the business. This Tribunal found that in the extraordinary circumstances of Covid-19, that it was reasonable for the Claimant's Line Manager to undertake the Investigation.

83. In any event, it is noted that the ACAS Code of Practice does not require an Investigation Manager to be somebody other than the Line Manager of the employee in question.

84. We found that the disciplinary process was paused when the Claimant brought a Grievance, with the Respondent allowing his Grievance (page 494) and Grievance Appeal (page 509) to be completed before the disciplinary process was re-started.

85. We also note that the Claimant then brought a second Grievance (page 522) which was about the Disciplinary Investigation itself. The Respondents decided that the second Grievance should be dealt with as part of the disciplinary process and we found that this was reasonable. We found that had the Respondents paused the disciplinary process once again to consider the second Grievance, that unnecessary delay would have

occurred and also there would be a duplication of the addressing of issues raised in the disciplinary process.

86. We found that both the Claimant's Grievances were fully and carefully investigated and considered.

87. In essence the issue for this Tribunal was whether the disciplinary process was fair, rather than any complaints about the Grievance process. However we did not find that the Grievance process was unfair in any way, but in any event, this had no bearing on the fairness or otherwise on the dismissal of the Claimant.

Issues in this Case

88. The issues the Tribunal had to decide are set out as follows:

1. Unfair Dismissal

1.1 Whether the Claimant was dismissed?

1.2 What was the reason or the principal reason for dismissal? The Respondent says the reason was conduct or some other substantial reason. The Tribunal will need to decide whether the Respondent genuinely believed the Claimant had committed misconduct.

1.3 If the reason was misconduct, did the Respondent act reasonably in all the circumstances as treating that as sufficient reason to dismiss the Claimant? The Tribunal will usually decide in particular whether:

1.3.1 there were reasonable grounds for that belief;

1.3.2 at the time the belief was formed, the Respondent had carried out a reasonable investigation;

1.3.3 the Respondent otherwise acted in a procedurally fair manner; and

1.3.4 whether dismissal was within the range of reasonable responses.

2. Harassment related to philosophical belief (Equality Act 2010 – s.26)

2.1 Did the Respondent do the following things:

2.1.1 on 11 and 12 May 2021 during the investigation of the disciplinary the Claimant says he was told that he did not care about other people and that he could have caused the factory to be shut down;

2.1.2 the Respondent appointed “Covid Checkers” who were responsible for checking the temperature of workers in the warehouse between 5 and 12 times per shift. The checks alleged to amount to harassment;

2.1.3 the Respondent implemented a one way system in the warehouse which inconvenienced the Claimant;

2.1.4 the Respondent played Government announcements about Covid two or three times per shift and on one occasion, played the announcement for 15 minutes, which affected the Claimant’s ability to concentrate on his work;

2.1.5 Covid Checkers stood at the entrance to the canteen and made people use hand santiser even when they had just washed their hands in the toilet;

2.1.6 the temperature checks of staff was usually done by a camera, the camera broke down frequently and on those occasions temperatures were taken by a gun, the use of the gun made the Claimant anxious because he thought the gun may shoot him; and

2.1.7 the Claimant refused the temperature tests and was told he had to have them in order to be allowed to enter the workplace, he complained and was told that he would only have to have his temperature taken once per shift, the Respondent did not adhere to this arrangement.

3. Did the conduct have the purpose of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

4. If not, did it have that effect?

5. The Tribunal will take into account the Claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

89. Both parties submissions were taken into account in reaching our decision although we do not recite them here.

The Law

Harassment related to disability

90. 'Harassment' is defined in section 26, which includes, in subsection (1):

> *(1) "A person (A) harasses another (B) if—*
> *(a) A engages in unwanted conduct related to a relevant protected characteristic, and*
> *(b) the conduct has the purpose or effect of—*
> *(i) violating B's dignity, or*
> *(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*"
>
> .....
>
> *(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
> *(a) the perception of B;*
> *(b) the other circumstances of the case;*
> *(c) whether it is reasonable for the conduct to have that effect.*

91. In *Richmond Pharmacology Ltd v Dhaliwal [2009] IRLR 336*, Underhill J set out at paragraph 10 (A/122) the elements of a claim of harassment related to a protected characteristic:

"(1) …Did the respondent engage in unwanted conduct?

(2) …Did the conduct in question either:

(a) have the purpose or

(b) have the effect of either (i) violating the claimant's dignity or (ii) creating an adverse environment for her? ..

(3) Was that conduct [related to] 1 the claimant's [relevant protected characteristic]?"

92. As for "purpose or effect", the requisite threshold is high – intending to or causing upset or offence is insufficient – the language used (e.g., "violating" and "degrading") points to purposes/effects which are serious and marked (*Betsi Cadwaladr University Health Board v Hughes* EAT 0179/13 and *Land Registry v Grant* [2011] ICR 1390).

93. The question of whether conduct "*related to*" a relevant characteristic is determined by the Tribunal, not by the claimant's perception (*Tees Esk and Wear Valleys NHS Foundation Trust v Aslam* [2020] IRLR 495).

94. The Code, at paragraph 7.9, observes that:

> "*Unwanted conduct 'related to' a protected characteristic has a broad meaning in that the conduct does not have to be because of the protected characteristic*".

95. It gives the following example:

> "*A female worker has a relationship with her male manager. On seeing her with another male colleague, the manager suspects she is having an affair. As a result, the manager makes her working life difficult by continually criticising her work in an offensive manner. The behaviour is not because of the sex of the female worker, but because of the suspected affair which is related to her sex. This could amount to harassment related to sex.*"

96. This less-than-causative meaning of "related to" has been considered in case law.

97. Whether conduct is "related to" a protected characteristic is an objective question, not determined by the respondent's knowledge or perception of the claimant's protected characteristic, or by their perception of whether the conduct "relates to" the claimant's protected characteristic (*Hartley v Foreign and Commonwealth Office Services* [2016] ICR D17).

98. In *Kelly v Covance Laboratories Ltd* [2016] IRLR 338 a Russian claimant worked for a company carrying out animal testing which had concerns about possible unwelcome actions by covert animal rights activists. The claimant spoke Russian, and frequently held long conversations on her mobile telephone in Russian. The claimant's manager instructed her not to speak Russian so that her conversations could be understood by English-speaking managers. When she brought a claim of racial harassment, that was dismissed by the tribunal. On appeal, the EAT found that the tribunal had been correct to conclude that the instruction did not "relate to" the claimant's race or national origins, even though it potentially could have been – it was because the claimant's line manager was suspicious of her conduct in the context of the employer's business and the risks it faced from animal rights activists.

99. For conduct to be 'related to' the protected characteristic of belief, it need not have been done because of the belief, as would be the case in direct discrimination: *R (Equal Opportunities Commission) v Secretary of State for Trade and Industry [2007] IRLR 327 (A/84).* However, there is a limit to the breadth of the concept, and whether conduct was in fact related to the protected characteristic must be assessed in the context in which the act was done. This

was also illustrated in *Henderson v General Municipal and Boilermakers Union [2015] IRLR 451 (A/194),* where the EAT held that the first-instance tribunal had erred in finding that there had been unlawful discrimination and harassment on the grounds of Mr Henderson's left-wing democratic socialist belief. Although on one occasion, he was shouted at for publishing a letter that was "too left-wing", the context in which the criticism was made was the high profile political difficulties which the open letter was perceived to have caused the leader of the Labour Party (Paragraph 95) (A/206). Simler J emphasised the need for the tribunal to have regard to the context of the conduct and concluded that *"the tribunal's own findings pointed strongly against a conclusion that the asserted acts of harassment had anything whatever to do with his protected beliefs" (Paragraph 97)*

100. In *Wasteney v East London NHS Foundation Trust* [2016] ICR 643 (A/215), the claimant, a born-again Christian, was issued with a written warning for trying to impose her religious views on a junior colleague at work. Eady J held at Paragraph 55 that:

> "*whilst the definition of harassment permits the looser test of "related to", a clear sense of what the conduct did in fact relate to should permit the employment tribunal to reach a conclusion as to whether it is the manifestation of religion or belief that is in issue or whether it is in fact the complainant's own inappropriate conduct" (A/227).*

101. As the first-instance tribunal had found that the claimant was not disciplined for reasons relating to sharing her faith, but rather for acts which blurred professional boundaries and placed improper pressure on a junior colleague (Paragraph 62) (A/229), it was correct not to uphold her harassment claim (Paragraph 70) (A/230).

102. Section 26(4) requires that:

> "*In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken account-*
>
> *102.1.1.1. the perception of B;*
>
> *102.1.1.2. the other circumstances of the case; and*
>
> *102.1.1.3. whether it is reasonable for the conduct to have that effect.*"

103. This is entails both subjective (the perception of B) and objective (whether it is reasonable for the conduct to have that effect) assessments of the effect of the conduct, as well as consideration of all the other circumstances of the case.

The objective assessment is particular to the claimant – was it reasonable for the conduct to have the effect on that particular claimant?

104. In *Pemberton v Inwood [2018] IRLR 542,* Underhill LJ at Paragraph 88 (A/246) updated the Dhaliwal guidance to emphasise that under the EqA, "effect" has both a subjective and an objective aspect:

"In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances – sub-section (4)(b)."

105. Applying the objective aspect of the test means that even unwanted conduct a claimant feels very strongly about will not amount to harassment if it is not, in the view of the tribunal, objectively sufficiently serious as to violate dignity or create an intimidating, hostile, degrading, humiliating or offensive environment. As Elias LJ said in Grant v HM Land Registry [2011] ICR 1390 at Paragraph 47 (a/152):

"Tribunals must not cheapen the significance of these words [i.e. the language of s. 26 (1)]. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment" .

106. In *Henderson* Simler J held that the incident where the claimant was shouted at for publishing a letter that was "too left-wing" did not reach the necessary degree of seriousness to qualify as harassment: to so conclude was "to trivialise the language of the statute" (Paragraph 99) (A/206).

107. The Code (at paragraph 7.18) indicates that the *"other circumstances of the case"* could be matters such as the personal circumstances of the claimant, such as their health, mental capacity, cultural norms, and previous experience of harassment, as well as the environment in which the conduct takes place.

Whether a belief is protected under the EqA

108. Section 10(2) EqA defines a belief as “any religious or philosophical belief”, including a lack of belief. In order to qualify as a religious or philosophical belief meriting protection under the EqA, a belief must satisfy all five criteria known as the ‘Grainger criteria’, laid out by Burton J in the case of *Nicholson v Grainger plc [2010] ICR 360 at Paragraph 24 (A/135).* The criteria are that:

a. The belief must be genuinely held;

b. It must be a belief and not an opinion or viewpoint based on the present state of information available;

c. It must be a belief as to a weighty and substantial aspect of human life and behaviour;

d. It must attain a certain level of cogency, seriousness, cohesion and importance; and

e. It must be worthy of respect in a democratic society , be not incompatible with human dignity and not conflict with the fundamental rights of others.

109. The second criterion derives from the case of *McClintock v Department of Constitutional Affairs [2008] IRLR 29,* in which the claimant’s opposition to same sex adoption was found to be based on his interpretation of the available evidence regarding the impact on children adopted by same sex couples and not his Christian beliefs. He was prepared to change his view if evidence showed the impact was not adverse. The EAT held at Paragraph 45 (A/100) that *“to constitute a belief there must be a religious or philosophical viewpoint in which one actually believes, it is not enough 'to have an opinion based on some real or perceived logic or based on information or lack of information available.'”* (This does not preclude science-based beliefs from being protected; in Grainger at Paragraph 30 (A/137) Burton J gave as an example the clash between Creationism and Darwinism.)

110. As for the third criterion, in order to qualify as a “belief as to a weighty and substantial aspect of human life and behaviour”, the belief must be directed to a fundamental aspect of human life and should not have “so narrow a focus as to be parochial rather than fundamental”: *Harron v Chief Constable of Dorset Police [2016] IRLR 481 at Paragraph 37 (A/213).*

111. In relation to the fourth criterion, Burton J held (at Paragraph 26) (A/135) that a protected philosophical belief must have “a similar status or cogency to a religious belief”. 'Coherence' is to be understood in the sense of being intelligible and capable of being understood: Harron at Paragraph 34 (A/213).

112. The fifth criterion has been held in the case of *Forstater v CGD Europe [2021] IRLR 706* to present only a low threshold. Choudhury J held at Paragraph 79 (A/306) that:

"it is only those beliefs that would be an affront to Convention principles in a manner akin to that of pursuing totalitarianism, or advocating Nazism, or espousing violence and hatred in the gravest of forms, that should be capable of being not worthy of respect in a democratic society. Beliefs that are offensive, shocking or even disturbing to others, and which fall into the less grave forms of hate speech would not be excluded from the protection."

Unfair Dismissal

113. The Claimant was continuously employed by the Respondent for more than two years and in those circumstances had the right not to be unfairly dismissed by it (section 95 of the Employment Rights Act 1996).

114. Section 98 of the Employment Rights Act 1996 ('the Act') provides that:

98 General

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

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

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

(2) A reason falls within this subsection if it

(a) …

(b) relates to the conduct of the employee,

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

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

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

115. The correct approach for the Tribunal to adopt in considering section 98(4) of the ERA (as set out in *Iceland Frozen Foods v Jones* [1982] IRLR 439) is as follows:

"… the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) —

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

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

116. The ACAS Code of Practice on Disciplinary and Grievance procedures sets out matters that may be taken into account by tribunals when assessing the reasonableness of a dismissal on the grounds of conduct, as follows:

'Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.

Employers and employees should act consistently.

Employers should carry out any necessary investigations, to establish the facts of the case.

When investigating a disciplinary matter take care to deal with the employee an affair and reasonable manner. The nature and extent of the investigations will depend on the seriousness of the matter and the more serious it is then the more thorough the investigation should be. It is important to keep an open mind and look for evidence which supports the employee's case as well as evidence against it. Be careful when dealing with evidence from a

person who wishes to remain anonymous. In particular, take written statements that give details of the time, place, dates as appropriate, seek cooperative evidence check that the person's motives are genuine, and assess the credibility and weight to be attached to their evidence.

Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.

Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting.

If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct. And its possible consequences to enable the employee to prepare to answer the case of the disciplinary hearing. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements within the notification. At the meeting, the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should also be given a reasonable opportunity to ask questions, present evidence, and call relevant witnesses. They should also be given the opportunity to raise points about information provided by witnesses.

Employers should allow an employee to appeal against any formal decision made."

117. For guidance on the level of investigation and on the Respondent's belief that an act of misconduct has occurred, *British Home Stores v Burchell* [1979] IRLR379 provides as follows:

"What the tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the ground of the misconduct in question (usually, though not necessarily, dishonest conduct) entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. That is really stating shortly and compendiously what is in fact more than one element. First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at

> the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case."

118. As at the time of the Claimant's dismissal, the Tribunal is to ask (i) did the Respondent believe the Claimant was guilty of the misconduct alleged, (ii) if so, were there reasonable grounds for that belief, (iii) at the time it had formed that belief had it carried out as much investigation into the matter as was reasonable in the circumstances, and (iv) was the decision to summarily dismiss the Claimant within a range of reasonable responses open to an employer in the circumstances *(Yorkshire Housing Ltd v Swanson* [2008] IRLR609)? The range of reasonable responses test applies as much to the procedure which is adopted by the employer as it does to the substantive decision to dismiss *(Sainsbury's Supermarkets Limited v Hitt* [2003] IRLR 23).

119. The employer cannot be said to have acted reasonably if he reached his conclusion in consequence of ignoring matters which he ought reasonably to have known and which would have shown that the reason was insufficient *(W Devis & Sons Ltd v Atkins [1977] IRLR314, HL).*

120. An employee can challenge the fairness of a dismissal if an agreed procedure was not correctly followed *(Stoker v Lancashire County Council [1992] IRLR 75).*

121. The fairness of the procedure adopted by an employer is to be assessed at the end of the internal process, including any appeal process. *(Taylor v OCS Group Limited [2006] IRLR613).* The process must be considered in the round. Smith LJ stated:

> "If [the Tribunal] find that an early stage of the process was defective and unfair in some way, they will want to examine any subsequent proceedings with particular care. But their purpose in so doing will not be to determine whether it amounted to a rehearing or review, but to determine whether due to the fairness or unfairness of the process procedures adopted, the thoroughness or lack of it of the process and the open mindedness or not, of the decision maker, the overall process was fair, notwithstanding any deficiencies at the earliest stage."

122. Case law has identified that the reason for dismissal will be a set of facts known to the employer at the time of dismissal or a genuine belief held on reasonable grounds by the employer which led to the dismissal *(Abernethy v Mott, Hay & Anderson [1974] IRLR213, CA).*

Polkey

123. In the event of an unfair dismissal the Tribunal must determine what would have been likely to have occurred if a fair procedure had been adopted, in accordance with the guidance in *Software 2000 Ltd v Andrews [2007] IRLR 569.* The EAT stated:

> "If the employer seeks to contend that the employee would or might have ceased to be employed in any event, had fair procedures being followed, or alternatively, would not have continued in employment indefinitely, it is for him to adduce relevant evidence on which he wishes to rely. … However, there will be circumstances where the nature of the evidence which the employer wishes to adduce or on which he seeks to rely, is so unreliable that the Tribunal may take the view that the whole exercise of seeking to reconstruct what might have been so riddled with uncertainty that no sensible prediction based on that evidence can properly be made."

124. Recent case law has moved away from the distinction between a finding of Unfair Dismissal on procedural grounds as opposed to dismissal on substantive grounds such as in *Gover and ors v Propertycare Ltd. [2006] ICR1073, CA; Thornett v Scope [2007] ICR236, CA; Software 2000 Ltd v Andrews and Ors [2007] ICR 825, EAT; and Contract Bottling Ltd v Cave and Anor 2015 ICR146, EAT.*

Harassment Allegations – Applying the Law to the Facts

First Harassment Allegation

3.1.1 On 11 and 12 May 2021, during the investigation of the disciplinary offence, the Claimant says he was told that he did not care about other people and that he could have caused the warehouse to be shut down;

125. In the minutes of the disciplinary meeting [p.137] Mr Thomson said to the Claimant as follows:-

> *p.137- "In your own words 'I always look after the safety of myself and the safety of other people', but you don't. By allegedly choosing not to isolate, after allegedly travelling, you risked the health and safety of every co-worker on site."*

126. During cross-examination the Claimant in effect accepted this was not said to him but said that, *"my understanding from those two sentences was that he tried to imply that I don't care about other people".* Mr Sagar, being in the minority, found the words spoken to the Claimant at p.137 were intended to imply that he did not care about other people. The Claimant specifically said "this was self-incriminating and to make me feel guilty (of not caring for others)."

127. However by a majority, this being myself and Ms Smith, we found that what was in fact said to him, as admitted by the Claimant, was that he thought he looked after the safety of other people but that he didn't. It was, we found, a criticism of his actions and not a statement about his lack of concern for the safety of others.

128. The second part of the allegation above relates to the wording that states [in the middle of p.137], derived from the summary of the investigation findings given on 12 May 2021, saying, *"your alleged failure to isolate… could have led not just to potential infection on site, but also potential site shut down due to your actions." [137].*

129. It was not disputed that Julian Heley, the investigator, said this. As he explained when giving evidence, the context for this statement was that,

"we were the only IKEA operating at that time [and] it was only because of the strict measures we took to protect the safety of our coworkers that we were able to stay open".

130. The next question, in relation to the First Harassment Complaint, is whether that was unwanted conduct. We find that it was. The Claimant certainly did not want to have this put to him during the Investigation i.e. that he did not look after the safety of other people.

131. We turn now to whether the unwanted conduct was related to the relevant protected belief. We found by a majority, with Mr Sagar dissenting, that Julian Heley's findings that the Claimant's actions could have led to a site shutdown were not related to the Claimants beliefs, and in particular that,

> *"Everyone is entitled to all the rights and freedoms expressed in Human Rights and the Universal Declaration of Human Rights"*
>
> *and (2)*
>
> *"The UK government is using Covid 19 to control people and take their rights and freedoms away from them",*

132. We found by a majority they were findings he made as an investigator about the consequences of the Claimant's actions in going abroad and failing to quarantine on return.

133. We found by a majority, with Mr Sagar dissenting, that this was a criticism of the Claimant's conduct not of his beliefs. We found, by a majority, that, based on what was said during the investigation meeting, and where Mr Heley was at pains to tell the Claimant that he did not want to judge his beliefs and opinions, which he was entitled to hold and express [134], that the statements [P.137] which the Claimant objected to were the investigator's factual findings as a result of that investigation, i.e., that he had travelled abroad and wer found by a majority it was his conduct they were concerned about not his beliefs.

134. Reminding ourselves of the case law, myself and Ms Smith, by a majority, focussed on what was being addressed in this allegation put to him in the investigation meeting, which was that his actions in failing to quarantine on returning from abroad put others at risk. The fact his conduct arose from his beliefs was a separate issue, and to equate conduct with beliefs would amount to a conflation of the two as established in both Henderson and Kelly.

135. Mr Sagar, in the minority, found that the unwanted conduct related to the protected philosophical belief. The Claimant said in evidence that, *"site shutdown was almost impossible and ridiculous…colleagues could be deceived to believe that is possible."* He firmly equated these claims to question his Covid beliefs that, *(1) "Everyone is entitled to all the rights and freedoms expressed in Human Rights and the Universal Declaration of Human Rights" and (2) "The UK government is using Covid 19 to control people and take their rights and freedoms away from them",* Mr Sagar considered that the Claimant, in all his

replies and conduct, put his Covid beliefs front and centre and told Mr Heley and Mr Thomson that Ikea needed to have carried out its own research rather than acting on Government guidance. In these circumstances he found separation of the concepts of Claimant's conduct and beliefs tenuous. He found that this unwanted conduct related directly to the Claimant's protected beliefs regarding Covid.

136. Having found by a majority that the Respondent did not engage in unwanted conduct which was related to the Claimants relevant protected characteristic i.e. his beliefs, then this First Allegation fails.

137. As this unwanted conduct was not related to a relevant protected characteristic then the issue of whether there was any justification for such conduct, and whether his belief was a protected belief, need not be considered.

Second, Sixth and Seventh Harassment Complaint

3.1.2 The Respondent appointed 'Covid checkers' who were responsible for checking the temperature of workers in the warehouse between 5 and 12 times per shift. The checks are alleged to amount to harassment;

3.1.6 The temperature checks of staff was usually done by a camera. The camera broke down frequently and, on those occasions, temperatures were taken by a gun. The use of the gun made the Claimant anxious because he thought the gun may shoot him;

3.1.7 The Claimant refused the temperature tests and was told he had to have them in order to be allowed to enter the workplace. He complained and was told that he would only have to have his temperature taken once per shift. The Respondent did not adhere to this arrangement.

138. The second, sixth and seventh harassment allegations overlapped and so we deal with them together.

139. On the second harassment allegation the Claimant's evidence [P.17] was that his temperature was *"checked frequently, five to seven times a shift which was not reasonable."* We found the frequency was five to seven times a shift, and not *'between 5 and 12 times per shift.'*

140. On the sixth and seventh harassment allegation it was not in dispute that when the thermal cameras were not working he would have his temperature checked by a temperature gun, but that it was agreed by the Respondent that he would only need to have his temperature manually checked the first time he entered the warehouse. However, we found that the Covid checkers at the entrance rotated every 20-30 minutes; it was therefore impracticable to track whether (out of the hundreds of workers in the warehouse on each shift) the Claimant had already had his temperature checked that day after arriving for the first time or coming back from a break or re-entering the building in accordance with the one-way system.

141. The next question, in relation to the Second, Sixth and Seventh Harassment Complaints, is whether that was unwanted conduct. We find that it was. The Claimant certainly did not want to have his temperature checked once per shift, or five to seven times per shift, with a temperature gun.

142. On the issue of whether these allegations related to the Claimant's asserted protected relevant belief we found, by a majority, with Mr Sagar dissenting, that the temperature checks were a safety measure implemented universally for all staff and visitors to the warehouse in order to reduce the risk of Covid 19 infections, and in order to follow government guidelines, and were not related to the Claimant's beliefs.

143. Mr Sagar, in the minority, found that the Respondent implementing temperature checking in the workplace, and, when the temperature checking monitor failed, they used a temperature gun and that it was done more than once a day, was related to the Claimant's relevant beliefs, i.e. that *(1) "Everyone is entitled to all the rights and freedoms expressed in Human Rights and the Universal Declaration of Human Rights" and (2) "The UK government is using Covid 19 to control people and take their rights and freedoms away from them".* He found that these temperature checks were rote based and indiscriminate and implemented in spite of the Claimant's protests. He found that this unwanted conduct related directly to the Claimant's protected beliefs regarding Covid.

144. Having found by a majority that the Respondent did not engage in unwanted conduct which was related the Claimants relevant protected characteristic then these Second, Sixth and Seventh Harassment Complaints did not have the proscribed effect and therefore fail.

145. As this unwanted conduct is not related to a relevant protected characteristic then the issue of whether there was any justification for such conduct, and whether his belief was a protected belief, need not be considered.

Third Harassment Complaint

3.1.3 The Respondent implemented a one-way system in the warehouse, which inconvenienced the Claimant;

146. It was not in dispute that there was a one-way system in place in the warehouse. The Claimant's evidence was that he was inconvenienced by the one-way system in the warehouse.

147. The next question, in relation to this Third Harassment Complaint, is whether that was unwanted conduct. We find that it was. The Claimant certainly did not want to have to use the one-way system in the warehouse.

148. The Claimants evidence on this was simply about how the one-way system was 'elaborate' [Paragraph 16 WS].'

149. We then asked ourselves if the one-way system implemented by the Respondent related to his beliefs? By a majority view, with Mr Sagar dissenting, we did not find it was related to his beliefs. The implementation of a one-way system was in accordance with government guidelines and was not related to his beliefs and was related to health and safety systems put in place in the Respondents warehouse.

150. Mr Sagar, in the minority, found that the Respondent implementing a one-way system in the workplace, related to the Claimants beliefs, i.e. that *(1) "Everyone is entitled to all the rights and freedoms expressed in Human Rights and the Universal Declaration of Human Rights" and (2) "The UK government is using Covid 19 to control people and take their rights and freedoms away from them"*. He found that the one-way system related to the Claimant's beliefs

as he made his antipathy to the system well-known in relation to his beliefs regarding Covid.

151. Having found by a majority that the Respondent did not engage in unwanted conduct which was related to the Claimant's relevant protected characteristic then this Third Harassment Complaint did not have the proscribed effect and therefore fails.

152. As this unwanted conduct is not related to a relevant protected characteristic then the issue of whether there was any justification for such conduct, and whether his belief was a protected belief, need not be considered.

Fourth Harassment Complaint

3.1.4 The Respondent played government announcements about Covid two or three times per shift and on one occasion, played the announcement for 15 minutes, which affected the Claimant's ability to concentrate on his work;

153. We found that the reference to government announcements being played was in fact a reference to a recording produced by the Respondent, where an employee of the Respondent, Barbara Harrison, reminded employees about the health and safety measures put in place in the workplace, and their need to abide by them. We found that the purpose of the measure was to keep employees of the Respondent vigilant and to ensure they complied with the health and safety measures in place. It was not in dispute that the announcements were played every fifteen minutes.

154. The next question, in relation to this Fourth Harassment Complaint, is whether that was unwanted conduct. We find that it was. The Claimant certainly did not want to listen to the announcements being played every fifteen minutes.

155. We then asked ourselves if the announcements implemented by the Respondent related to his beliefs? By a majority view, with Mr Sagar dissenting, we did not find it was related to his beliefs. The implementation of announcements was to keep employees vigilant to the risks Covid presented and was in accordance with government guidelines and was not related to his beliefs and was related to health and safety systems put in place in the Respondents warehouse.

156. Mr Sagar, in the minority, found that the Respondent implementing announcements in the workplace, related to the Claimants beliefs, i.e. that (1) *"Everyone is entitled to all the rights and freedoms expressed in Human Rights and the Universal Declaration of Human Rights" and (2) "The UK government is using Covid 19 to control people and take their rights and freedoms away from them"*. He found that this unwanted conduct related directly to the Claimant's protected beliefs regarding Covid.

157. Having found by a majority that the Respondent did not engage in unwanted conduct which was related to the Claimant's relevant protected characteristic then this Fourth Harassment Complaint did not have the proscribed effect and therefore fails.

158. As this unwanted conduct is not related to a relevant protected characteristic then the issue of whether there was any justification for such conduct, and whether his belief was a protected belief, need not be considered.

Fifth Harassment Complaint

3.1.5 Covid checkers stood at the entrance to the canteen and made people use hand sanitiser, even when they had just washed their hands in the toilets;

159. It was not in dispute that the covid checkers ensured people used hand sanitiser when entering the canteen. As to whether the Claimant, and all employees, always washed their hands after using the toilet we heard no evidence about whether the Respondents ensured all employees washed their hands after using the toilets.

160. The next question, in relation to this Fifth Harassment Complaint, is whether that was unwanted conduct. We find that it was. The Claimant certainly did not want to have to use hand sanitiser when entering the canteen.

161. We then asked ourselves if the hand washing implemented by the Respondent related to his beliefs? By a majority view, with Mr Sagar dissenting, we did not find it was related to his beliefs. The implementation of handwashing was in accordance with government guidelines and was not related to his beliefs and was related to health and safety systems put in place in the Respondents warehouse.

162. Mr Sagar, in the minority, found that the Respondent implementing hand sanitising in the workplace, related to the Claimants beliefs, i.e. that *(1) "Everyone is entitled to all the rights and freedoms expressed in Human Rights and the Universal Declaration of Human Rights" and (2) "The UK government is using Covid 19 to control people and take their rights and freedoms away from them"*. Mr Sagar found that the Claimant gave specific evidence that Covid checkers forced hand sanitation on all entering the canteen regardless of whether they had washed their hands after entering the toilet or if they had touched anything in the canteen. This was not denied by the Respondent. This unwanted conduct related directly to the Claimant's beliefs about Covid as he suggested that spread of infection was not possible in an indiscriminate, asymptomatic manner.

163. Having found by a majority that the Respondent did not engage in unwanted conduct which was related the Claimants relevant protected characteristic then this Fifth Harassment Complaint did not have the proscribed effect and therefore fails.

164. As this unwanted conduct is not related to a relevant protected characteristic then the issue of whether there was any justification for such conduct, and whether his belief was a protected belief, need not be considered.

165. To summarise we found, by a majority decision, that the Claimant's harassment allegations cannot succeed. The Claimant did not establish that the Respondent's Covid 19 safety measures were linked to his beliefs but instead only established that they were unwanted by him, and were forced on him against his will.

166. The Claimant accepted, when giving evidence, that he was able to openly express his views about Covid 19 in the workplace, and his employer did not treat him badly because he had done so. As Counsel submitted, to the contrary, his freedom of belief was protected by Mr Bishop upholding his grievance against a colleague who had criticised his views during an investigation interview [501].

167. We found the investigation was thorough and fact focussed at all times. It was never an investigation into his beliefs but instead what he had done based on those beliefs.

168. Having found by a majority that the claim for harassment fails on the issue of whether it was related to his protected beliefs, then his claims for harassment fail.

Unfair Dismissal – Applying the Law to the Facts

169. The Respondent submitted the reason for the dismissal of the Claimant was misconduct which was a potentially fair reason. This issue was not in dispute.

170. We then asked ourselves if the Respondent held a genuine belief that the Claimant had committed misconduct. It was never in dispute the Claimant had breached government travel regulations and also the Respondent's own policy, referred to as their Code of Conduct, and we found that Mr Thomson, the dismissing officer of the Respondent, did hold a genuine belief that the Claimant had committed misconduct. His reasons were clearly set out in the meeting notes of the outcome meeting on the 1 July 2021 [560-562] and the dismissal letter also makes clear his belief in the Claimant's misconduct [P.548-542].

171. We then asked ourselves if the Respondent had reasonable grounds for that belief? We found as follows:-

171.1 The Respondent heard from colleagues about the Claimant's Facebook posts, and they had reasonable grounds to be worried at that time that the Claimant could be breaching its polices and causing infection to spread in the workplace having returned to the workplace without first quarantining for ten days. In particular his Facebook page indicated he had been on holiday abroad [P.140][P.148]. The Claimant himself told a colleague he had been to Italy via Poland [P.148] and another colleague that he had been to Italy [P.156]. These colleagues subsequently provided evidence to the grievance investigator. Several statements were obtained and it was a thorough investigation.

171.2 When asked by a Team Leader, the Claimant denied travelling abroad and returning to work without isolating but was noted to be "a little sheepish" [P.166]. The Claimant refused to answer questions in his investigation interview [P.122] and disciplinary hearing [P.545] but did not at any point in fact deny the allegation that he had holidayed abroad and then returned and had not quarantined. The Claimant clearly had time to comply with quarantine requirements given the dates of travel [P.117] but he chose not to and returned to the

workplace four days after arriving back in the UK. He was also prosecuted and fined for the offence.

171.3 The Claimant was contractually obligated to take reasonable care for the health and safety of others at work and was obliged to comply with the Respondent's written policy in this regard [P.39]. He was in clear breach of that policy taken at face value on what the investigator had been told by others.

171.4 The Respondent's disciplinary policy provided that failure to observe safety regulations [P.54] or breaking any statutory rule or regulation potentially causing injury or danger or bringing the company into disrepute [P.55], would be treated as gross misconduct. There were reasonable grounds for the investigator to conclude that gross misconduct may have occurred.

171.5 The Respondent's Code of Conduct also required the Claimant to follow its internal and external health and safety requirements [P. 71]. The Claimant never denied that he had a statutory duty under s.7 of the Health and Safety at Work Act 1974 to take reasonable care for the health and safety of himself and others at work, and to cooperate with his employer to enable his employer to discharge its own health and safety obligations [P.481], albeit he tried to qualify this and say that the Health and Safety Act only applied to 'transmissible diseases' and he did not consider Covid was transmissible. The Claimant accepted that he was trained on this provision as part of his annual refresher training.

171.6 The Claimant took leave from 19 to 30 April 2021 [P.168], returning on 3 May 2021. At that time, the Respondent's Covid 19 guidelines required employees to follow Government guidance [190]. As was well-publicised at the time, Government guidance provided that *"It is illegal to travel abroad without reasonable excuse. Travel abroad for holidays is not permitted"* [240]. This restriction had statutory force under reg.8 of the Health Protections (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 [479]. Further, on arrival in the UK (for those permitted to travel) 10 days' quarantine was required [P.248].

172. We then asked ourselves if at the time of the belief the Respondent had carried out a reasonable investigation? We found that it was a reasonable investigation that was carried out by the Respondent, and that it was in the reasonable band of investigations of any other employer. In particular we found as follows:-

172.1 The investigating manager, Mr Heley carried out an investigation we judged to be reasonable in the circumstances. In the investigation pack were interviews with seven colleagues [P. 139-165] and it was never suggested by the Claimant that the investigation was not thorough but instead he said that [Paragraph 69] that he *'was verbally and emotionally abused,' and was 'asked self-incriminating questions.'* We found that he was not asked self-incriminating questions and that he was not verbally and emotionally abused.

172.2 Mr Heley also referred to internal guidance [P.169-205], the risk assessment [P.207-239], UK Government guidance [P.206][P.240-410], Polish guidance on travel [P.411-446], Italian guidance on travel [P.447-478] and relevant statutory extracts [P. 479-481] and we found he researched all relevant legal guidance in conducting his investigation.

172.3 Mr Heley gave the Claimant every chance to put forward anything he wished to advance in his own defence in the investigation meeting on 11 May 2021 [P.121] and again during the reconvened meeting on 12 May 2021 [P.136]. When the Claimant referred to Government guidance on High Consequence Infectious Diseases, Mr Heley then added a copy of this to the investigation pack [P.484] and discussed it with the Claimant in the reconvened meeting [P.135].

172.4 Despite the Claimant adopting a *'no comment'* approach as if in a police interview, Mr Heley still persevered and gave him the opportunity to address each point of the case against him.

172.5 We found that the Claimant's argument that Mr Heley ought to have investigated the scientific basis for the Covid 19 pandemic to be without any merit. No Respondent can be obliged to challenge, and research emergency government regulation before applying it in the workplace. As noted above the Claimant wasted significant amounts of Tribunal time on this allegation and in the end this Tribunal had to

direct witnesses not to answer these questions which had no legal merit whatsoever.

172.6 The Respondent was entitled to proceed on the basis that Covid 19 was a dangerous disease which the Respondent was obliged to protect its employees from by following Government guidance in the workplace.

173. We then asked ourselves if the Respondent carried out a fair procedure in the disciplinary processes that it followed? We found it was a fair process for the following reasons:-

173.1 We found that the disciplinary process was conducted in accordance with the ACAS Code of Practice and the dismissal was procedurally fair.

173.2 In particular different managers carried out the investigation, disciplinary and appeal stages. We found that whilst the internal policy provided that an investigation would "normally" be conducted by a different manager from the immediate line manager P.[51] that in the context of Covid 19 pandemic the circumstances were not normal; fewer managers were available, and so Mr Heley undertook the investigation, and in any event as set out above this does not amount to a breach of the ACAS procedures.

173.3 The Claimant was given the opportunity to be accompanied at the disciplinary [P.535] and appeal [P.573] hearings.

173.4 The disciplinary process was paused at the point when the Claimant brought a grievance, allowing his grievance [P.494] and grievance appeal [P.509] stages to be completed before the disciplinary process was restarted.

173.5 After the grievance appeal had been resolved, the disciplinary hearing was rescheduled for 24 June 2021 [529]. The Claimant then brought a second grievance [522]. This complaint essentially concerned the disciplinary investigation. We found as set out above that the Respondent's decision that this grievance should be considered and dealt with as part of the disciplinary process [P.522] was reasonable in the

circumstances having already adjourned the proceedings once, and it meant duplication was avoided.

173.6 We found Mr Thomson gave very detailed consideration to the points raised in the Claimant's second grievance, and provided reasoned responses in the meeting on 1 July 2021 [P.556-559] and his outcome letter [P.548-550].

173.7 We did not find that the Claimant had been given short notice of the disciplinary hearing for the reasons set out above, and in short we found it was an outcome meeting on the 1 July 2021 and not a further disciplinary meeting.

173.8 The Claimant was given the opportunity to appeal and his appeal, which included the points he wished to raise in respect of the second grievance outcome [P.573-574], was considered fully and was detailed in the outcome letter [578-582].

174. We then asked ourselves if the decision to dismiss the Claimant was within the reasonable band of responses of any other employer? We found that it was for the following reasons:-

174.1. The Claimants misconduct was serious, amounting to a criminal act at the time, and risked putting his co-workers at unnecessary additional risk of infection.

174.2. The Claimant expressed no remorse, and maintained his actions were justified and he was convinced that he was entitled to act as he had, meaning that the Respondent could not know if he would repeat his actions again in the future. When it was put to the Claimant in cross-examination that he had not done or said anything to reassure his employer that he would not act in the same way again, he responded, *"Why would I say that?"*

174.3. We found he was entirely lacking in any insight about the potential effect of his conduct on others and maintained the stance his employer was somehow obliged to scientifically justify the law passed by the UK government before they followed it.

174.4. At the time of his misconduct and the Respondent's decision-making, the need for the Respondent to keep its employees safe during the Covid 19 pandemic was paramount. Put simply the Respondent needed to keep their business running and to do so therefore complied with all UK legislation, and in so doing were able to be the only IKEA factory open and running during the pandemic.

174.5. The Claimant's conduct resulted in a police investigation, including police attendance at the Respondent's premises. It was clearly a reputational risk for the Respondent to employ the Claimant, who had maintained his refusal to comply with the Respondent's Code of Conduct, and in our judgment based on the Respondent's clear and justified concern for the health and safety of its employees.

174.6. The Claimant's conduct had caused anxiety to some of the other employees. His colleagues were concerned and anxious about his actions [P.141][P.145][149][P.161]. The Claimant held a managerial role which was in effect a deputy leadership position assisting the Team Leader. It was not tenable in any event for the Respondent not to require an employee with a managerial position to follow its Code of Conduct on travel and quarantining during the pandemic.

175. We found the Claimant's views were treated with respect at all times and he was dismissed for his conduct not his philosophical beliefs. In any event the Claimant never put his claim on the basis that the act of dismissal was an act of harassment. However we comment at this juncture on this in any event and the applicable law.

Interplay with Article 9 ECHR

176. Article 9 of the European Convention of Human Rights ('ECHR') should be taken into account in claims of philosophical belief discrimination and harassment. This is because s.3(1) Human Rights Act 1998 ('HRA') provides that

> *"so far as it is possible to do so… legislation must be read and given effect in a way which is compatible with the Convention rights", and also because the Tribunal, as a public body, is obliged by s.6 HRA to itself act compatibly with ECHR rights. Article 9(1) ECHR provides an unfettered right to hold a religion or belief and, in conjunction with Article 9(2), a limited right to manifest a religion or belief:*
>
> *1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom,*

either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching practice and observance.

2. *Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."*

177. The test for whether an individual's conduct is a manifestation of a belief protected under Article 9 is whether there is a sufficiently close and direct nexus between the act and the underlying belief. In *Eweida v United Kingdom (48420/10) [2013] IRLR 231*, the European Court of Human Rights held (at Paragraph 82) (A/169) that:

"*In order to count as a "manifestation" within the meaning of art 9, the act in question must be intimately linked to the religion or belief. An example would be an act of worship or devotion which forms part of the practice of a religion or belief in a generally recognised form . However, the manifestation of religion or belief is not limited to such acts; the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case . In particular, there is no requirement on the applicant to establish that he or she acted in fulfilment of a duty mandated by the religion in question."*

178. Caselaw has drawn a distinction between manifesting a belief in the workplace in a way that is protected by Article 9 ECHR, and manifesting a belief in an inappropriate way, which the employer is justified in restricting or sanctioning. In *Chondol v Liverpool City Council [2009] 2 WLUK 266 (A/102),* the claimant was a social worker who attempted to promote his religious beliefs to service users. The EAT held that the first-instance tribunal was right to distinguish between the claimant's protected religious belief and his inappropriate promotion of that belief. This distinction has been applied in subsequent cases, including *Wasteney v East London NHS Foundation Trust,* referred to above, and approved by the Court of Appeal in *Page v NHS Trust Development Authority [2021] ICR 941 at Paragraph 68 (A/279).*

179. In *Higgs v Farmor's School [2023] ICR 1072*, the EAT (Eady J) directed at Paragraph 82 (A/343) that where a claimant's conduct amounts to a manifestation of a belief (i.e., satisfying the 'close and direct nexus' test in Eweida), then in order to ascertain whether the distinction between manifestation and objectionable manner of manifestation identified in *Chondol* and *Page* applies, employment tribunals should consider whether any interference with the limited Article 9(1) ECHR right to manifest a belief is objectively justified in accordance with Article 9(2). Under Article 9(2), an interference must be (1) prescribed by law and (2) necessary in a democratic society in pursuit of one or more of "public safety, for the protection of public

order, health or morals, or for the protection of the rights and freedoms of others". Judging the latter involves analysing the proportionality of the measure by answering four questions, framed by Lord Reed JSC at Paragraph 74 of *Bank Mellat v HM Treasury* (No 2) [2014] AC 700 (and cited in Higgs at Paragraph 54 (A/335)) as follows:

a. Is the objective of the measure sufficiently important to justify the limitation of a protected right;

b. Is the measure rationally connected to the objective;

c. Could a less intrusive measure have been used without unacceptably compromising the achievement of the objective; and

d. Whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.

180. Whilst the decision in *Higgs* is currently under appeal it represents current guidance, and in any event we now refer to the test of proportionality.

181. Whilst the Claimant brought a claim for unfair dismissal without suggesting that the dismissal amounted to discrimination because of a protected belief, or harassment related to a protected belief, we make the following observations:-

181.1. Even had we found, (contrary to our findings by a majority above on the seven allegations) and even if such a claim had been brought, that the act of dismissal was related to his protected belief, and even if we had found that the belief itself was protected, and even had we found that his actions in going on holiday and failing to quarantine in returning to work amounted to a manifestation of those beliefs, we would still have found that the Respondent was justified in the context of this case in dismissing him in response to his undisputed conduct.

181.2. In particular, whether the Respondent's decision is analysed based on the *'range of reasonable responses'* test, or based on the four factors in the *Bank Mellat* case i.e., in analysing whether objective justification was made out as set out above, the result would have been the same. We would have found as follows:-

(i) The Claimant was fairly dismissed for the reasons set out in this Judgment.

(ii) The Respondent had to protect the health and safety of it staff and the public who came into contact with its staff.

(iii) It was proportionate to dismiss him in pursuit of its stated health and safety aims and its code of conduct.

(iv) Where an employee refuses to accept the employer is entitled to protect the health and safety of all its staff and customers then the rational aim of the employer to do so and to dismiss the Claimant in pursuit of that objective is justified.

(v) No lesser measure would have been effective such as a warning based on the evidence of the Claimant's attitude to his own actions.

(vi) Under s.9 the Respondent in a proportionate manner pursued legitimate health and safety objectives for its staff and the public, and had regard to the rights of others, in that they took steps to stop the spread of infection in the workplace and in the general public who come into contact with their staff.

(vii) In all these circumstances the disciplining and dismissal of the Claimant was proportionate and justified, and any .impact on the Claimant's ability to manifest his beliefs was outweighed by the need of the Respondent to protect his colleagues and the general public.

182. The Claimants claim for Unfair Dismissal therefore fails and is dismissed.

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Employment Judge L Brown

Date: 7 May 2024

Sent to the parties on: 8 May 2024

For the Tribunal Office.

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