EMPLOYMENT TRIBUNALS

Claimant: XYZ

Respondent: Birmingham City Council

FINAL HEARING

Heard at: Birmingham

On: 9, 10, 13, 16, 17, 20 to 22 & (deliberations in private) 23 May 2024

Before: Employment Judge Camp
Mr R Virdee
Mr R Spry-Shute

Appearances
For the Claimant: the Claimant's wife
For the Respondent: Mr P Wilson, counsel

N.B. There is a Tribunal order in place preventing the Claimant from being identified. Please see the attached Annex A (page 37 below).

RESERVED JUDGMENT

(1) This Judgment is further to the Judgment by Consent of 24 May 2024, the text of which is attached as Annex B (page 38 below).

(2) As is explained in more detail below, the unanimous decision of the Tribunal is that:

a. the Claimant's complaint of unfair dismissal succeeds;

b. the Respondent must pay the Claimant one day's pay as compensation for accrued but untaken annual leave under the Working Time Regulations 1998;

c. a. and b. above are effectively by consent;

d. all of the Claimant's other complaints fail and are dismissed.

(3) The Respondent made the following admissions on 9 May 2024:

The Respondent admitted the following facts:

1. On 8th December 2020 Lee Marsh passed wind on the Claimant and found it amusing whilst the Claimant was eating lunch.

2. On 9th December 2020 Lee Marsh called the Claimant a grass after he complained to his supervisor and threatened his job security.

3. On 9th December 2020 Lee Marsh ignored the Claimant for weeks as a result of his complaint.

4. In March 2021, Lee Marsh told the Claimant not to mess with him because he snaps, and he hits very hard.

5. In May 2021, Lee Marsh told the Claimant "*If any of you youngsters get this job … I will tell you to f*** off*".

6. In August 2021, Lee Marsh told the Claimant that he would tell him to f off because he is older and will not be told by youngsters. He also asked the Claimant what he would do if he asked one of the older members to do something and they threatened him.

7. On 13th October 2021, Lee Marsh repeatedly quizzed him about the ongoing trial and whether it was about "*kiddy-fiddling*"

8. On 25th October 2021, Lee Marsh and Malcolm Harrison did not interact with the Claimant and avoided being around him.

9. On 5th November 2021, Lee Marsh threatened the Clamant with physical violence involving the use of a chair.

The Respondent made the following admission of liability: that the Claimant was constructively dismissed on the basis of a breach of the implied term of trust and confidence and that that dismissal was an unfair dismissal.

(4) In closing submissions, the Respondent, through counsel, confirmed that the Respondent was also conceding that the Claimant was not paid compensation for one day's-worth of accrued but untaken annual leave when his employment ended and that the following was age-related harassment: in May 2021, Lee Marsh telling the Claimant, "*If any of you youngsters get this job … I will tell you to f*** off*".

(5) The Tribunal's decision is that the following were instances of direct age discrimination:

a. Lee Marsh passing wind on the Claimant and telling him he can get rid of of the Claimant in December 2020;

b. from around 25 October 2021, Mr Marsh no longer interacting the same with the Claimant and avoiding being around him.

(6) The Tribunal's decision is that the following were instances of age-related harassment:

a. in March 2021, Lee Marsh telling the Claimant not to mess with him because he snaps, and he hits very hard;

b. on 5 November 2021, Lee Marsh threatening the Claimant with physical violence involving the use of a chair.

(7) The Claimant's complaints in respect of the above instances of age-related harassment and direct age discrimination fail because of time limits.

(8) The Claimant's other complaints all fail on their merits. Those other complaints are: further complaints of age-related harassment and direct age discrimination; complaints of disability-related harassment and direct disability discrimination; complaints of unfavourable treatment because of something arising in consequence of disability; complaints of breach of the duty to make reasonable adjustments; a complaint of unauthorised deductions from wages.

REASONS

Introduction, background & issues

1. The Claimant was employed by the Respondent, initially as a Trainee Estate Caretaker and latterly as a Grade 3 Neighbourhood Caretaker, from 5 October 2020 until his resignation on 16 October 2022, effective on 28 October 2022.

2. The claim, presented on 10 January 2023 following early conciliation from 31 October to 12 December 2022, largely stems from an incident that occurred between the Claimant and a colleague called Lee Marsh on 5 November 2021. During that incident – as is now admitted by the Respondent and is recorded in the above Reserved Judgment – "*Lee Marsh threatened the Claimant with physical violence involving the use of a chair*". That part of the incident occurred in a private area, variously referred to as the "kitchen" or the "relief room". It also involved – as was and is admitted by the Claimant – the Claimant confronting Mr Marsh and verbally attacking him in strong terms in a public area of the building in which they were working.

3. Shortly after the incident, a preliminary investigation was conducted by Peter Barratt, Neighbourhood Services Co-ordinator (Housing) and the manager of the Claimant's line manager (a Mr Williams). He spoke to the Claimant and to Mr Marsh, amongst others, and prepared an email note of what they had told him, which he sent to Rachel Fulwell of HR on 15 November 2021. We shall refer to this as the "email of 15 November 2021". It recorded the fact that:

3.1 Mr Marsh confessed to having, "*flipped and attempted to punch Anthony who was sitting down. Nick Ramsey* [a colleague] *intervened, and words were exchanged. Lee then picked up a chair and was going to hit Anthony with it. Again, Lea said that Nick Ramsey intervened and stopped the incident becoming serious.*";

3.2 the Claimant confessed that after the initial incident, "*Lee got up and went out of the Kitchen. I could not believe what had happened and so I also got up and went outside. I saw Lee and I went over to him and shouted and swore at him, as I was very angry and felt undermined by Lee's actions and as I am a new supervisor*".

4. Both the Claimant and Mr Marsh were then subject to protracted disciplinary processes. The email of 15 November 2021 was not used at all in those processes. This was potentially significant as, although what the Claimant told the investigating officer – Samantha Jones – was broadly consistent with what he had told Mr Barratt, what Mr Marsh and some colleagues told her was less so, and served to minimise the seriousness of what Mr Marsh had done and in particular to underplay his violent intent. With support from Claire Jackson of HR, Mrs Jones produced investigation reports which concluded that both the Claimant and Mr Marsh had a case to answer for gross misconduct. The Claimant became unwell and went off on long-term sickness absence from 23 May 2022 onwards. On 16 October 2022, before his disciplinary hearing took place, the Claimant resigned with effect on 28 October 2022. At the time he resigned, the Claimant did not know about the email of 15 November 2021 or its contents. In the meantime, Mr Marsh had been found guilty of misconduct and issued with a written warning, following a disciplinary hearing on 20 July 2022.

5. There was a preliminary hearing for case management on 22 April 2024 and we refer to the written records of that hearing and of the previous preliminary hearing, on 20 June 2023. Between April 2024 and the start of this final hearing, the claim was refined and a (at the time) final and definitive list of issues was agreed, to which we also refer. The complaints being made included: complaints of age-related harassment, alternatively direct age discrimination, based on the Claimant being in his mid-30s versus Mr Marsh being in his late 50s; and complaints of disability-related harassment, alternatively direct disability discrimination, based on the Claimant's admitted disability / disabilities of anxiety, depressive disorder and PTSD.

6. There were significant developments in the case during this final hearing, namely: the Claimant withdrawing a number of his complaints, as is recorded in the Judgment by Consent of May 2024 (at Annex B); the Respondent making a number of admissions, as is recorded in the above Reserved Judgment, including admissions that several things that were alleged to be discrimination occurred as a matter of fact (including the admission relating to the incident of 5 November 2021 just mentioned) – but not that they were acts of discrimination – and that the Claimant had been unfairly constructively dismissed.

7. In light of those developments, what was left for us, the Tribunal, to deal with at this hearing was:

7.1 time limits issues;

7.2 whether one or two things happened as a matter of fact;

7.3 if they did, whether they, and in any event whether certain other things that the Respondent admitted happened, constituted direct disability or age discrimination or disability or age related harassment, including in particular

the issue of whether what happened was because of or related to disability or age;

7.4 half a dozen victimisation complaints, in relation to which the main issue was whether the reason for any detriments the Claimant was subjected to was that he did a protected act;

7.5 two complaints under section 15 of the Equality Act 2010 ("EQA"), two reasonable adjustments complaints, and some pay claims, as set out in the Judgment by Consent of May 2024. We shall explain what the issues that arise in relation to those complaints are when we decide them, later in these Reasons.

8. Finally by way of introduction and background, it is relevant to these proceedings that the Claimant was abused as a child, that this is (as we understand it) the root cause of his mental health difficulties, and that his abuser was tried and convicted in the Crown Court, with the Claimant as one of the witnesses against him, in or around October 2021. To minimise the upset caused to the Claimant during the hearing by – unavoidably – mentioning this, we referred to it as the "Crown Court matters" and we shall continue to do so.

The facts

9. The evidence before us consisted of oral and written witness evidence from the Claimant, Mrs Jackson, Mr Barratt, Mrs Fulwell, and Mrs Jones. The Respondent was originally contemplating having as witnesses Mr Marsh and a colleague of his and the Claimant's called Mr Harrison, and we had written statements from them, but after it made the admissions it made (see above), the Respondent sensibly elected not to call them.

10. The Claimant's witness statement was extremely long and dense and dealt with many things that were not issues in the case. The Respondent's statements had the virtue of relative brevity, but they did not address many important matters. What the Respondent's and their witnesses' position was in relation to some of those matters did not emerge until part of the way through this hearing. In fairness to the Respondent, the Claimant was originally making literally dozens of complaints, of many different kinds, and his case changed quite significantly in the run-up to the hearing, with some complaints being clarified and others withdrawn. It is, though, unsatisfactory, to say the least, that, for example, the Respondent left it until the first day the final hearing to make a series of major admissions. We should add, in fairness to the Respondent's witnesses and to Mr Wilson of counsel who was representing the Respondent at this final hearing, that we doubt any of this was their fault.

11. In terms of what happened, little of relevance is in dispute. This case is much more about why things happened, and in particular why certain individuals other than the Claimant did what they did, something neither the Claimant nor anyone else other than those individuals themselves can know and therefore something the Claimant could not give direct evidence about.

12. We accept that everyone who came before us told the truth as they genuinely believed it to be. Given the fallibility of human beings, this does not, of course,

mean that their evidence was entirely factually correct. The brain is an imperfect recording device, memories fade and change over time, and the events with which we were concerned mostly took place two years or more before this hearing. So far as concerns the Claimant himself, his ability to recall events accurately was, through no fault of his own, adversely affected by his mental ill-health since October / November 2021 and by his unshakeable but un-evidenced belief that colleagues, managers and HR conspired to 'do him down' (see below).

13. In addition to the witness evidence, there was a file / 'bundle' of documents of 1318 pages (including the index), unhelpfully numbered 1 to 1062. We were referred to only a fraction what was in the file and we did not have time to look at, much less read, more than a handful of pages on top of those to which we were explicitly taken in statements, during cross-examination, and in closing submissions.

14. We gave the basic facts in the opening section of these Reasons. The Respondent has admitted various facts, as set out in paragraph (3) of the Reserved Judgment, above. There is also a 'cast list' at Annex C (page 35 below) and a Chronology at Annex D (page 36 below), to which we refer and which should be deemed to be incorporated into these Reasons.

15. It is unnecessary to say a great deal more about the facts at this stage. We shall make our findings on contentious matters later in these Reasons, where we deal with the Claimant's individual complaints. Here, we shall merely outline the most relevant events.

16. The Claimant began as a Trainee Estate Caretaker in October 2020. From an early stage he had ambitions, and a progression plan, to move into a Grade 3 supervisory role. Others, including Mr Marsh, were aware of those ambitions. He completed his traineeship and worked as a Grade 2 Caretaker, in May 2021 unsuccessfully applied to be a Grade 3, over the Summer applied again and was successful this time, and he began working as a Grade 3 in or around September / October 2021.

17. Between December 2020 and August 2021, there were a number of incidents between Mr Marsh and the Claimant that the Claimant makes complaints of age discrimination about.

18. The Claimant was a prosecution witness at the Crown Court trial in October 2021. Around the time it started, as is admitted by the Respondent and recorded in the above Reserved Judgment, "*On 13th October 2021, Lee Marsh repeatedly quizzed him* [the Claimant] *about the ongoing trial and whether it was about "*kiddy-fiddling*".*"

19. There is a claim about Mr Marsh and Mr Harrison avoiding contact with the Claimant after his promotion and it is an admitted fact that, "*On 25th October 2021, Lee Marsh and Malcolm Harrison did not interact with the Claimant and avoided being around him.*"

20. We have already given the gist of what happened during the incident on 5 November 2021. The Claimant had a fairly lengthy phone conversation about it with Mr Williams, who had not witnessed it, on the day. Mr Williams then

telephoned Mr Barratt. Later that same day, the Claimant phoned Mr Barratt about it too.

21. On 8 November 2021, Mr Barratt had a face-to-face meeting with Mr Marsh and then one with the Claimant. He also had telephone conversations with Mr Ramsey and Mr Harrison and with a Mr Watton, another of the Claimant's and Mr Marsh's colleagues. Mr Barratt recorded what he had been told on 5 and 8 November 2021 in his email of 15 November 2021. We have nothing in writing directly from Mr Williams about his involvement.

22. Mrs Fulwell commissioned the disciplinary investigations of both the Claimant and Mr Marsh. The Claimant makes a claim about her email to him of 29 November 2021 in which she wrote, "*I would assure you that the investigation will be done in a fair and transparent manner.*" Mrs Jones was the appointed investigator. She had one or more face-to-face meetings with a number of individuals between December 2021 and February 2022 and there are notes of all, or almost all, the relevant meetings.

23. The Claimant alleges he did protected acts in accordance with section 27 of the Equality Act 2010 ("EQA") by complaining about Mr Marsh's conduct: in conversation with Mr Williams on 5 November 2021; in conversation with Mr Barratt on 8 November 2021; during his meeting with Mrs Jones on 10 December 2021.

24. At the end of December 2021, Mr Barratt indicated to the Claimant that he was referring him to occupational health. As we understand it, the main reason for this referral was to try to get some specialist psychological / psychiatric treatment for the Claimant in connection with the Crown Court matters, which he was having trouble accessing with any speed via the NHS. There is a dispute as to whether or not Mr Barratt ever completed that referral, in circumstances where nothing at all came of any referral that was done at that time. The Claimant had to be re-referred to occupational health in July 2022.

25. The Claimant had a week off work in November 2021 as compassionate leave. From the Respondent's point of view, this was to help him 'clear his head'. He had further short periods off with some physical ailments. He had a month off from 21 February 2022 with anxiety and low mood. He was off sick because of mental ill-health from 23 May 2022 until the end of his employment.

26. Mrs Jones's investigation report into the Claimant was not finalised until 28 April 2022. It went through a number of drafts and before it was finalised changes were made to its wording and its substance at Mrs Jackson's suggestion. Those changes included upgrading one of the charges the Claimant was facing from misconduct to gross misconduct. This was the following charge: actions and behaviour that could have had, or had, the potential to bring the Respondent into disrepute. In her equivalent report into Mr Marsh (of 18 March 2022), Mrs Jones had decided he [Mr Marsh] had no case to answer to that charge.

27. When, in May 2022, the Respondent sent the Claimant a 'pack' of documents for his disciplinary, some sensitive personal data of Mr Marsh's had not been adequately redacted in documents included within it, in breach of the GDPR. This led the Claimant to believe that there was a similar failure to redact his [the

Claimant's] sensitive personal data from the pack of documents sent to Mr Marsh for Mr Marsh's disciplinary. The Respondent looked into this and found that that was not the case, in that the redactions done to those documents had been done properly – electronically and not by hand. The Respondent sought to reassure the Claimant of this at the time and subsequently, but the Claimant has found it very difficult to accept it.

28. The Claimant raised a formal grievance in writing on 29 July 2022. It runs from page 849 (electronic page 1070) of the bundle and we refer to it. The grievance, which is admitted to be a protected act, was along similar lines to the Tribunal claim. The main thrust of it was that the Claimant was the victim in the incident of 5 November 2021 and that he should not be the one being disciplined for gross misconduct, with the threat of dismissal, particularly not when the disciplinary process was making him ill. It took the Respondent some time to respond to the grievance in any remotely substantive way, and it was eventually responded to by Mrs Fulwell in September and October 2022 – see immediately below.

29. There are claims about various bits of correspondence between the Claimant and/or his wife and Mr Barratt or Mrs Fulwell:

    29.1 an email from Mrs Fulwell of 9 June 2022 in response to an email from the Claimant of 7 June 2022 largely about the GDPR breach, in which, amongst other things, the Claimant told her that he was "*a sufferer of PTSD, anxiety, and mild depressive disorder*";

    29.2 an email from Mr Barratt of 14 July 2022 about occupational health referrals;

    29.3 correspondence from Mr Barratt in August and September 2022, in particular an email of 6 September 2022, about what level of contact there should be between the Claimant and the Respondent during his sickness absence;

    29.4 emails from Mrs Fulwell of 9 September 2022 and 11 October 2022 in which she refused to accept the Claimant's grievance as a formal grievance and suggested that the contents of the grievance be used as mitigation during his disciplinary hearing;

    29.5 a letter from Mrs Fulwell of 16 September 2022 about a proposed disciplinary hearing on 30 September 2022 and the possibility of the Claimant providing a written submission to the disciplinary hearing or having representation by a work colleague or Trade Union representative if he was not well enough to attend himself;

    29.6 emails in September 2022 from Mrs Fulwell or Mr Barratt about the Respondent communicating with the Claimant via his wife rather than directly with him (in light of his ill-health), in particular an email from Mrs Fulwell to the Claimant of 22 September 2022 in which she wrote, "*I am unable to communicate with your wife on employee matters in relation to yourself unless verbal consent is given by you for me to do so*";

    29.7 a letter from Mrs Fulwell of 7 December 2022 about references. The only claims the Claimant is pursuing about things that happened after he

resigned concern this letter and alleged unauthorised deductions from his final wage packet.

30. There was a fair amount of correspondence between the Claimant / his wife and the Respondent between June and October 2022 about how and when the disciplinary process should conclude. This included the letter of 16 September 2022 just referred to. What seems to have been the immediate cause of the Claimant resignation was an email from Mrs Fulwell of 12 October 2022, which included the following:

> *I am sorry that I did not communicate clearly in my email to you on 22nd September 2022 that the disciplinary was not happening on 30th September 2022. I thought that you were aware following my email on 22nd September 2022 and your subsequent email of 4th October 2022. Please accept my apologies for not confirming this to you.*
>
> *In order to support you and give you closure, I would like to progress with your disciplinary hearing. To give you some time I would like to offer two alternative dates for the hearing. The proposed dates are Wednesday 9th November 2022 at 10am or Wednesday 23rd November 2022 at 10am. … Can you please advise me by 25th October 2022, which date is most suitable for you. You have advised me that you are not well enough to attend in person. Therefore to assist (as I've been advised that this is in-line with the advice and recommendation from Occupational Health), can you please email your written submission direct to me by no later than Monday, 7th November 2022.*

31. The Claimant resigned by email on 16 October 2022. We refer to his seven page letter of resignation, which is dated 15 October 2022 and runs from page 981 of the bundle (electronic page 1204). It is the final alleged protected act.

The law

32. Our starting point is the relevant legislation, in particular the following parts of the EQA: sections 13, 15, 20(3), 23, 26, 27, 136, and paragraph 20(1)(b) of schedule 8.

33. As to direct discrimination:

    33.1 this involves 'less favourable' treatment and not merely bad treatment. We are looking at whether the Claimant was treated worse than others in materially the same circumstances as him, who were in their 50s or older or who did not have his mental health disabilities, were or would have been treated;

    33.2 in terms of case law, we note in particular paragraph 17, part of the speech of Lord Nicholls, of the House of Lords's decision in **Nagarajan v London Regional Transport** [1999] ICR 877 and the contents of paragraphs 9, 10 and 25 of the judgment of Sedley LJ in **Anya v University of Oxford** [2007] ICR 1451.

34. In relation to the harassment claim, we note **Richmond Pharmacology v Dhaliwal** [2009] ICR 724, at paragraph 7 to 16, read in conjunction with

paragraphs 86 to 90 of the judgment of Underhill LJ in **Pemberton v Inwood** [2018] EWCA Civ 564.

35. In relation to the concept of detriment and to what could broadly be termed 'causation' in the EQA, in relation to direct discrimination and victimisation at least, we have directed ourselves in accordance with paragraphs 48 to 51 and 61 to 74 of **Warburton v Northamptonshire Police** [2022] EAT 42. As to causation specifically in the context of an EQA section 15 claim, we have borne in mind **Robinson v Department of Work and Pensions** [2020] EWCA Civ 859. Also on causation under EQA section 15, and more generally in relation to that section, we adopt the summary of the law of Simler P (as she then was) in **Pnaiser v NHS England** [2016] IRLR 170, EAT, at paragraphs 30 and 31, in particular this: "*the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact*".

36. In relation to both the EQA section 15 and the reasonable adjustments claims, we have sought to apply the law as explained by the Court of Appeal in **Griffiths v Secretary of State for Work and Pensions** [2015] EWCA Civ 1265 at paragraphs 15 to 29, 41 to 68, 73, and 79 to 80.

37. As to whether any unfavourable treatment of the Claimant in accordance with EQA section was a proportionate means of achieving a legitimate aim, we adopt the summary of the law relating to 'justification' set out in paragraphs 11 and 12 of the decision of HH Judge Eady QC (as she then was) in **Birmingham City Council v Lawrence** [2017] UKEAT 0182_16_0206.

38. In relation to the burden of proof, we have applied the law as set out in paragraphs 36 to 54 of the decision of the Court of Appeal in **Ayodele v Citylink Ltd & Anor** [2017] EWCA Civ 1913.

39. Given the Respondent's admission that the Claimant was constructively unfairly dismissed, we have not had to consider the law of unfair dismissal to any significant extent. Certain aspects of the law relating to discrimination and victimisation complaints about constructive dismissal are considered later in these Reasons, as are time limits.

Constructive dismissal

40. As explained in the above Reserved Judgment, the Respondent, by an email from counsel – Mr Wilson – on 9 May 2024, admitted that it constructively dismissed the Claimant and that that constructive dismissal was unfair in accordance with section 98 of the Employment Rights Act 1996 ("ERA"). We discussed the basis of that admission with Mr Wilson during the hearing, on 10 May 2024. We understood from him that the Respondent accepted there had been a breach of trust and confidence and that the Claimant had resigned in response, but more than that remains somewhat unclear. Mr Wilson told us that the Respondent's admission was primarily based on the Respondent's failure to take into account during the disciplinary process the contents of the email of 15 November 2021 and Mr Marsh's 'confession' in particular. This, the Respondent admits, made the disciplinary process against the Claimant unfair.

41. The problem we have with that as the basis for a constructive dismissal is that for the Claimant to have been constructively dismissed, he has to have resigned in response to the breach of trust and confidence in question. As the Claimant had no knowledge at the time of resignation of the contents of Mr Barratt's email of 15 November 2021, the resignation can't have been in response to it being ignored during his disciplinary process. (See **Malik & Mahmud v BCCI** [1997] ICR 606 at 624). Be that as it may, the Respondent has admitted constructive unfair dismissal and we are not going to go behind that admission.

42. We are reasonably clear as to what the Respondent concedes the 'last straw' was in relation to the constructive dismissal (see **Omilaju v Waltham Forest London Borough Council** [2005] EWCA Civ 1493 and **Kaur v Leeds Teaching Hospitals NHS Trust** [2018] EWCA Civ 978 at paragraphs 39 to 46): pressing ahead with a disciplinary hearing notwithstanding the Claimant's professed inability either to attend it or to make written representations for it.

Disability claims

43. We shall start with the Claimant's claims put forward primarily as disability-related harassment, but as direct disability discrimination in the alternative. We shall deal with them in, roughly, the (non-chronological) order in which they appear in the list of complaints at page 39, below.

44. The first such complaint concerns the letter of 7 December 2022 sent to the Claimant by Mrs Fulwell. The part of the letter he objects to is: "*I can confirm that because you have resigned, all disciplinary proceedings will cease from 28 October 2022. However, I must point out that Birmingham City Council is under an obligation to provide factual statements to any future reference request of employment details, performance, and service record. This would include that at the time of your resignation, you were subject to a disciplinary investigation for allegations of gross misconduct. It would also include that a disciplinary hearing was deemed to be required.*"

45. In relation to this, as in relation to all, or virtually all, things in respect of which the Claimant makes a claim of disability-related harassment and direct disability discrimination, the Claimant's case has variously been as follows:

    45.1 the letter was deliberately drafted in the way it was out of malice, with the aim of exacerbating his mental ill-health and making him more unwell;

    45.2 what happened was the product of a failure to take reasonable care for the Claimant's mental health and of the Respondent's institutional disregard for mental as opposed to physical ill-health;

    45.3 connected with the first point above and directly applicable only to things that happened before the Claimant resigned, that as soon as the Claimant revealed he had mental health difficulties, the Respondent, and Mr Barratt, Mrs Fulwell and Mrs Jackson in particular, decided that he was more trouble than he was worth and embarked upon a plan to 'get rid' of him.

46. We don't doubt that this is genuinely what the Claimant thinks and feels. However, there is no evidence whatsoever to support those thoughts and feelings. The

Claimant and his wife evidently believe that the Respondent is largely responsible for his current state of mental health. Underlying a lot of the complaints that have been put forward in Tribunal is an allegation of negligence. However, this is not a County or High Court personal injury claim. Whether the Respondent breached its duty of care to the Claimant is not a matter for us. Moreover, although we think we can understand how the Claimant has come to believe that the Respondent takes better care for the physical than for the mental health of its employees, it is a startling jump to go from an allegation that individuals failed to take sufficient care for the Claimant's mental health to the extreme allegation that individuals – including individuals who did not know the Claimant at all – were so full of hatred towards him that they actively wanted to cause harm to him. In fairness to those individuals: to Mr Barratt, Mrs Fulwell and Mrs Jackson, we should make clear that those allegations have no foundation whatsoever in fact.

47. In the circumstances, all of the allegations of disability-related harassment, or alternatively direct disability discrimination, fail because none of the relevant conduct was related to or because of the protected characteristic of disability. It may well be true that a lot of what happened made the Claimant's mental health worse, but that does not in and of itself make the conduct in question related to or because of disability.

Complaint about the letter of 7/12/22

48. So far as concerns this particular complaint, the reason for this wording being included in the letter of 7 December 2022 was that: it is the Respondent's policy – a policy that in our experience is normal and common, particularly in the public sector – to say in a reference for someone whose employment came to an end by them resigning at a time when they were facing disciplinary allegations of gross misconduct, that that was how their employment had ended; Mrs Fulwell thought it best to inform the Claimant that that was the Respondent's policy. We should add that we think it was not just reasonable but positively desirable for her to do that, because it was information most people in the Claimant's position would want to know.

Complaint about the letter of 16/9/22

49. The Claimant also alleges disability-related harassment, alternatively direct disability discrimination, in relation to a letter from Mrs Fulwell of 16 September 2022 inviting the Claimant, in light of his unfitness to attend a disciplinary hearing, to make a written submission to the hearing or alternatively arrange for representation at the hearing by a work colleague or trade union representative. In short, this had nothing to do with disability and the reason that it was written was that the Respondent took the view, rightly or wrongly, that the best thing all round was for the disciplinary hearing to proceed, even without the Claimant present, rather than for the disciplinary allegations to continue to hang over him.

Complaint about the email of 14/7/22

50. The Claimant claims disability-related harassment, alternatively direct disability discrimination, in relation to an email from Mr Barratt of 14 July 2022. The main thing in this email to which the Claimant objects is the following: "*Following the occupational health referral I did for you on 21 December 2021, did you let*

occupational health know how you found their support, to see if any improvements need to be made to the service." The reason the Claimant objects to this is that he believes Mr Barratt did not complete an occupational health referral on him.

51. We are entirely satisfied that Mr Barratt did do an occupational health referral. There is clear evidence in the bundle of Mr Barratt preparing to do the referral, including correspondence between himself and the Claimant asking for particular personal details from the Claimant to enable him to complete it. We have no good reason to disbelieve Mr Barratt when he tells us that the referral was done. The Claimant's assumption that it wasn't stems simply from the fact that he was never contacted by occupational health. We have no direct evidence, but the likelihood is that some kind of administrative error occurred within the occupational health department.

52. Nobody followed the occupational health referral up, whether from the Respondent's side or from the Claimant's side. It is rather odd that Mr Williams, the Claimant's line manager, did not follow it up; but no more odd than that neither the Claimant nor his trade union representative did so. Mr Barratt, who was not the Claimant's direct line manager (and it was not his job to follow it up), simply assumed, because he had heard nothing to the contrary, that the Claimant had seen occupational health earlier in the year. It is most unlikely, and would be rather extraordinary, for Mr Barratt, had he known that the Claimant had not had an occupational health referral and had not seen occupational health, to have written to the Claimant as he did in this email of 14 July 2022.

53. In any event, as with all other allegations of disability-related harassment or direct disability discrimination, the reason for the Respondent's actions was nothing to do with the protected characteristic of disability.

Complaint about levels of contact

54. A further complaint of disability-related harassment, alternatively direct disability discrimination, is the allegation that Mr Barratt insisted on "*an oppressive level of contact*". This is essentially the same complaint as the allegation, again made as direct disability discrimination or alternatively disability-related harassment, that in (or around) August 2022 Mr Barratt wanted contact with the Claimant once a week rather than once a month "*as per policy*".

55. This allegation is not made out as a matter of fact and we entirely agree with what is said about this in paragraph 64 of Mr Wilson's written closing submissions. Further and in any event, the reason Mr Barratt suggested that the Claimant should provide an email update to the Respondent once a week ("*I would suggest that we keep in touch by email if that is okay and an update every week would be really appreciated*") in an email of 6 September 2022 is that Mr Barratt, in good faith and for legitimate welfare reasons, was wanting regularly to keep in touch with the Claimant.

56. We note that all three of us on this Tribunal have seen many cases where the allegation was that the respondent had neglected the claimant by insufficiently regular contact with them. Striking a balance in this area is a difficult judgement-call for any employer to make; it is often a 'damned if you do and damned if you don't' situation.

Complaint about a comment made on 13/10/21

57. Another complaint of disability-related harassment, alternatively direct disability discrimination, relates to the admitted fact that, "*On 13th October 2021, Lee Marsh repeatedly quizzed the Claimant about the ongoing trial and whether it was about "kiddy fiddling".*"

58. We are not satisfied that the reason Mr Marsh said this was anything to do with the protected characteristic of disability. We only have the Claimant's unchallenged evidence about what happened, but no one who was a witness before us, the Claimant included, knows what was in Mr Marsh's mind when he said it. Based purely on what the Claimant told us, Mr Marsh was not a respecter of other people's boundaries and was overly and insensitively curious about what the Claimant's Crown Court trial related to. Mr Marsh did not and could not have known what it was about and it appears to us that he was trying to get this information out of the Claimant by making what no doubt seemed to him to be 'jokey' suggestions as to what it might be about. It is by horrible bad luck that he happened to use the phrase "*kiddy fiddling*" when doing this.

59. The fact that the root cause of the Claimant's mental illness was abuse that he suffered as a child does not mean that any mention to him of child abuse is conduct related to the protected characteristic of disability, particularly in circumstances where the person mentioning it is completely unaware of the abuse. Child abuse is not synonymous with mental illness. The fact that a remark relates to child abuse does not mean that it relates to mental illness, still less does it mean that the remark was made "*because of*" the protected characteristic of disability in accordance with EQA section 13.

Complaint about the incident of 5/11/21

60. The Claimant also alleges disability-related harassment, alternatively direct disability discrimination, in relation to the incident on 5 November 2021.

61. The basis upon which the Claimant is making this as an allegation of disability discrimination is a little unclear. Originally, he appeared to be suggesting that what happened related to the protected characteristic of disability because it caused him mental anguish. However, it seemed to us that his case shifted during the hearing, perhaps once he appreciated that conduct which causes or exacerbates a disability is not necessarily the same thing as conduct related to disability. We aren't entirely sure if this is now what the Claimant's case is, but if the alleged connection between this incident and the protected characteristic of disability is an allegation that Mr Marsh acted as he did because he sensed some kind of weakness from the Claimant, i.e. that Mr Marsh took action that he would not have taken had he perceived the Claimant as being in good mental health, we are not satisfied that this is correct as a matter of fact.

62. Further, it matters that Mr Marsh was completely unaware at the time of the incident that the Claimant was disabled. We accept that in principle the perpetrator of conduct which is alleged to be harassment does not need to know that their victim has a disability in order to be a perpetrator of disability-related harassment. However, the thing the Claimant potentially relies on here is Mr Marsh's alleged perception that the Claimant was vulnerable, making him, as it were, a 'suitable'

target for bullying in the eyes of the bully. Bullying that occurs because the bully perceives vulnerability is not, we think, bullying related to any mental health disability the victim has, at least not when the bully does not know about that mental health disability.

63. Any allegation that Mr Marsh acted as he did on 5 November 2021 "*because of*" the protected characteristic of disability has no discernible basis in the evidence.

Complaint about GDPR breaches

64. The allegation that it was disability-related harassment, alternatively direct disability discrimination, to provide the Claimant in May 2022 with "*a disciplinary pack with several GDPR breaches*" appears to have been withdrawn. Certainly, the allegation that the *Claimant's* data rights were breached has been withdrawn. If and insofar as the Claimant is still arguing that there was harassment or discrimination here, presumably because of the way discovering that Mr Marsh's data rights had been breached made the Claimant feel, we reject that argument. As we have already explained, exacerbating disability is not the same as doing something which "*related to*" (EQA section 26(1)(a)) disability, or which was "*because of*" disability. We know of no other basis upon which the Claimant is still alleging, if he is, that this was disability-related harassment or direct disability discrimination.

Complaints about emails of 9/9/22 & 11/10/22

65. The next complaint of disability-related harassment, alternatively direct disability discrimination, concerns Mrs Fulwell's email to the Claimant of 9 September 2022. In that email, in relation to the Claimant's grievance, she wrote, "*I would suggest that you use your complaint as part of your mitigation.*"

66. There is considerable overlap between this complaint and the complaint relating to Mrs Fulwell's email of 11 October 2022, in which she stated, "*…having considered the contents of your submission* [grievance] *I cannot accept this as a formal grievance … As per my email of 9th September 2022 to you, I would suggest that you use your complaint as part of your mitigation…*".

67. It is common practice where someone raises a grievance that is closely connected with a disciplinary process to consider the subject matter of the grievance as part of that disciplinary process. The Claimant's grievance clearly was very closely connected with the disciplinary process. We note that paragraph 46 of the ACAS Code of Practice 1 on disciplinary and grievance procedures states: "*Where an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.*"

68. We also note that it is very common for people facing disciplinary allegations to raise a grievance and attempt to use it to slow down or stymie the disciplinary process. We are not suggesting that that was the Claimant's intention here, but looking at it from the Respondent's point of view, we can see that it might well have seemed that that was what the Claimant was doing. We think that it was reasonable for the Respondent to adopt this approach, particularly considering

that the grievance was raised many months both after the disciplinary process began and after the main things that the Claimant was complaining about within the grievance occurred.

69. The reason Mrs Fulwell wrote these comments in the emails was nothing to do with disability. She was doing so simply because, on HR advice, she (rightly or wrongly; but genuinely) thought that suggesting to the Claimant that the things he was raising as part of his grievance were best raised as mitigation in the disciplinary hearing, and that not dealing with the grievance separately from the disciplinary process, was the appropriate way to proceed.

Direct disability discrimination

70. We now move onto the complaints which are made primarily as direct disability discrimination, with disability-related harassment in the alternative. In relation to each of these, we explained earlier (paragraphs 45 to 47 above) that none of the relevant conduct was because of or related to the protected characteristic of disability and therefore that all complaints of direct disability discrimination and disability-related harassment necessarily fail.

71. We have already dealt with the first two and the last of the complaints put forward primarily as direct disability discrimination in the Claimant's list of complaints: the allegation that there was a failure to refer the Claimant to occupational health for eight months between November 2021 and July 2022 (an allegation rejected because, amongst other things, there was no failure to refer to occupational health); the allegation relating to the level of contact, which Mr Barratt suggested should be once a week in August/September 2022 (as to which, see paragraphs 54 to 56 above); the complaint in respect of Mrs Fulwell's email of 11 October 2022 stating that the Claimant's grievance could not be accepted as a formal grievance (as to which, see paragraphs 66 to 69 above).

Complaint about the investigation into the 5/11/21 incident

72. Another allegation put forward primarily as a complaint of direct disability discrimination is that Mrs Fulwell promised "*a fair investigation knowing the opposite was true*" in November 2021. Mrs Fulwell did indeed promise that the investigation which was then underway would be fair and it is indeed the case that that promise was not fulfilled, in that, as the Respondent has conceded, the email of 15 November 2021 was not taken into account (see paragraph 40 above). But for this to be a coherent complaint of direct discrimination, Mrs Fulwell has to have made that promise intending the opposite and/or knowing that the opposite would not be the case, and we do not accept that she did. The fact that the investigation was ultimately unfair does not mean that when Mrs Fulwell made the promise she didn't mean it. In any event, yet again, there is no substantial basis in the evidence for any suggestion that Mrs Fulwell did this because of something to do with the protected characteristic of disability.

Complaint concerning comments re. power going to C's head

73. Another complaint made first and foremost as one of direct disability discrimination is: "*Allegations of power going to my head and head changing that are ongoing*". This concerns certain comments made during the disciplinary investigation

meetings by the Claimant's and Mr Marsh's colleagues Mr Watton, Mr Harrison and Mr Ramsey. The comments in question are uses of the expressions "*power has gone to his* [the Claimant's] *head*", as well as Mr Marsh possibly telling the Claimant at some stage that he shouldn't let his promotion to Grade 3 "*change your head*".

74. The expression 'power going to [someone's] head' is a common expression that has no connotations of mental ill-health; and talking about the Claimant's 'head changing' in the particular context almost certainly meant the same thing, namely a suggestion that the Claimant was over-full of himself because of his promotion. We are not satisfied that in the circumstances in which the phrases the Claimant complains about were used (or allegedly so), none of the words he relies on as discriminatory had any connection to mental ill-health or other disability.

Complaints about the disciplinary

75. The Claimant makes a direct disability discrimination complaint (alternatively one of disability-related harassment) about, "*Pursuing me for GM due to alleged verbal abuse of LM but not NR, via a predetermined GM disciplinary.*"

76. This is one of a number of allegations to the effect that various individuals, in particular Mr Barratt, Mrs Fulwell and Mrs Jackson, together decided, in or around November 2021, that they wanted to bring about the termination of the Claimant's employment – supposedly for a variety of reasons – and that they conspired to, as it were, 'fix' the disciplinary process to ensure that the Claimant would be sacked.

77. We have already rejected the essential allegation as having no objective basis in the evidence in relation to one complaint of disability-related harassment: see paragraphs 45.3 and 46 above. The particular aspect of it on which this direct discrimination complaint is focussed is the fact that during his disciplinary investigation interview, Mr Ramsey said that after the incident between Mr Marsh and the Claimant on 5 November 2021, he had called Mr Marsh an "*idiot*" and told him to go home. The Claimant's case is that – although he wasn't there so he doesn't know – Mr Ramsey was unlikely simply to have called Mr Marsh an idiot and the Claimant suggests that he would likely have attached an expletive to the word "idiot"; and he suggests that disciplining him [the Claimant] for his part in the incident and not disciplining Mr Ramsey for his use of offensive language towards a colleague just afterwards was discriminatory.

78. Putting to one side the fact that no one, including Mr Marsh, complained about Mr Ramsey having used an expletive or about him having called Mr Marsh an idiot at the time – and the fact that this complaint is entirely based on speculation and not evidence – the comparison between the Claimant and Mr Ramsey in relation to this is not a valid comparison in accordance with EQA section 23. Calling someone in a private area an idiot when they have just done something idiotic, as Mr Marsh had, is not remotely comparable to what the Claimant admitted to having done, let alone what he was accused of having done.

79. Another aspect of the Claimant's overarching case that the Respondent wanted to 'get rid of' him is the allegation that steps were taken by the Respondent to make what the Claimant did seem more serious and to exculpate Mr Marsh. This

is reflected in the direct disability discrimination (alternatively harassment) allegation that in Mrs Jones's investigation report in relation to the Claimant, it was decided that he had a case to answer in relation to the charge that his actions and behaviour could have, or had, the potential to bring the Respondent into disrepute, whereas the finding in her report about Mr Marsh in relation to the same charge was that Mr Marsh did not have a case to answer.

80. There was no less favourable treatment here, as Mr Marsh was not a valid comparator. The reason they were treated differently in relation to this allegation is explained by a material difference in what they were accused of having done; and, indeed, by what they had both in fact done. Mr Marsh's violence and aggressive actions towards the Claimant were confined to the relief room, a private area. Contrastingly, the Claimant had instigated an altercation with Mr Marsh in a public area. There is no substantial basis in the evidence for us to conclude that had their positions been reversed, the Claimant would have been treated any differently from the way in which Mr Marsh was treated, or vice versa, still less that any different treatment was in any way connected with the fact that the Claimant had a disability that Mr Marsh did not have, or was otherwise connected with the protected characteristic of disability.

81. "*Witnesses, managers and HR withholding exculpatory facts from a formal disciplinary process*" is a further complaint of direct disability discrimination (alternatively harassment) that is an aspect of the overarching allegation that the Respondent wanted the Claimant's employment to end. This particular allegation relates to the Respondent's failure to use Mr Barratt's email of 15 November 2021 within the Claimant's or Mr Marsh's disciplinary processes.

82. We are entirely satisfied that the explanation for why the email and the information contained within it was left out of the disciplinary process was forgetfulness and lack of competence. There is nothing in the evidence suggesting to us that it was or might have been due to a desire to 'get rid of' the Claimant, because he was or because it was thought he might be disabled, or for any other reason; on the evidence, neither Mr Barratt, nor Mrs Fulwell, nor Mrs Jackson had any such desire. Apart from anything else, at the time of the incident, the Claimant had only one year's service with the Respondent and therefore had no right to a fair dismissal. A conspiracy to get rid of him, taking in his managers and HR, would have to have been the most incompetent conspiracy imaginable to leave him still employed when he acquired two years' service and the right to bring an unfair dismissal complaint, in October 2022, shortly before he resigned.

83. A further similar and related allegation of direct disability discrimination (alternatively harassment) is: "*HR suggesting numerous unfavourable amendments to disciplinary documents influencing the investigating officer's decision making and upgrading a finding of misconduct to GM in order to establish my GM from November 2021.*"

84. This allegation concerns the fact that Mrs Jones's investigation report that was eventually produced had significant differences from her first draft, and that many of those differences were down to suggestions made to her by Mrs Jackson.

85. One of the suggested changes, which Mrs Jones adopted, was to conclude in the investigation report that the Claimant had a case to answer to a charge of gross

misconduct and not merely misconduct. Apart from that change, it is not in our view objectively the case that the suggested amendments, looked at as a whole, served to maximise the Claimant's guilt and/or to exculpate Mr Marsh, as has been suggested by the Claimant and on his behalf.

86. The reason Mrs Jackson suggested that what the Claimant was accused of having done should be classed as potential gross misconduct was that that was genuinely the view that Mrs Jackson took. It was a view that Mrs Jones ultimately agreed with, on the basis that what the Claimant did happened in a public area and so had the potential to bring the Respondent into disrepute.

87. In addition, we are bound to say that, in our view, it was entirely reasonable to continue to charge the Claimant with gross misconduct, up until his resignation, notwithstanding the information that had been provided about his mental health. Moreover, we think it would have been open to the Respondent reasonably to continue to charge the Claimant with gross misconduct even if the email of 15 November 2021 had been part of the disciplinary investigation. This is because what the Claimant had admitted to having done was, objectively, such a serious matter. Whether the difficulties he had with his mental health were the reason he behaved as he did and whether they provided sufficient mitigation to downgrade what he had done from gross misconduct to misconduct were matters that it was appropriate and reasonable to leave to the chair of the disciplinary hearing. This is so notwithstanding the fact that, based on what we now know, it would in all likelihood not have been reasonable for the Claimant to have been dismissed for gross misconduct. However, the Claimant resigned before a disciplinary hearing took place, so we will never know whether the Respondent's witnesses were right to say (as they did) that in practice, the outcome of the disciplinary hearing, had it taken place, would probably not have been dismissal.

Complaints about the email of 9/6/22

88. There is overlap between the complaints we have just been considering and those in paragraph 4 of the Judgment by Consent of May 2024: "*complaints of direct disability discrimination, alternatively unfavourable treatment because of something arising in consequence of disability, about the following: "9/6/22 – RF continuing to ignore C's disclosure of diagnosed conditions/disability by e-mail and failing to factor it in as mitigation for the disciplinary*".

89. We agree with what is said about these complaints in paragraphs 60 and 61 of Mr Wilson's written closing submissions.

90. What the Claimant is referring to here is an email from Mrs Fulwell of 9 June 2022 about the breach of the GDPR that had occurred in relation to Mr Marsh's information. It was sent in response to an email from the Claimant of 7 June 2022, which included the following: "*I am not sure if you are aware, but I am currently signed off due to anxiety because of recent events and breaches in GDPR, and this had a really negative impact on my mental health. … I am currently signed off until 24th June 2022 and at this point in time until that date, I am not fit for work and therefore I am not able to attend the disciplinary hearing on the above-mentioned dates. … I hope you can appreciate as a sufferer of PTSD, anxiety, and mild depressive disorder I struggle with trust issues and following recent events it has set me back somewhat. Although I do appreciate your reassurances*

that my sensitive data wasn't breached, I am working on accepting this but for me unlike others, it is easier said than done. …".

91. The gist of Mrs Fulwell's email of 9 June 2022 was the provision of further reassurance to the Claimant that his GDPR rights had not been breached. At the end of it, she suggested to him: "*should you need any support during this difficult time please contact the EAP service … which is a free, confidential support and advice service for BCC employees*".

92. There is nothing in Mrs Fulwell's email to which anyone in the Claimant's position could reasonably object or consider to be detrimental to themselves. By sending it, Mrs Fulwell was not subjecting the Claimant to unfavourable treatment, nor to a detriment. For that reason, whatever else, the Claimant's complaints about it of direct discrimination and unfavourable treatment under EQA section 15 fail.

93. In addition:

    93.1 there is no discernible "*something*" that arose in consequence of disability that resulted in Mrs Fulwell writing what she wrote in her email and the Claimant has not suggested anything fitting the bill;

    93.2 if and in so far as the Claimant is alleging (as he may be) that Mrs Fulwell sent the email to him knowing it would upset him and intending that it would, and/or that she would have sent a different and (in some unspecified way) more favourable email to someone without his mental health disabilities, it is an allegation that is not objectively based and which we do not accept;

    93.3 Mrs Fulwell did not "*ignore*" the Claimant's "*disclosure of diagnosed conditions/disability*". In her email, she engaged with and responded to what the Claimant had written;

    93.4 what the Claimant actually seems to be suggesting in this part of his claim is that as soon as he revealed to the Respondent that his mental health was being adversely affected by the disciplinary process, that process should have been abandoned and/or, at least, that the charges against him should have been reduced from gross misconduct to misconduct. We disagree. Nothing in the Claimant's email of 7 June 2022 made a difference to whether it was appropriate to subject the Claimant to a disciplinary process, nor to whether what he had done constituted misconduct or gross misconduct. The most that could be said about it was that it potentially made it advisable to pause the disciplinary process, to give the Claimant time to get better. This is effectively what the Respondent did;

    93.5 even if we agreed with the Claimant that him having a mental health disability made it unreasonable to continue disciplining him, this would not give rise to the direct disability and EQA section 15 discrimination complaints that he has made here.

Disability direct discrimination & harassment claims – conclusion

94. In conclusion in relation to direct disability discrimination and disability-related harassment, all of the Claimant's complaints fail. This is for a number of reasons,

but principally because in no sense whatsoever was the conduct complained of related to or because of the protected characteristic of disability.

Section 15 discrimination about the disciplinary

95. There is also overlap between the last few complaints we have been dealing with and those numbered 3 in the Judgment by Consent of May 2024: "*claims for unfavourable treatment because of something arising in consequence of disability under section 15 of the Equality Act 2010, relying on the Claimant's conduct during an incident with a Mr Marsh on 5 November 2021 as the "*something*", about the Respondent subjecting the Claimant to a disciplinary investigation and then disciplinary proceedings alleging gross misconduct and continuing to do so up to the Claimant's resignation.*"

96. We start by asking ourselves whether we are satisfied that "*the Claimant's conduct during an incident with a Mr Marsh on 5 November 2021*" arose in consequence of disability, as the Claimant alleges it did.

97. On balance, based in particular on the evidence in his witness statement about how he was feeling on the day and how what happened brought back memories of the Crown Court matters, we accept that how the Claimant reacted on the day arose to a more than minimal extent in consequence of the disability of PTSD.

98. The next question is whether the alleged unfavourable treatment was because of that 'something'. There are arguably at least two complaints of unfavourable treatment: a complaint about the Claimant being subjected "*to a disciplinary investigation and then disciplinary proceedings alleging gross misconduct*"; and a complaint about the Respondent "*continuing to*" subject the Claimant to "*disciplinary proceedings alleging gross misconduct … up to* [his] *resignation*".

99. It is obvious that the reason the Claimant was subjected to a disciplinary investigation and then disciplinary proceedings alleging gross misconduct was the way he behaved on 5 November 2021. The only person suggesting otherwise is the Claimant, with his allegations, which we have rejected as unfounded, that the true reason he was disciplined was that Mr Barratt, Mrs Fulwell and Mrs Jackson each had a personal vendetta against him.

100. There are two reasons why this complaint fails.

101. First, the disability that is relevant to this complaint is PTSD. The Claimant himself did not know he had PTSD until he was diagnosed in early March 2022 and his medical records suggest PTSD did not occur to his GP as a possible diagnosis until 23 February 2022. The part of this complaint that relates to the Respondent investigating the Claimant therefore fails because the Respondent did not know and could not reasonably have been expected to know that the Claimant had PTSD in November 2021, when the decision was made to investigate him.

102. Secondly, subjecting the Claimant to a disciplinary process, including charging him with gross misconduct, was justified as a proportionate means of achieving a legitimate aim for the reasons given in paragraphs 86 and 87 above. (The legitimate aim being "*effectively maintaining workforce discipline*"). The Respondent made a serious procedural error by not taking into account

Mr Barratt's email of 15 November 2021 as part of the disciplinary process, making that process unfair. Nevertheless, what the Claimant had done and admitted to was potential gross misconduct, both in our view and in the Respondent's reasonable view, and made it reasonable and proportionate: to charge him with gross misconduct; and to leave the decision as to whether he was actually guilty of gross misconduct to the decision-maker at the disciplinary hearing.

103. Had the Claimant not resigned, just as it would probably have been substantively and not merely procedurally unfair for the respondent to have dismissed him at a disciplinary hearing in late 2022, it would very likely also have been unjustified discrimination under EQA section 15 for the Respondent to have done so. But that does not make deciding in April / May 2022 that he had a case to answer for gross misconduct unfair, unreasonable, disproportionate or discriminatory.

104. The same 'justification' defence applies to the complaint about the Respondent "*continuing to*" subject the Claimant to "*disciplinary proceedings alleging gross misconduct … up to* [his] *resignation*", in so far as such a complaint exists as something separate and distinct. We think that in fact there is not truly a complaint about disciplining him other than the one about charging him with gross misconduct in the first place. After the decision to charge him was made, the Respondent never reviewed that decision, nor did it otherwise ask itself whether the charge should be downgraded, nor did it have any particular reason for doing so. There was in reality a single decision, made in April / May 2022 on the back of Mrs Jones's report of 28 April 2022, that the Claimant should face disciplinary proceedings and that one of the allegations made against him was at a level of gross misconduct. That decision was a proportionate means of achieving a legitimate aim.

105. Accordingly, the EQA section 15 complaints about investigating and bringing disciplinary proceedings against the Claimant fail.

Age claims

106. We shall take the allegations of age-related harassment and direct age discrimination together and we shall for convenience refer to them collectively as "age discrimination" claims[1]. It is convenient to split them into three categories: those connected with Lee Marsh, up to and including the incident on 5 November 2021; those relating to the conduct of others, concerning things that happened after 5 November 2021; the complaint that the Claimant's constructive dismissal was age discrimination, which is in a category of its own and which will be dealt with separately.

107. In summary, broadly, the age discrimination complaints about Lee Marsh's conduct succeed – subject to time limits – and the complaints about what other people did fail. This is because there is ample evidence that Mr Marsh had ageist prejudice towards the Claimant and no evidence of substance that anyone else did.

[1] We are aware that this is technically incorrect: see EQA section 25(1).

Age discrimination by Mr Marsh

108. The chronologically first complaint relates to the following admitted conduct, "*On 8 December 2021, Lee Marsh passed wind on the Claimant, and found it amusing, whilst the Claimant was eating lunch*" and the following unchallenged evidence in paragraph 47 of the Claimant's witness statement, "*LM* [Mr Marsh] *then said you have got a lot to say for yourself for a newcomer, I said I haven't I have the right to object to disgusting behaviour, he then said to me be careful how you speak to me as I can get rid of you … He said, "you are only a trainee I can get rid of you like I have the others in the past"…*".

109. We also note the following admissions of fact: "*In May 2021, Lee Marsh told the Claimant, "If any of you youngsters get this job … I will tell you to f*** off."*."; "*In August 2021, Lee Marsh told the Claimant that he would tell him to f off because he is older and will not be told by youngsters. He also asked the Claimant what he would do if he asked one of the older members to do something and they threatened him.*" In addition, we note this unchallenged evidence (from paragraph 43 of the Claimant's witness statement): "*once Lee got wind of my progression plan is when I first felt uncomfortable around him. It would be comments like "these babbies coming in and trying to take over", "you are only a pup", "I have got kids your age", "anyway it's first in last out at the Council".*" Also unchallenged was the Claimant's evidence that it was in or around November 2020 that he first began thinking about and talking about possible promotion into a Grade 3 role, which is what he is referring to as his "*progression plan*".

110. Putting all of that together, there is strong evidence that Mr Marsh had a problem with somebody of the Claimant's age potentially being in authority over him. That is more than sufficient to reverse the burden of proof in relation to age discrimination in accordance with EQA section 136 so far as concerns things that happened from November/December 2021 onwards, i.e. once Mr Marsh learned of the Claimant's ambitions. It is evidence from which we could conclude that Mr Marsh's conduct towards the Claimant was because of the protected characteristic of age, or was age-related.

111. In relation to this allegation about Mr Marsh passing wind at the Claimant and telling him that he could be got rid of, the Respondent has not begun to satisfy us, in accordance with EQA section 136(3), that in no sense whatsoever was Mr Marsh consciously or unconsciously motivated by something to do with the Claimant's age. On the contrary, the evidence we have strongly suggests that Mr Marsh wanted to take the Claimant down a peg or two, to show him who was boss and to curb his ambitions, because he considered the Claimant a 'babby' or a 'pup'. We appreciate that in many contexts age-related comments can be friendly and even affectionate and can be meant and taken as harmless and good-humoured, but on the evidence we have – which in terms of what we have directly from Mr Marsh includes only limited written evidence – there was an edge to what Mr Marsh said to the Claimant. Even without any edge, some of the comments were outside the realms of acceptable workplace banter.

112. We consider this specific allegation to be direct age discrimination rather than age-related harassment. Whatever the Claimant's subjective feelings at the time, we are not satisfied that the conduct had the requisite purpose or effect set out in EQA section 26(1)(b).

113. The complaint about the fact that Mr Marsh ignored the Claimant for weeks after he had complained about the 'breaking wind incident' is of a different nature from the other age discrimination complaints that are before us, because there is clear evidence that the reason Mr Marsh did this was because the Claimant complained about him. We know this because, amongst other things, Mr Marsh called him a "*grass*" on 9 December 2020. The fact that it was this rather than the Claimant's age that motivated Mr Marsh here is supported by the fact that ignoring the Claimant didn't continue beyond a few weeks. This complaint therefore fails.

114. The chronologically next complaint about Mr Marsh's conduct is set out in paragraph 55 of the Claimant's witness statement, which was not challenged in cross-examination. "*Around March 2021 … LM was complaining about Richard Round (RR) … He … told me of a time when he snapped with RR because he kept phoning him to run up and down flights of stairs, he was too lazy to go up and down in LM's words, LM said he began arguing with RR and punched a hole in the bin-room door, instead of punching RR because he was fuming. He then said "come with me and I will show you". I declined the offer. He said it shows not to mess with him because "I hit very hard".*" The Respondent has admitted that, "*In March 2021, Lee Marsh told the Claimant not to mess with him because he snaps, and he hits very hard.*"

115. This looks to us like another attempt by Mr Marsh to put the Claimant in his place. As such, for reasons given above, the burden of proof pursuant to EQA section 136 in relation to this complaint passes to the Respondent; there is no evidence of substance to discharge the burden on the Respondent to show that in no sense whatsoever was this conduct discriminatory; and – subject to time limits – the complaint therefore succeeds. On balance, we do think this satisfies the test of having the particular purpose or effect set out in EQA section 26(1)(b) and it is therefore age-related harassment rather than direct age discrimination. If we are wrong about that, it would be direct age discrimination, because it would be less favourable treatment because of age. (It would less favourable treatment in accordance with EQA sections 13(1) and 23 because Mr Marsh would not have wanted to put someone just like the Claimant, but a similar age to Mr Marsh, in his place in the way Mr Marsh evidently wanted to do to the Claimant).

116. We have already mentioned the Respondent's concession that in May 2021, Mr Marsh told the Claimant, "*If any of you youngsters get this job … I will tell you to f*** off.*" In closing submissions, the Respondent, through counsel, also conceded that it was age-related harassment. If that concession had not been made, we would probably have found that it was direct age discrimination.

117. The next complaint of age discrimination or age-related harassment concerning Mr Marsh that has not been withdrawn relates to an allegation that after the Claimant secured his promotion to Grade 3, "*Lee Marsh and Malcolm Harrison, did not interact with the Claimant and avoided being around him.*"

118. Mr Harrison and Mr Marsh acting in this way appears to be connected with the Claimant's promotion – indeed, the Respondent's case is that that was the reason for it. Consistent with the decisions we have already made in relation to the other complaints of direct age discrimination / age-related harassment, so far as Mr Marsh is concerned, there is evidence to suggest that he [Mr Marsh] had a problem with the Claimant being promoted and potentially being in authority over

him because of the Claimant's age. The burden of proof has passed to the Respondent, and has not been discharged.

119. So far as concerns Mr Harrison, however, there is insufficient evidence for us to be able to "*decide, in the absence of any other explanation, that*" Mr Harrison was similarly motivated.

120. Subject to time limits, the part of this complaint that relates to Mr Marsh therefore succeeds and the part relating to Mr Harrison therefore fails.

121. The final complaint concerning Mr Marsh that is pursued principally as age-related harassment is about the incident on 5 November 2021, the basic facts of which are admitted by the Respondent.

122. The Respondent has submitted, rightly, that the immediate reason Mr Marsh took against the Claimant on the day was Mr Marsh's perception that the Claimant had been officious in connection with an audit that had been conducted the previous day, and him thinking the Claimant was exceeding his authority. However, if we ask ourselves, 'Why did Mr Marsh have that perception and why did he react in the disproportionate way he did?', the Respondent again comes up against EQA section 136 and the burden of proof. There is evidence suggesting that the reason for Mr Marsh's behaviour was potentially resentment that a 'youngster', as Mr Marsh perceived the Claimant to be, was lauding it over him. Yet again, then, there is evidence from which we could decide that unlawful discrimination had occurred and the Respondent has failed to discharge the burden upon it of showing that in no sense whatsoever was Mr Marsh's conduct related to age. There can be no reasonable doubt that Mr Marsh's conduct had the purpose or effect set out in EQA section 26(1)(b). This therefore succeeds on its merits as a complaint of disability-related harassment.

Age discrimination by others

123. There are two complaints that are made principally as direct age discrimination. One of them is the complaint about the Claimant's constructive dismissal. As explained above, we shall deal with that separately. The other is about Mr Ramsey and Mr Watton allegedly "*allowing LM to confront me doing my job and making no attempt to de-escalate the situation until it was too late.*" This concerns what happened on 5 November 2021 and the fact that Mr Ramsey and Mr Watton knew that Mr Marsh was cross with the Claimant the previous evening. The Claimant alleges that they had an opportunity to prevent the incident from happening and that they did not take that opportunity because of the Claimant's age.

124. We can see no grounds for this complaint. Mr Ramsey and Mr Watton may have been aware that Mr Marsh had the previous night been angry with the Claimant, but the suggestion that they could practicably, and that they should, have done something on 5 November 2021 to stop an incident occurring, let alone that they failed to do that thing because of something to do with the protected characteristic of age, has no objective basis. If the Claimant is suggesting that they should have prevented Mr Marsh having anything to do with the Claimant on 5 November 2021, 'just in case', we reject that as wholly unrealistic. If the Claimant is suggesting that they could and should have known there was a severe risk of a serious incident occurring, we reject that too.

125. So far as concerns what happened on the day, we note it is common ground that the Claimant and Mr Marsh were present in the relief room together for around half an hour before the incident occurred.

126. The suggestion that Mr Ramsey and Mr Watton would have acted differently if the Claimant were older is pure speculation on the Claimant's part, without any substantial basis in the evidence.

127. This complaint therefore fails.

Victimisation

128. We shall deal with the complaint that the Claimant's constructive dismissal was discriminatory once we have dealt with the victimisation complaints.

129. All the victimisation complaints fail because there is no basis at all in the evidence for the Claimant's allegation that the Respondent acted because of anything to do with any protected acts or alleged protected acts that the Claimant did or that the Respondent believed he had done or might do.

130. The Claimant's case is broadly to the effect that the Respondent wanted to 'get rid' of him for various reasons, as we have already said, and one of those reasons is that it supposedly didn't want to look into his allegations of discrimination, because had it done so, some inconvenient truths would have emerged. It seems to be along those lines, at least. It is not a case that makes any real sense given what happened.

131. The Claimant did not even raise a formal or informal grievance about discrimination as such until, at the earliest, his grievance of 29 July 2022. Within a large organisation like the Respondent, people alleging discrimination is, if not a daily or weekly occurrence, then certainly something unremarkable and not unusual. In relation to any whistleblowing or victimisation or kindred type of claim, one has to ask the question: even fully taking into account that people often do not act rationally or with good reason, why would the alleged victimiser react to that particular protected act / protected disclosure like that? what might their particular motive be? Given that the Claimant wasn't even raising a grievance until July 2022, the supposed motives of wanting to punish him for raising his concerns about discrimination (to the extent that he did), or of wanting to damage his credibility, or any of the other motives commonly attributable to victimisers, are not remotely plausible.

132. Because it doesn't matter whether the alleged protected acts were actually protected acts, we shan't spend as much time on the question of whether or not they were as we might otherwise do.

133. Looking at the alleged protected acts in turn:

    133.1 we are prepared for present purposes to assume that the Claimant did do a protected act when speaking to Mr Williams on 5 November 2021. However, we note that there is no evidence that Mr Williams passed on complaints of discrimination that the Claimant made to him to anyone else;

133.2 we are not satisfied that the Claimant did allege age discrimination when speaking to Mr Barratt on 8 November 2021. If he did say anything which could be construed as age discrimination, it evidently did not register with Mr Barratt and therefore it does not appear in Mr Barratt's notes, contained in his email of 15 November 2021;

133.3 if the Claimant is suggesting that Mr Barratt deliberately omitted references to allegations of age discrimination from his notes, that is a suggestion which is highly unlikely to be true given what else is in those notes, including the so-called 'confession' of Mr Marsh on which the Claimant places so much reliance;

133.4 we can see from the notes of the meeting that took place on 10 December 2021 that the Claimant did do a protected act in the course of that meeting, in that he alleged that an overtly age discriminatory remark was made: (as recorded in the meeting notes) "*If any of you youngsters get a GR3 job I will tell them to* [f***] *off.*" The Claimant did not, however, make a big deal of the fact that the remark had been made – it was just part of his narrative of events. That protected act was done in the course of a conversation with Mrs Jones, against whom the Claimant no longer seems to be making any allegations of discrimination, harassment or victimisation, and it is clear from the evidence that she had nothing at all against the Claimant. We cannot see why the Claimant making that particular remark would give anyone from the Respondent a plausible motive for wanting to do him down;

133.5 we then have the Claimant's grievance, which is admitted to be a protected act. By the time we get to late July 2022, the disciplinary process was very far advanced. We have already made findings as to the Respondent's reasons for dealing with the grievance the way it was dealt with. There is no discernible basis, other than that this is what he seems to believe, for the Claimant's allegation that his grievance would have been treated differently if it had been a grievance about something other than discrimination which was similarly closely connected to the disciplinary proceedings against him as his grievance was;

133.6 in his resignation letter the Claimant used the word "*discrimination*". Although there is force in Mr Wilson's submission that that word was not being used in a technical sense – i.e. to mean an allegation of a breach of the EQA – and although behind the letter there seems to be the same confusion that there is in the Claimant's Tribunal claim between the allegation that the Respondent failed to take reasonable care for the Claimant's mental health and wellbeing and an allegation of disability discrimination, we are prepared to give the Claimant the benefit of the doubt as to whether the resignation letter contained a protected act for the purposes of this decision.

134. We shall proceed to consider each of the victimisation complaints in turn as if all the alleged protected acts were indeed protected acts. Before doing so, we repeat the general point made in paragraph 129 above: all the victimisation complaints fail because there is no basis in the evidence for the Claimant's allegation that the Respondent acted because of anything to do with any protected acts or alleged

protected acts that the Claimant did, or that the Respondent believed he had done or might do.

135. The first complaint of victimisation concerns "*the predetermined GM disciplinary procedure*". There was no pre-determination. The Claimant did something and admitted having done something that, objectively judged, was potentially gross misconduct. What was unreasonable about the disciplinary procedure vis-à-vis the Claimant was the failure to include within the investigation the contents of Mr Barratt's email of 15 November 2021. That was, with hindsight, a serious mistake, but it did not, as we have already explained, form part of any plan to ensure that the Claimant was dismissed. The Respondent could also be criticised for the amount of time the investigation took, but there is nothing suspicious about that – it is sadly the case that within local authorities and other large public sector organisations, disciplinary proceedings often take a very long time indeed and there was nothing particularly unusual about the delay in this case. We have already explained that we see nothing untoward or unreasonable in charging the Claimant with gross misconduct, nor with the Respondent continuing to levy that charge notwithstanding the Claimant's apparent state of mental ill-health.

136. The next victimisation complaint relates to Mrs Fulwell's letter of 7 December 2022. We have already dealt with that (paragraphs 44 to 48 above). The reason it was written was nothing to do with any document or conversation allegedly containing a protected act.

137. The next victimisation complaint is about, "*the failure to pay on time and correctly in January 2023*". The basis of this is the Claimant's apparent belief that Mr Barratt had some power or control over payroll within the Respondent that he simply did not have. The allegation seems to be that Mr Barratt somehow commanded payroll not to make a payment to the Claimant and that payroll meekly complied. It is a fanciful allegation for which there is no evidence. Within an organisation like the Respondent, payments are made on termination by payroll without individual line managers having a say.

138. In addition, we cannot see what remotely plausible motive Mr Barratt would have for doing this even if it was within his power to do it.

139. A part of this complaint is an allegation that the Claimant was underpaid in January 2023. We have already found that there was an underpayment of 1 day's worth of holiday pay. We are not sure whether any other claims about pay are still being advanced, but insofar as one is, there is, at least on paper, a complaint about a deduction of £833.15 from the Claimant's final pay slip, dated 25 January 2023.

140. In short, we are satisfied that that deduction was correctly made. What happened was that after the termination of the Claimant's employment, the Respondent's staff across the board were given a pay rise. That pay rise was backdated to April 2022. The Claimant was therefore, post-termination, due something for the period from April 2022 to the end of his employment. The period in respect of which the Claimant was due a backdated pay rise was in fact only up to the point in time when he went off sick, which was on 23 May 2022. For reasons we assume were to do with the Respondent's payroll software, when someone was off sick and was paid SSP, their payslip would: show their basic salary being paid (together, in the Claimant's case, with a supplement of £10 per month because he was a

designated first aider); then show the amount of that basic salary (and first aider supplement in the Claimant's case) being deducted; then show SSP being paid on top. We can see this in, for example, the Claimant's last two pre-termination payslips, for September and October 2022. In the Claimant's final, January 2023, payslip, a similar thing was done: there was £1,107.42 "*Basic Salary Retroactive*", £285.91 sick pay "*Paid Retroactive*", and then the deduction of £833.15, which was for "*Sickness Offset Retroactive*". That deduction was the equivalent of the deductions of the Claimant's entire salary that were made in the pre-termination payslips, but was not for the whole of the "*Basic Salary Retroactive*" because the Claimant started on sick pay after the date to which the pay rise was backdated.

141. There is also a victimisation complaint about the "*rejection of my grievance October 2022*". Again, we have already dealt with this, explaining the reasons why the grievance was 'rejected'. In common with every other victimisation complaint, there is no discernible basis in the evidence for connecting decisions made not to accept the Claimant's grievance as a formal grievance with any alleged protected act that he did.

142. Finally, there is a victimisation complaint that mirrors a number of the disability discrimination complaints concerning the disciplinary process: "*HR suggesting numerous unfavourable amendments to disciplinary documents, influencing the investigation officer's decision making and upgrading a finding of misconduct to GM in order to establish by GM from November 2021.*" Again, we have already made all the necessary findings relevant to this complaint: the amendments in question were suggested by HR, and reasonably so in our view, because what happened was considered to be potential gross misconduct on the Claimant's part; this was done in good faith, and was uninfluenced by the Claimant's age, disability, or by any alleged protected act.

143. In conclusion, none of the victimisation complaints succeed, for various reasons, but principally because there was no causal connection between any detriment and any actual or alleged or anticipated protected act.

EQA complaints about dismissal

144. There are three complaints made under the EQA about the Claimant's constructive dismissal: victimisation; direct age discrimination; discrimination arising under EQA section 15. We shall deal first with the victimisation complaint.

145. Briefly, none of the things that made up the breach of trust and confidence in response to which the Claimant resigned was an act of victimisation. All the victimisation complaints have failed and there is no hint in the evidence of any conscious or unconscious victimising motive on the part of the relevant individuals at the Respondent.

Dismissal as age discrimination

146. The Respondent has admitted that the Claimant was constructively dismissed. In relation to the age discrimination complaint about that dismissal, the question for us is whether age discrimination was a more than de minimis part of the breach of trust and confidence in response to which the Claimant resigned. Given our findings in relation to the other age discrimination complaints, the Claimant's best

argument in support of the allegation that his constructive dismissal was, at it were, 'tainted' by age discrimination is to the effect that he resigned in part because of the age-related harassment Mr Marsh inflicted on him on 5 November 2021 and beforehand. The Respondent's counterargument is that events of 5 November 2021 and beforehand simply formed part of the background to the admitted breach of trust and confidence and were not in and of themselves to any significant extent part of the chain of events making up that breach. Further or alternatively, the Respondent argues that even if they did form part of a breach of the trust and confidence term[2], they were not part of the breach of trust and confidence that the Claimant resigned in response to.

147. Dealing with these arguments, we begin by noting the obvious distance in time between 5 November 2021 and the Claimant's resignation on 15 October 2022. That 11-month gap is not necessarily fatal to the Claimant's claim, but it is highly relevant. This is not a case of the kind that is quite common against large public sector employers where something happens in the workplace about which the claimant brings a grievance at the time, where that grievance is looked into and ultimately rejected after a lengthy grievance process, lasting – say – 11 months, and where the Claimant resigns shortly after the rejection of the grievance.

148. We have to ask ourselves: why did the Claimant resign? We have to ask this question because to be constructively dismissed, the Claimant has to have resigned in response to a fundamental breach of contract, so we need to know which things making up a breach of trust and confidence he resigned in response to – which must be things that he knew about and the breach of trust and confidence must be one in relation to which there was no affirmation between the breach and resignation.

149. The best evidence we have as to why the Claimant resigned is what he wrote in his resignation letter dated 15 October 2022. It is a long and detailed letter covering a number of potentially relevant topics. The first of those topics is the Respondent's refusal to accept the Claimant's grievance. We have already decided that the refusal to accept the grievance was not an act of age discrimination and therefore we find that a resignation in response to that refusal was not age discrimination either. The fact that the grievance happened to be about, amongst other things, age discrimination doesn't mean its rejection was age discrimination.

150. The resignation letter also complains about breaches of the GDPR. The Claimant's complaint about this has been withdrawn. There was no GDPR breach of the Claimant's information. And there is no suggestion, let alone evidence to support any such suggestion, that Mr Marsh's data rights were breached because of discrimination.

151. Also mentioned in the letter is the disciplinary process. Again, we have found that the disciplinary process was not tainted by discrimination of any kind, and certainly not by age discrimination. There is also an allegation about lack of support for the Claimant's mental health, including with the occupational health referrals. The

[2] The term in every contract of employment that the employer must not, without reasonable and proper cause, act in a way calculated or likely to destroy or seriously damage the relationship of trust and confidence between it and the employee.

essential allegation is breach of the Respondent's duty to take reasonable care for the Claimant's mental health. Once again, this is not discrimination.

152. The other things mentioned in the resignation letter that are potentially relevant are sick pay and other pay issues and what could be categorised as communication issues. Yet again, in relation to these things there is nothing mentioned in the letter that we have found to be discrimination of any kind.

153. Based on what is in the letter, the incidents with Mr Marsh which we have found to be age discrimination, including what happened on 5 November 2021, are indeed, as was submitted on the Respondent's behalf, no more than background to the reasons for the resignation.

154. The Claimant's witness statement doesn't add anything of substance in relation to the reasons why he resigned that is different from what is in the resignation letter.

155. In conclusion, we are not satisfied that the Claimant resigned in response to the incident of 5 November 2021 itself, nor to anything else we have found to be discriminatory, and the Claimant's constructive dismissal was therefore not age discrimination.

Dismissal as disability discrimination

156. The Claimant's EQA section 15 claim about dismissal is based on an allegation that the Claimant's actions on 5 November 2021 that led to him being subject to a disciplinary process were "*something arising in consequence of disability*". We have already upheld that allegation. We have also already noted that PTSD had not yet been diagnosed in November 2021, and so the Respondent had no knowledge of it at the time of the incident. However: the relevant date of knowledge for the purposes of EQA section 15(2) is the date of the unfavourable treatment; in this instance, the unfavourable treatment is the constructive dismissal, which occurred in October 2022; by then, the Respondent knew (or, in so far as it didn't know, could reasonably have been expected to know) the Claimant had PTSD.

157. Any defence based on constructive dismissal allegedly being a proportionate means of achieving a legitimate aim under EQA section 15(1)(b) is, in practice even if not in theory, a non-starter. We cannot conceive of how acting so as to breach trust and confidence could possibly be proportionate, however legitimate the aim.

158. This complaint nevertheless fails for essentially the same reasons the age discrimination complaint about dismissal failed – see paragraphs 146 to 155 above. The question we have to ask ourselves to decide this complaint is: did the Claimant resign because of something arising in consequence of disability? The relevant thing that arose in consequence of disability is – very broadly – what happened on 5 November 2021 and the Claimant did not resign in response to that. Instead, he resigned in response to the things that occurred after 5 November 2021, which did not arise in consequence of disability.

159. It is true that the Claimant resigned partly in response to the Respondent continuing to pursue allegations of gross misconduct as part of a disciplinary

process and not accepting a grievance that was partly about the disciplinary process; and that but for the Claimant's behaviour on 5 November 2021 that to an extent arose in consequence of disability there would not have been a disciplinary process against him in the first place. However, we think that that is too distant and remote a connection between the resignation and the "*something arising in consequence of disability*" for it to be right to say that the constructive dismissal was "*because of*" that something in accordance with EQA section 15.

160. It follows that the constructive dismissal was not disability discrimination either.

Reasonable adjustments

161. The first reasonable adjustments complaint concerns: "*A policy of requiring employees who are off sick to communicate directly with the Respondent/employer unless verbal consent was given by the employees for anybody else to liaise with the Respondent/employer.*"

162. The only time this policy or practice potentially caused substantial disadvantage to the Claimant was on 22 September 2021, which was the only time anyone suggested that the Respondent needed verbal consent from the Claimant in order to communicate directly with the Claimant's wife. The duty to make reasonable adjustments for the Claimant cannot have been triggered before then because before then, no such policy / practice was applied to the Claimant. There was no breach of the duty to make reasonable adjustments because the only adjustment that it was reasonable for the Respondent to have to make was an adjustment that the Respondent in fact made straight away, later that same day, namely not requiring the Claimant's verbal consent and accepting a communication from his trade union representative as his consent.

163. The other reasonable adjustments complaint concerns: "*A PCP of not having 1 to 1 meetings or stress risk assessment of individuals working in the Respondent's caretaking department at the Bromford and Hodge Hill estates.*"

164. The Claimant did have one-to-ones during his apprenticeship and was evidently able to raise issues with management outside of one-to-ones. His case is if he had had one-to-ones he might have told Mr Williams about the Crown Court matters and that that might have led to either of the following: Mr Williams might have spoken to the Claimant's colleagues, thus somehow preventing what happened on 5 November 2021 from taking place; Mr Williams might have referred the Claimant to Occupational Health to get him some additional support, and this might have meant he reacted differently to the way he in fact reacted on 5 November 2021. The alleged substantial disadvantage is that neither of these things happened and that had they happened the Claimant would not have been subject to a disciplinary process and would not have resigned.

165. The Respondent has a cast-iron defence to this second reasonable adjustments complaint, namely that, manifestly, it did not know and could not possibly (let alone "*reasonably*") have been expected to know that the Claimant was likely to be placed at that disadvantage. There is simply no sensible basis in the evidence for us to find otherwise.

166. In any event, we are not satisfied that the step the Claimant says should have been taken (in accordance with EQA section 20(3)), namely having one-to-ones once his apprenticeship ended, would have had any significant chance of 'avoiding' the disadvantage. The Claimant was very unlikely to have opened up more than he did about the Crown Court matters; it is vanishingly unlikely that he would have said anything about them before, at the earliest, August 2021, which doesn't leave much time for there to have been a one-to-one, let alone an OH referral leading to the provision of additional professional support; and the theoretically possible path between having a one-to-one and changing what happened on 5 November 2021 is long and very indirect.

Age discrimination time limits

167. Finally, we shall consider time limits in relation to the age discrimination complaints that we have decided would succeed on their merits.

168. In light of our other findings, the last act of discrimination, and the end point of any relevant "*conduct extending over a period*" under EQA section 123(3)(a), is 5 November 2021. To avoid time limits problems, the Claimant would have to have started early conciliation on 4 February 2022 at the latest. Given the actual dates of early conciliation and of the claim form, the cut-off date for time limits purposes is 1 August 2022. This means the claim form was presented – or, at least, that early conciliation was started – nearly six months late. As the primary time limit is just three months, six months is a comparatively long period of delay.

169. The question we have to ask ourselves is: is it just and equitable to extend time? In relation to this, we have sought to apply the law as summarised in paragraphs 9 to 16 of the EAT's (HH Judge Peter Clark's) decision in **Rathakrishnan v Pizza Express (Restaurants) Ltd** [2016] ICR 283.

170. We are conscious of the fact that, although it is for the Claimant to persuade us that it would be just and equitable to extend time, that doesn't mean that there has to be a good reason for the Claimant submitting a claim form late, or even any explanation for this. However, if, as in the present case, we don't know why the claim form was submitted late, this does rather put on the back foot a claimant seeking to show that time should be extended.

171. The Claimant's case on time limits as put forward in his evidence was purely based on there allegedly being conduct extending over a period. If the Claimant had succeeded in his age discrimination complaint about constructive dismissal, there would indeed have been conduct extending over a period, and time limits would not have been a problem, but given our findings, there wasn't and they are a problem. In his written closing (and we note that submissions are not, of course, part of the evidence before the Tribunal, something we explained to the Claimant and his wife several times during the hearing), the Claimant suggested the reason, or a reason, why the claim form was submitted late was as follows: "*The reason being the Claimant's contested litigation would have prevented any claims from being brought at the time due to wanting to avoid any potential and likely possible litigation of the Crown Court and Employment Tribunal running concurrently.*" Even if that had been part of the Claimant's evidence, and an unchallenged part of it, it wouldn't help him from a time limits point of view because the Crown Court

proceedings concluded in November 2021, by which stage the Claimant still had more than two months to initiate early conciliation.

172. Another explanation the Claimant might perhaps have put forward in evidence, but didn't, was the state of his mental health. However, the Claimant was in work for most of the relevant 3 month primary limitation period (6 November 2021 to 4 February 2022). Within it, he had a week of compassionate leave, but was then back in work and subsequently had some further absences, but these were short and were for non-mental health related reasons. The first absence for anxiety or anything similar was not until 21 February 2022.

173. We were not taken to them during the hearing, but we nevertheless during our deliberations looked at the Claimant's medical notes that we have access to and there was nothing in them to suggest that the Claimant was having particular mental health difficulties that might have made it difficult or impossible for him to make a Tribunal claim between November 2021 and February 2022. His failure to present a claim form / initiate early conciliation within the primary time limit is not, then, explained by his mental ill-health.

174. The Claimant does not suggest that he was ignorant of the law and that that prevented him from bringing a claim sooner; and we note that he had a trade union representative throughout the disciplinary process and presumably had sought advice from a trade union in relation to bringing a claim.

175. We have already noted that the Claimant did not bring a grievance until July 2022, so the grievance cannot provide a reason for him not starting the claims process by 4 February 2022. In fairness to him, he did not say in his evidence that he didn't want to bring a claim until the Respondent had dealt with his grievance. Had he said anything like that, it would not have been credible.

176. In short, we do not know on the evidence why the Claimant did not bring a claim within the primary time limit of 3 months (plus any early conciliation extension) in EQA section 123.

177. We also take into account the 'balance of prejudice'. The prejudice to the Claimant of us not extending time is obvious: he would lose some complaints he would otherwise win. However, that is prejudice caused simply by the existence of time limits. He suffers no more prejudice than is suffered by any claimant who loses a claim because Parliament has decided that the time limit for the particular type of claim that they are bringing is less than the period of time it took them to make their claim.

178. In common with virtually every case where a claimant misses a time limit by months rather than by years, there is no particular prejudice caused to the Respondent by the late presentation of the claim. But if we were to say simply that time should be extended because the Claimant suffers the prejudice that the application of time limits almost inevitably causes and because there is – as there almost invariably is in cases of this kind – a lack of real prejudice to the Respondent, that would mean extending time in virtually every case; or, at least, the default position would be to extend time in any case where a Claimant had submitted their claim form less than a number of years late. Applying EQA section 123(1)(b) like that would drive a coach and horses through the legislation.

179. As the burden is on the Claimant to persuade us that it would be just and equitable to extend time, the question is why should we extend time, rather than why shouldn't we. The difficulty the Claimant has is that because he has not explained to us why he didn't bring the claim on time, we have no answer to that question [why should we extend time?] other than: because if we don't, the Claimant will lose his case. That is not, in our view, a good enough answer because it is an answer that could be given by every Claimant in every case that faces a time limits bar. In addition, the Claimant suffers less prejudice than other claimants in similar situations might face because he has to an extent been vindicated, and will, we hope, get some satisfaction from this, in that: rather than simply dismissing these complaints on the basis of time limits, we have made findings that he was the victim of unlawful discrimination; he has won his unfair dismissal claim.

180. In conclusion, the Claimant has failed to satisfy us that it would be just and equitable to extend time. Accordingly, his complaints of age discrimination that have succeeded on their merits fail on the basis that they were presented outside of the time limits in EQA section 123 and the Tribunal therefore has no power to deal with them.

Remedy hearing

181. As the Claimant has won his unfair dismissal claim, he is entitled to one of the remedies in ERA sections 112 and 113: reinstatement; re-engagement; compensation only. It is our understanding that he is just seeking compensation.

182. If there is a remedy hearing – and, for everyone's sake, we hope there is not and that the parties can agree remedy and compensation, it may be necessary to answer some difficult questions. In particular, we may have to decide what would have happened if the Claimant hadn't been constructively dismissed and had instead, for example, had a disciplinary hearing, been found guilty of misconduct but not gross misconduct, and been given a warning of some kind. If he would have resigned come what may, perhaps because he believed (wrongly, as we have found, above) that he should not have been subject to a disciplinary process at all and/or should not have been found to have a case to answer for gross misconduct, the Respondent could reasonably argue that he has not suffered any financial loss as a result of his constructive dismissal. We have made no decision about this either way, but it is something we will almost certainly have to look at if there is a remedy hearing. We also note that there is no compensation for personal injuries or injury to feelings for unfair dismissal. The Claimant should bear all this in mind when trying to negotiate settlement with the Respondent in the coming weeks.

ORDER

183. The Claimant and the Respondent must do their best to agree how much compensation should be paid to the Claimant, and any other remedy, for constructive unfair dismissal. They will probably need to involve Acas in this.

Within 3 weeks of the date this decision is sent to them, they must write to the Tribunal:

183.1 **either** confirming that they have agreed compensation and other remedies and have entered into a legally binding settlement agreement;

183.2 **or** providing their suggestions, agreed if possible, for further case management orders to take these proceedings forward to a 1 day remedy hearing, together with details of any dates in the next six months on which they would not be available for that hearing.

Employment Judge Camp

22nd July 2024

ANNEX A

PRIVACY ORDER

1. Subject to paragraph 2 below, pursuant to rules 50(1) and (3)(b) of the Employment Tribunals Rules of procedure 2013 and Art 8 of the European Convention on Human Rights and section 10A of the Employment Tribunals Act 1996 and section 1 of the Sexual Offences Amendment Act 1992 it is **ORDERED** that there shall be omitted or deleted from any document entered on the Register, or which otherwise forms part of the public record, including the Tribunal's hearing lists, and from any document published by anyone anywhere potentially made available to the public, including – **even in a private group** – posts on social media and electronic messaging services such as WhatsApp, anything which is likely to lead members of the public to identify any of the persons specified below as being either a party to or otherwise involved with these proceedings:

   This order applies to the following persons:

   The claimant.

2. Paragraph 1 above does not prevent the claimant from being referred to by name or otherwise identified during and within any Tribunal hearing; nor does it require documents or statements or any other written material used during any Tribunal hearing to be redacted or anonymised; nor does it prevent the respondent from discussing at any time, orally and in writing, the claimant and these proceedings internally, including but not limited to discussions between the respondent's legal team, the respondent's witnesses, the respondent's officers and/or HR; nor does it prevent the respondent from publishing information as required by law; nor does it prevent the claimant being identified in copies of this order provided by the Tribunal in order to notify people of its terms.

3. Publication contrary to the above Order is a **criminal offence**.

4. In any document forming part of the public record, the claimant will be referred to as "XYZ".

Order made by Employment Judge Camp on 22 April 2024

ANNEX B

TEXT OF THE JUDGMENT BY CONSENT SIGNED BY THE EMPLOYMENT JUDGE ON 24 MAY 2024

All complaints are dismissed upon withdrawal pursuant to rules 51 and 52 of the Rules of Procedure **apart from**:

1. a complaint of constructive unfair dismissal under section 98 of the Employment Rights Act 1996;
2. the following numbered complaints in the attached list of complaints:
   - 2.1 9 to 14, 16 & 20. Notwithstanding what is suggested in the attached list, these are pursued as complaints of direct age discrimination or age-related harassment;
   - 2.2 1 to 8, 25 to 27, 29, 30, 32, 33, 35 & 36. Notwithstanding what is suggested in the attached list, these are pursued as complaints of direct disability discrimination or disability-related harassment;
   - 2.3 44 to 49, which are victimisation complaints under the Equality Act 2010.
3. claims for unfavourable treatment because of something arising in consequence of disability under section 15 of the Equality Act 2010, relying on the Claimant's conduct during an incident with a Mr Marsh on 5 November 2021 as the "*something*", about the Respondent subjecting the Claimant to a disciplinary investigation and then disciplinary proceedings alleging gross misconduct and continuing to do so up to the Claimant's resignation;
4. complaints of direct disability discrimination, alternatively unfavourable treatment because of something arising in consequence of disability, about the following: "*9/6/22 – RF continuing to ignore C's disclosure of diagnosed conditions/disability by e-mail and failing to factor it in as mitigation for the disciplinary*";
5. complaints of breach of the duty to make reasonable adjustments based on the following PCPs (a PCP being a "*provision, criterion or practice*" in accordance with section 20 of the Equality Act 2010):
   - 5.1 a policy of requiring employees who are off sick to communicate directly with the Respondent/employer unless verbal consent was given by the employees for anybody else to liaise with the Respondent/employer;
   - 5.2 a PCP of not having 1-to-1 meetings or stress risk assessments of individuals working in the Respondent's caretaking department at the Bromford and Hodge Hill estates;
6. a claim for unpaid holiday pay and an unauthorised deductions claim for a backdated pay rise.

LIST OF COMPLAINTS
REFERRED TO IN PARAGRAPH (1) OF THE JUDGMENT SIGNED BY THE JUDGE ON 24/5/2024

Disability-related harassment

1. The letter December 2022-hostlie, humiliating, degrading, offensive
2. Disciplinary letter in September 2022-hostile, degrading
3. PB email July 2022-humiliating, offensive, degrading
4. PB insisting on an oppressive level of contact, Hostile, degrading.
5. LM Kiddy fiddling comment 0ctober 2021-humiliating, offensive, degrading.
6. The punch and the chair November 2021-hostile, offensive, degrading
7. Receiving a disciplinary pack with several GDPR breaches May 2022, offensive, humiliating-effect regardless of what the breaches were
8. RF asking C to use his grievances as mitigation at a disciplinary hearing September 2022-degrading, offensive.

Age-related harassment

9. Lee farting and telling me he Can get rid of me December 2020-offensive, degrading.
10. Lee ignoring me for weeks- hostile, degrading.
11. Snapping and bin room door March/April 2021-hostile
12. Youngsters fuck off may/June 2021-hostile, offensive, degrading.
13. Lee and Malcolm avoiding being around me- hostile, degrading.
14. The punch and the chair November 2021-hostile, offensive, degrading

Direct Age Discrimination

15. LM's conduct throughout employment
16. NR and GW allowing LM to confront me for doing my job and making no attempt to de-escalate the situation until it was too late November 2021
17. The rejection of my grievance October 2022
18. GW and MH comments in investigation meeting incorrectly assuming inexperience got job because good on computers etc May 2022
19. The findings of the investigation report May 2022
20. Constructively dismissing me October 2022
21. Pursuing me for GM due to alleged verbal abuse of LM but not NR
22. Witnesses, managers and /hr Withholding exculpatory facts from a formal disciplinary process from 5/11/21 onwards.
23. Finding a case to answer on allegation 3 contrary to LM March -May 2022
24. HR suggesting and making numerous unfavourable amendments to disciplinary documents and influencing the investigating officer's decision making and upgrading a finding of misconduct to GM in order to establish my GM from November 21 onwards.

Direct Disability Discrimination

25. PB wanting contact once a week rather than once a month as per policy August 2022
26. Failure to refer to OH for 8 months between November 2021 and July 2022
27. RF promising a fair investigation knowing the opposite was true November 2021
28. Advertising my job before I received my disciplinary pack and the procedure had completed.
29. Allegations of power going to my head and head changing that are ongoing.
30. Pursuing me for GM due to alleged verbal abuse of LM but not NR, via a predetermined GM disciplinary
31. The investigation report findings March to May 2022
32. Finding a case to answer on allegation 3 contrary to LM March to May 2022
33. Witnesses, managers and /hr Withholding exculpatory facts from a formal disciplinary process.
34. BW and PB deceiving me by telling me I done the right thing by formally complaining about the attempted assault but withholding facts from me and the investigation May 2022

35. HR suggesting numerous unfavourable amendments to disciplinary documents, influencing the investigating officer's decision making and upgrading a finding of misconduct to GM in order to establish my GM from November 2021
36. RF's refusal of formal grievance.
37. PB accepting my resignation on 17/10/22.

Whistleblowing detriment

38. The pre-determined GM disciplinary procedure November 2021 onwards
39. The letter December 2022
40. Failure to pay on time`
41. The rejection of my grievance
42. Constructively dismissing me
43. HR suggesting numerous unfavourable amendments to disciplinary documents, influencing the investigating officer's decision making and upgrading a finding of misconduct to GM in order to establish my GM from November 2021

Victimisation

44. The pre-determined GM disciplinary procedure
45. The letter December 2022
46. Failure to pay on time and correctly January 2023
47. The rejection of my grievance October 2022
48. Constructively dismissing me October 2022
49. HR suggesting numerous unfavourable amendments to disciplinary documents, influencing the investigating officer's decision making and upgrading a finding of misconduct to GM in order to establish my GM from November 2021

Reasonable adjustments

50. A policy of requiring employees who are off sick to communicate directly with the Respondent/employer unless verbal consent was given by the employees for anybody else to liaise with the Respondent/employer?
51. A PCP of not having 1 to 1 meetings or stress risk assessments of individuals working in the Respondent's caretaking department at the Bromford and Hodge Hill estates

ANNEX C

AGREED CAST LIST

(Witnesses in bold)

Malcolm Harrison	Estate Caretaker in Housing – witness to 5/11/21 incident
Lee Marsh	Estate Caretaker in Housing – 5/11 incident & other incidents of alleged discrimination
Nick Ramsey	C & Lee Marsh's colleague; witness to 5/11 incident
Gavin Watton	C & Lee Marsh's colleague; witness to 5/11 incident
Brian Williams	Grade 4 Housing Officer - C's supervisor
Peter Barratt	Neighbourhood Services Co-ordinator (Housing) - deals with initial investigation plus referrals to OH and absence management
Rachel Fulwell	Senior Service Manager – Commissioning Officer for disciplinary investigation, deals with response to C's grievance
Claire Jackson	People Services Advisory Officer – HR officer supporting investigation and disciplinary proceedings
Samantha Jones	Housing Manager/ Investigation officer
Terry Dingley	C's TU Rep
Angela Gilraine	Lee Marsh's TU Rep
Malkiat Thiarai	BCC Data Protection
Tim Normanton	Head of Employee Relations – responds to C's complaint of data breach
Alka Mangal	HR Business Manager – advice re alleged data breach
Simon Naish	Head of OH
Mohammed Naveed	C's contact whilst subject to alternative to suspension
Hilary Davies	Disciplinary Panel for proposed disciplinary hearing for C
Tamsyn Daley	HR support for Hilary Davies
Natalie Smith	South Head of Housing Management (to whom grievance is sent by C)

ANNEX D

AGREED CHRONOLOGY

2020

5th October	C commences employment with BCC as a Trainee Estate Caretaker
8th December	Lee Marsh passing wind incident
9th December	Incident in which Lee March calls C a grass

2021

March	Lee Marsh's "I snap" comment
May	Lee Marsh's "youngsters … fuck off" comment
August	Lee Marsh's comment that he would tell C to "fuck off because he is older and will not be told by youngsters"
October	Lee Marsh questions C about forthcoming trial, and asks 'is it about Kiddy Fiddling'
October	C gives evidence in criminal trial against his abuser
25th October	C is promoted to role of Neighbourhood Caretaker
5th November	Incident between Lee March and C which led to disciplinary investigation/ 1st Protected Disclosure in phone call to Briam Williams also Protected Act
8th November	Peter Barratt meets with Lee Marsh then with C to discuss incident involving C and Lee Marsh (informal preliminary investigations)/ 2nd Protected Disclosure
10th November	Lee Marsh transferred to Albany House Shard End
15th November 2021	Peter Barratt reports to Rachel Fulwell with results of preliminary investigations (pg 211 to 214)
	C takes up offer of taking 5 days compassionate leave to deal with his court case
17th November 2021	C transferred to Overpool Estate Washwood Heath
24th November	C is notified that an investigation would take place into 3 allegations of gross misconduct & that Samantha Jones was the investigator

28th November	C's e-mail to Rachel Fulwell advising that he was dealing with extreme personal trauma outside work/ 3rd Protected Disclosure (pg 271)
10th December	C is interviewed by Samantha Jones for disciplinary investigation – and was the only investigation meeting with C/ 4th Protected Disclosure also Protected Act
28th December	Peter Barratt does referral to OH for C at request of his line manager Brian Williams

2022

February to March	C is off sick
8th March	Date of Dr Venkat Majjiga's Psychiatric Report [97]/ prepared for CICA assessment
18th March	Samantha Jones completes Investigation Report – case for Lee Marsh to answer on 2 out of 3/ case for C to answer on all 3 allegations
13th May	Letter informing LM that case proceeding to a disciplinary hearing
16th May	Letter informing C that case proceeding to a disciplinary hearing
18th May	Letter inviting C to a disciplinary hearing on 17th June or 23rd June
23rd May	Issue raised by C of breach of Lee Marsh's and C's personal data/ Breach reported to BCC's Corporate Information Governance Team/ 5th Protect Disclosure
23rd May	C begins period of long-term sickness and absence from work
25th May	C assured by Rachel Fulwell that she not been able to read the redactions on disciplinary pack sent to LM
30th May	C sends e-mail complaining of breach of GDPR to Malkiat Thiarai/ 5th Protected Disclosure
7th June	Rachel Fulwell notified by C that he suffers from PTSD, anxiety and mild depressive disorder
9th June	Rachel Fulwell e-mails C to give further assurance that his personal information had not been breached

16th June	Tim Normanton reports to C upon enquriries he had made – that he had found no breach of GDPR
27th June	New hearing dates offered to C of 20th July and 10th August
13th July	C is referred to OH for a second time by Peter Barratt
20th July	LM's disciplinary hearing – Lee Marsh is issued with a written warning
29th July	Grievance (pg 776 to 782) sent to Natalie Smith/ 6th Protected Disclosure – also Protected Act
1st August	Mental Health assessment carried out by OH (Emma Mather)
3rd August	Emma Mather's – tests suggested C had severe depression and anxiety
17th August	OH Telephone Consultation OH Report (pg 830) – conclusion that C's issues fell outside OH's mainstream expertise
13th September	Further invitation to disciplinary on 30th September - offering alternative ways to attend i.e. via written submissions or via representation
11th October	Rachel Fulwell's e-mail "I cannot accept this as a formal grievance … I would suggest that you use your complaint as part of your mitigation" (pg 971)
13th October	Further invitation to disciplinary on 9th November or 23rd November either in person or by representation
16th October	C resigns (resignation letter 981-986)/ 7th Protected Disclosure/also Protected Act
17th October	PB's acknowledgement of resignation
28th October	Date of termination of employment

2023

10th January	Claim presented
January	Back-dated pay rise to April 2022 paid