



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 8000628/2023

**Held in Edinburgh on 1, 2 and 3 October 2024
Members' Meeting 28 October 2024**

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**Employment Judge M Sutherland
Tribunal Member A Grant
Tribunal Member P Hammond**

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Jeremy McKenzie

**Claimant
In person**

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Scottish Ambulance Service

**Respondent
Represented by
G Fletcher, Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The unanimous judgment of the Tribunal is that the complaints of failure to make reasonable adjustments, discrimination arising from disability and unfair dismissal do not succeed and are accordingly dismissed.

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E.T. Z4 (WR)

REASONS

Introduction

1. The final hearing was held in person. The claimant appeared on his own behalf. The respondent had professional representation.
- 5 2. The claimant made complaints of failure to make reasonable adjustments, discrimination arising from disability and unfair dismissal, which were denied by the respondent.
3. The respondent accepted that the claimant was disabled by reason of cancer now in remission and that they knew this . By prior judgment it was found that
10 the claimant was also disabled during the course of his employment by reason of anxiety and depression and that respondent knew or ought reasonably to have known this.
4. The claimant gave evidence on his behalf. The respondent called the following witnesses: Clair Wright (Area Service Manager) and Dr Donna
15 Higgins (Deputy Regional Director).
5. Parties lodged a joint bundle to which supplementary documents were added during the hearing.
6. The parties made brief oral submissions. The respondent agreed to give their submissions first to enable the claimant to respond.

20 List of Issues

7. The list of issues agreed by the parties was as follows –

Failure to make reasonable adjustments - ss.20 & 21 Equality Act 2010 ("EqA")

- a. Did the respondent apply the following provision, criterion or practice ("PCP")?
25 i) Of requiring completion of the training portfolio within a short timescale;
ii) Of trainees having multiple CAVA assessors.
- b. If so, did the PCP, place the claimant at the following substantial disadvantage in comparison with persons who are not disabled?
i) Of being unable to complete his portfolio within a short timescale resulting
30 in his dismissal;
ii) Of strugglingly with inconsistent opinions affecting his ability to complete the portfolio resulting in his dismissal;

- c. If so, did the respondent know, or ought the respondent reasonably to have known, that the claimant was likely to be placed at a substantial disadvantage compared with persons who were not disabled?
- d. If so, did the respondent fail to take the following steps to avoid that disadvantage suffered by the claimant?
- 5 i) Allowing the claimant to complete his portfolio by 5 March 2023 as requested by him in November 2022;
- ii) Providing the claimant with a single assessor as requested by him in May 2022 and August 2023.
- 10 e. If so, was it reasonable for the respondent to have to take such steps, to avoid the disadvantage?

Discrimination arising from disability – s15 EqA

- f. Was the claimant treated unfavourably by being dismissed? (The respondent accepts that the claimant’s dismissal was unfavourable treatment.)
- 15 g. If so, was he dismissed because of something arising in consequence his disability? (The parties are in agreement that the claimant was dismissed because he had not completed his portfolio.)
- h. If so, was the treatment pursuant to a legitimate aim, namely to ensure Ambulance Technicians are clinically competent?
- 20 i. If so, was his dismissal a proportionate means of achieving that legitimate aim?

Time limits (s123 EqA)

- 25 j. Was the complaint of discrimination made within 3 months (plus ACAS early conciliation) of the act to which the complaint relates?
- k. If not were the complaints made within such further period as the tribunal thinks just and equitable?

30 Unfair Dismissal - s.98 Employment Rights Act 1996 (“ERA”)

- l. Was the principal reason for dismissal some other substantial reason?
- m. If so, was the dismissal fair or unfair in accordance with s98(4) ERA?

The claimant asserts that the dismissal was unfair because –

- i) The procedure adopted was unfair
 - ii) The decision maker was not fully aware of the background namely that his mental health had affected his ability to complete the training
 - iii) he had withdrawn his resignation on the basis that redeployment would be considered at the meeting but the decision maker failed to consider redeployment
 - iv) other students who have failed to complete the course have been offered the chance to explore redeployment.
- n. If, the tribunal finds that the dismissal was procedurally unfair, should compensation payable to the claimant be reduced to reflect that the claimant would have been dismissed in any event and, if so, by how much?

Remedy

- o. If the complaints are well founded what sums are due?

Findings in fact

8. The Tribunal makes the following findings in fact:

2021

9. The claimant was diagnosed with head and neck cancer in 2018 which following treatment was in remission. Partly as a consequence the claimant has continued to suffer anxiety and depression which has impacted his ability to eat, sleep and socialise.
10. In February 2021 the claimant was offered and accepted employment as a Trainee Ambulance Technician with the respondent.
11. The respondent provides an accident and emergency services across Scotland. The service is divided into 3 regions: North, East and West. Each region has various sub-divisions.
12. The claimant's employment was conditional upon the satisfactory completion of the Diploma for Ambulance Technician. The Diploma is awarded by FutureQuals on behalf of the Scottish Qualifications Authority . The award is

contingent upon successful completion of a Portfolio of Evidence which is assessed internally and externally.

13. The claimant was based at the Bo'ness Ambulance Station. The claimant reported to Clair Wright, Area Service Manager and the Clinical Education Manager.
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14. The required training programme comprised a 10 week clinical programme; 4 weeks emergency driving; and 52 weeks practical placement at an ambulance station. As part of the practical placement staff were required to submit a portfolio of evidence of clinical practice which demonstrated achievement of the required learning outcomes. The practical placement was subject to continual assessment. Work on the portfolio was undertaken and submitted for assessment throughout the placement.
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15. A trainee who has not completed the portfolio within 52 weeks ("diet 1") on account of sick leave or other authorised absence would ordinarily be granted a short extension based upon the length of that absence. If it is not completed by end of that extension closer consideration is given to the reason for the delay, their progress to date and the support required, with a view to granting a diet 2 with the completion date tailored to their individual circumstances. Some staff are also granted a diet 3. It is not unusual for trainees to require additional time and support to complete their portfolio.
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16. It was a requirement of the agreement with FutureQuals that the portfolio was marked by assessors who held the relevant Certificate in Assessing Vocational Achievement (CAVA) and the work of unqualified assessors required to be countersigned by a qualified assessor. Work as an assessor was undertaken by those holding other roles within the service including that of Ambulance Technician. There was a shortage of CAVA assessors in the West Region. A trainee's portfolio would therefore be marked by different assessors throughout the placement who would give feedback.
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17. On 15 March 2021 the claimant commenced the clinical training programme which he completed successfully.
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18. On 24 May 2021 the claimant commenced 4 weeks of emergency driving training which he also completed successfully.

19. On 26 July 2021 the claimant commenced 52 weeks practical placement. He was based out of the Bo'ness Station. The claimant was able to do the practical work.
20. The claimant began work on his portfolio which was due for completion on 26 July 2022. Initial progress on his portfolio was good although the claimant was unhappy that the work in his portfolio was being marked by different assessors most of whom were based out of the Livingston station. He considered the marking and their feedback to be inconsistent and confusing which he found stressful.
21. In November 2021 a CAVA assessor identified that one of the units in the claimant's portfolio has been plagiarised. This was raised with the claimant who admitted it. It was explained to him that nevertheless his work required to be investigated and that he would be locked out of his portfolio until the investigation has been concluded. He was however encouraged to continue with the practical work which he did.
22. In recognition of the stress of an investigation the claimant was referred to occupational health for counselling. The claimant completed a self-administered HADS (Hospital Anxiety and Depression Scale) questionnaire. The score generated indicated moderate anxiety and depression. It was recommended that he contact his GP for support.

2022

23. On 8 February 2022 the claimant raised with Clair Wright, ASM the excessive amount of time that the investigation was taking stating that "you have no idea how much this is stressing me out. [SALUS] can't help as I score above the threshold on the HAD assessment". Ms Wright provided an explanation for the delay. She offered a meeting with team leaders or SALUS should he find his mental health deteriorating which he declined.
24. From 23 February to 2 March 2022 and from 24 March to 10 April 2022 the claimant was absent from work with certified anxiety/ stress/ depression.
25. In April 2022 the claimant was advised that they would be taking no action in respect of the plagiarism in light of his immediate admission and the delayed

investigation. He was allowed to progress his portfolio which was unlocked and advised of a revised submission date of 20 November 2022 in light of the length of the investigation. That outcome was confirmed by letter of 12 August together with an apology for the delay which it was recognised “would have
5 been unsettling and distressing for you”.

26. On 17 May 2022 the claimant sought to be allocated his partner Karen Cassidy, Paramedic as a single assessor. He was advised that “portfolio making is a bit of a free for all just now as we scramble to try and get yourself and the rest of your cohort marked”. He was encouraged to ask Ms Cassidy
10 if she would take on his portfolio which he did. Ms Cassidy advised that she had already been allocated trainees but she would keep an eye on his folder too.

27. From 22 July to 10 August 2022 the claimant was absent from work with certified back and skin problems which he understood related to issues with
15 his mental health. It was noted by his GP he was still having issues eating and sleeping. He discussed taking anti-depressant medication with his GP but decided against it; it noted he was having issues with anger and frustration and he considered his personality has changed since his cancer diagnosis. It was considered appropriate to refer him to psychology.

28. From 12 September to 2 November 2022 the Claimant did not log on to the portfolio but did some work on it off line. On 16 November 2022 the claimant had an informal meeting with Alex Stewart, Clinical Team Leader to discuss the progress of his portfolio. The claimant advised that the failure to complete the portfolio by the submission date of 22 Nov 2022 was due to poor mental
25 health caused by work related stress. He was offered mirtazapine which he decided not to take due to concerns about not being able to work nightshift. In light of the modules still to be completed the claimant considered that 5 March 2023 was a realistic date for completion of his portfolio. It was agreed that he would complete his portfolio by 5 March 2023 subject to an extension request being approved. With a view to increasing consistency of marking he
30 would meet with Mr Stewart regularly (with submissions calculated on a weekly basis) and would raise any concerns with him in a timely manner. Mr Stewart was not a qualified CAVA assessor and his work would require to be

signed off by a qualified assessor. The claimant felt that this addressed his concerns.

29. On 17 November 2022 the claimant submitted to Clair Wright, ASM an extension request for completion of his portfolio. By way of mitigation the claimant referred to the length of time it took to complete the investigation of plagiarism which he had immediately admitted and the untruthful explanation for the delay, leading to periods of stress resulting in sick absence and assistance from the mental health team including a psychologist. Ms Wright offered a meeting to discuss matters to ensure he was supported moving forward. He was encouraged to submit further units towards his portfolio pending determination of his application.

30. On 24 November 2022 the claimant was contacted by Michael McCabe, Education Quality and Standards Lead who noted that his portfolio was overdue but his ASM had raised his time off sick and his submission date was revised accordingly to 18 December. He appreciated the outstanding work was unlikely to be completed in that timescale but he should meet as many learning outcomes as possible with a view to then discussing what still remained to be done. The claimant replied noting that he had agreed a realistic and achievable action plan with a team leader and he sought an explanation as to why his request to extend to 5 March 2023 had been refused. Mr McCabe replied noting that all students are given 52 weeks; his timescale had been extended to account for time off sick; if he fails to complete by the revised submission date an application is then made for a 2nd attempt (diet 2) which he expected management would support; the diet 2 submission date would depend upon how much work remained to be done and could not therefore be determined until diet 1 is complete “but please be assured that you’ll be provided with an achievable time frame”; “It sounds like the meeting you had with your team leader was productive and it’s good to hear that a realistic action plan had been developed as I’m sure this will be instrumental in assisting you to achieve your goal. As I mentioned before, I don’t think completion is achievable by the 18th of December but if you could start to implement this plan now and then once we set a diet 2 date, you can continue on with a clear finish line to aim for”.

31. The claimant discussed the outcome with Alex Stewart who encouraged him to continue with his portfolio according to their agreed plan. From 13 December 2022 onwards the claimant did not carry out any further work on his portfolio. By that date he had completed 30% of his portfolio. He was
5 aware of the expectation that he would continue to work on his portfolio but he felt unable to do so. Michael McCabe, Education Lead was then on long term absence and the failure to complete his portfolio by the due date was not raised with the claimant.

32. The claimant was very upset by his understanding of Michael McCabe's
10 decision. From 30 December 2022 to 20 January 2023 the claimant was absent from work with a certified skin disorder which he understood was triggered by issues with his mental health.

2023

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33. The claimant attended work and performed his role as Trainee Ambulance Technician from 21 January to 21 June 2023.

34. On 17 February 2023 the claimant advised Clair Wright, ASA that he was
20 unable to complete his training portfolio and that he was aware that this may impact on his position with the respondent. Ms Wright sought a meeting with him to discuss why including any supportive measure that could be put in place. They met on 6 March to discuss his mental health and problems completing his e-portfolio. She offered a review of his shifts to enable him to take the medication offered. She sought to refer him to OH to see what
25 support would allow him to complete his portfolio. He advised that he was struggling with the completion of his portfolio, possibly down to his mental health. His thoughts varied but he did not currently want to complete it and wanted instead to consider alternative options. CW advised that the options were: to look for another role in the service; to refer him to OH to seek
30 recommendations of how to support him or to see if suitable for redeployment; or, to resign. The claimant advised that he wanted to be referred to OH. Ms Wright understood that redeployment would be considered if he was unfit to complete his portfolio.

35. The questions to be determined by OH were discussed and agreed with the claimant. The claimant was due to attend OH on 28 April 2023 but this was cancelled due to COVID.
36. On 5 May 2023 the claimant had an absence management meeting with Ms Wright, ASM. The claimant advised that his mental health was affecting his professional relationships and that was finally being reviewed by psychiatry. He advised that he was not eating enough calories to sustain his energy output and he has struggled with this since his cancer diagnosis. He advised that his absences due to skin issues were linked to feelings of stress and anxiety. He advised that the role of Ambulance Technician may not be for him even though he loves the clinical side of his duties. Ms Wright advised that the portfolio is unfortunately a mandatory part of the training and was at risk of termination of his contract. The claimant was escalated to Stage 2 absence monitoring.
37. On 1 June 2023 Ms Wright, ASA concluded her Failing Student Report which extended to 3 pages together with supporting documentation. Her recommendation was that he meet with Dr Donna Higgins, Deputy Regional Director to discuss his continuing employment given his continued failure to complete his training portfolio. He was warned of the risk of dismissal. The failing student meeting was arranged for 15 August 2023.
38. The Failing Student Report noted in summary the following: the claimant's employment was expressly condition upon completion of the Diploma for Ambulance Technician which included a portfolio to be completed within 52 weeks; the initial due date for completion of his portfolio was July 2022; the claimant's initial progress on his portfolio was good; an issue of plagiarism was identified in November 2021 which the claimant admitted; the investigation did not conclude until April 2022 due to staff shortages; the claimant was absent on account of his mental health in March/ April 2022; the due date for completion of the portfolio was revised to November 2022 in light of the plagiarism investigation; from April 2022 progress with his portfolio had been slow and from September to November the claimant did not log on to the portfolio; in November 2022 the claimant had an informal meeting with Alex Stewart, CTL to discuss progress with his portfolio; in November 2022

Michael McCabe, Education Lead revised the submission date to 28 December 2022 but with the clear indication that he would be given a further significant extension; Mr McCabe was then on long term absence and the failure to complete was not raised with the claimant; in January 2023 the claimant was absent for issues related to his mental health; in February 2023 the claimant advised that he was not able to continue or complete the portfolio; the claimant had on several occasions raised issues with his mental health; in March 2023 he attended a meeting with Ms Wright, ASA where completion of his portfolio, issues with his anxiety and the affect of his mental health on completion, and the options including redeployment to another role were discussed; the claimant was referred to OH. It was noted in conclusion "Recommendations...it is recommended that he meet with the Dr Donna Higgins, Deputy Regional Director" and that an outcome may be termination of his employment. A copy of the OH report was included together with other relevant documents.

39. On 1 June 2023 the claimant attended occupational health. He was certified by occupational health as being currently fit to carrying out his full range of duties. It was noted that his psychological symptoms were not currently impacting on his fitness to work or his ability to meet the requirements of his training programme. The claimant advised that he was no longer intending to continue with his portfolio. It stated that redeployment was not considered necessary / mandatory on health grounds but alternative available roles could be considered by management. The report was discussed with the claimant before being issued.

40. From 22 June to 20 July 2023 the claimant was absent from work with certified anxiety. It was noted he was still having issues eating and sleeping. He was also being referred to psychiatry for possible PTSD related to his time in the police. He was prescribed and took anti-depressant medication for about 1 month. He felt more positive as consequence.

41. On 18 July 2023 the claimant had an attendance meeting with Alex Stewart, Clinical Team Leader. He described issues with poor sleep, lack of appetite and low mood.

42. On 13 August 2023 the claimant resigned because his request for one CAVA assessor was refused; because of issues related to the driving course (undertaken in 2021); because the explanation for delay in the plagiarism investigation was contradictory (given in March 2022); because the agreed plan to complete the portfolio was denied (in November 2022); because alternative employment previously discussed were not included as recommendations in the failing student report.
43. From 17 August to 25 September 2023 the claimant was absent from work with certified anxiety.
44. On 23 August 2023 the claimant attended a meeting with Ms Wright, ASA to discuss his resignation. He raised issues with the initial training received; the driver training; his portfolio (he felt over saturated and there were several areas that were irrelevant to his learning). In response to the refusal of his request to have Ms Cassidy as his sole CAVA assessor, it was explained that she is not a suitably qualified assessor and instead he had been allocated Alex Stewart and Mark Crawford in order to support him. It was also noted that he had been offered various extensions and process was explained to him; he was also offered OH support together with local management team support. In response to the failure to recommend redeployment it was noted that it was not part of her remit to recommend that within her report “instead this would have been highlight during your meeting with Dr Higgins”. The claimant confirmed that he wished to withdraw his resignation and attend the failing student meeting.
45. The failing student meeting was re-arranged for 11 September 2024. The claimant was advised of his right to be accompanied and warned of the risk of dismissal. Where a failing student has made reasonable attempts to progress their portfolio and where they are keen for a further opportunity to complete it, the usual outcome of the meeting would be the granting of a diet 2 extension.
46. The failing student meeting was held on 11 September 2024. The meeting lasted about 1 hour plus a 15 -20 minute recess. It was chaired by Dr Donna Higgins, Deputy Director who had considered the Failing Student Report and the attached documents. In attendance were the claimant (who elected not to

be accompanied), Ms Wright (ASA), and Michael McCabe, Education Lead. In light of her experience with other failing students who had required additional time and support, Dr Higgins had expected that he would want another opportunity to complete his portfolio.

5 47. Ms Wright presented a summary of her report and noted that at the meeting on 6 March 2023 the claimant confirmed that he was struggling with his mental health and completing the portfolio; he was referred to OH who advised that he was fit to work and his mental health symptoms were not impacting on his ability to complete the portfolio; he had made clear he did not intend to
10 complete the portfolio. Mr McCabe advised that the claimant had been given 17 months in which to complete the portfolio.

48. The claimant explained that a SMART plan (i.e. specific, measurable, achievable, relevant and time-limited) had been created with Mr Stewart for completion of the portfolio which was useful; he now found it too stressful to
15 open the portfolio; he has had health issues for over 5 years starting with head and neck cancer which is now in remission but he can't eat and sleep properly; that he felt well supported by Mr Stewart and Ms Wright regarding the completion of the portfolio. Dr Higgins asked if there were any further adjustments or support that would assist with completion of the portfolio. The
20 claimant advised that a consistent CAVA assessor may have helped but there was nothing that could be done now. He explained that he was completing a project management course to refocus his career and this was discussed. Neither the claimant nor anyone else raised the issue of redeployment to an alternative role.

25 49. After a recess Dr Higgins advised that because the claimant has made it clear that he had no intention of completing the portfolio his contract would be terminated with notice. She understood that he took issue with that style of learning and he was making a conscious choice not to complete it rather than he was unable to complete it. She decided it was not appropriate to offer
30 redeployment in light of the OH report but she encouraged the claimant to apply for other roles within the service.

50. The dismissal was confirmed by letter of 19 September 2023 which noted that: he had taken a decision not to complete it and felt unable to do so; the

OH report had advised there was no health reason impacting on his ability to complete the portfolio element or any further support that could be put in place to support him; he is facing health challenges which impacted on his decision to step away from the portfolio but he confirmed that there is no support which would change his position in relation to completion of the portfolio.

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51. The claimant suffered a dip in his mental health following his dismissal which lasted 3 to 4 weeks.

52. On 29 September 2023 the claimant submitted his appeal of the decision to dismiss on the following grounds: aspects of the clinical training were never delivered (in 2021); the driving course was not delivered per guidelines (in 2021); he has not been placed with a qualified staff member (in 2022/23); he was unreasonably refused his partner Ms Cassidy as his sole CAVA assessor (in 2022) ; his SMART plan for completion of the portfolio was unreasonably refused (in 2022); he rescinded his resignation on the understanding that redeployment would be discussed but it was never discussed (in 2023); Dr Higgins had no prior knowledge of his circumstances (in 2023); Dr Higgins made her decision on the day rather than the usual 7 days.

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53. An appeal hearing was arranged for 28 November 2022. Kenny Freeburn, Director, East Region was appointed as chair.

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54. On 23 November 2023 the claimant advised that he would not be attending the appeal hearing because: he expected redeployment to be raised by the respondent; it was not raised because the respondent had already reached the decision to dismiss; log in times do not capture time spent working off line on the portfolio; the failure to deliver training per guidelines was not discussed and rendered them in breach; the effect of multiple assessors was not taken seriously; the dismissal amounted to disability discrimination.

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55. On 27 November 2023 FK, Director replied advising that these issues would be discussed at the appeal hearing, he was encouraged to attend and he offered to reschedule the appeal hearing. The claimant replied on 28 November advising that a meeting would be futile and he was pursuing matters in the employment tribunal.

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56. At the time of his dismissal the claimant was in receipt of gross pay of £2,227 a month (£2,040 net) and pension contribution of £196.

57. The claimant was intermittently in receipt of benefits in the period from September 2023 to April 2024. The claimant secured alternative employment with the Ministry of Defence which started on 1 May 2024 and he did not have any ongoing losses thereafter.

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Observations on the evidence

58. The standard of proof is on balance of probabilities, which means that if the Tribunal considers that, on the evidence, the occurrence of an event was more likely than not, then the Tribunal is satisfied that the event did occur. Facts may be proven by direct evidence (primary facts) or by reasonable inference drawn from primary facts (secondary facts).

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59. The evidence of the respondent witnesses was consistent with the contemporaneous documentary evidence and there was no reason to doubt their credibility and reliability.

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60. During the course of the final hearing the claimant appeared to us to be a highly personable and very competent individual who sought to give a genuine account of events as he understood and recalled them. However the evidence of the claimant was at times inconsistent with the contemporaneous documentary evidence. It appeared to us that during his employment the claimant had struggled by reason of his mental health to draw reasonable inferences from the surrounding circumstances as noted below such that his testimony although credible was not considered wholly reliable testimony.

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61. The claimant had asserted in his pleadings that other students have been given a single CAVA Assessor including Ms Cassidy. Although it was apparent that he genuinely believed this, there was no evidence to this effect – the uncontroverted evidence was that for all trainees in that area a trainee's portfolio would be marked by different assessors throughout the placement who would give feedback.

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62. By November 2022 the claimant had effectively been provided Mr Stewart as a single CAVA assessor (although his work required to be signed off by someone who was qualified) with whom he had agreed the SMART plan and the claimant felt that this addressed his concerns. However the claimant's

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genuine belief was that this provision was removed by Michael McCabe but again there was no evidence to this effect. The only change made by Mr McCabe was to the completion date but he gave a strong indication that the claimant would be given significant additional time and no change was made to the SMART plan (including the ongoing support to be provided by Mr Stewart) which Mr McCabe described as realistic and instrumental.

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63. The claimant stated in evidence that other students who have failed to complete the course have been offered redeployment but when asked he was unable to advise whether this was on the basis that they were unfit to perform their current role.

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64. Dr Higgins stated in evidence that she did not pursue redeployment as a potential option because OH had confirmed that he was fit to carry his duties including completion of the portfolio. When asked about support, the claimant didn't mention or make any request for alternative roles and instead advised he was moving on to a project management career (therefore securing external employment). The claimant asserted he didn't mention redeployment because he wasn't asked about it. It is considered likely that the claimant didn't mention or make any request for alternative roles because at that point in he no longer wanted to work for the respondent in any capacity which reflected his earlier decision to resign. As the claimant stated in evidence, his opinion kept changing.

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65. Despite his assertion in the pleadings that other students who have failed to complete the course have been offered the chance to explore redeployment there was no evidence to this effect other than in relation to students who were certified by OH as not fit to do so.

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66. Whilst his mental health did not directly affect his ability to complete the portfolio (as noted by OH), it was considered likely that his mental health contributed to his decision not to complete it together with his dislike of that style of learning. He was concerned about the effect the stress of completion was having on his mental health. It was also apparent to us at the hearing that his mental health had some influence on his ability to reach reasonable and reasoned conclusions about completion of the portfolio – he erroneously inferred he was prevented from completing the SMART plan as agreed with

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Mr Stewart and he fixated on the restricted completion date rather on the clear indication that he would be given a further significant extension. The GP records in 2022 noted he was having issues with anger and frustration, was less tolerant and had very negative thinking and the claimant considered his personality had changed since his cancer diagnosis.

The law

Failure to make reasonable adjustments

67. Under Section 20 of the Equality Act 2010 ('EqA 2010') an employer has a duty, "where a provision, criterion or practice of A's, puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage".
68. Section 15 makes allowances for disability whilst Section 20 requires affirmative action (*Carranza v General Dynamics Information Technology Ltd [2015] IRLR 43, EAT*).
69. The tribunal must identify the provision, criterion or practice ('PCP') applied, the non-disabled comparators, the nature and extent of the disadvantage, and the reasonableness of the proposed adjustment. The burden of proof is upon the claimant to establish the application of the PCP, the substantial disadvantage, and an adjustment which on the face of it could be reasonable in the circumstances. The burden of proof is then upon on the respondent.
70. A substantial disadvantage is one that is more than minor or trivial. The purpose of the comparison with people who are not disabled is to establish whether the PCP or absence of an auxiliary aid puts the disabled person to a substantial disadvantage and not whether the disability causes it (*Sheikholeslami v University of Edinburgh 2018 IRLR 1090, EAT*). There is accordingly no requirement for a comparator group whose circumstances are the same.
71. What is a reasonable step is to be considered objectively having regard to all the circumstances of the case. Paragraph 4.5 of the EHRC Employment Code

(2011) ('EHRC Code') provides that "The following are some of the factors which might be taken into account when deciding what is a reasonable step for an employer to have to take: whether taking any particular steps would be effective in preventing the substantial disadvantage; the practicability of the step; the financial and other costs of making the adjustment and the extent of any disruption caused; the extent of the employer's financial or other resources; the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and the type and size of the employer." There is no onus on the claimant to suggest adjustments during their employment.

Respondent knowledge

72. Under Sch 8 Part 3 EqA 2010 the respondent is not subject to a duty to make reasonable adjustments if it does not know, and could not reasonably be expected to know that a disabled person has a disability and is likely to be placed at the substantial disadvantage by the PCP, a physical feature or the absence of an auxiliary aid. The tribunal must determine whether the respondent knew, or ought reasonably to have known, that the claimant was disabled. If so, the tribunal must determine whether the respondent knew, or ought reasonably to have known, that the claimant was likely to be placed at a substantial disadvantage (*Wilcox v Birmingham CAB Services Ltd [2011] All ER (D) 73 (Aug)*, EAT). If the respondent did not know, the tribunal must consider whether the respondent ought reasonably to have known in the circumstances. The respondent may be on sufficient notice as to the impairment, and its adverse effect, to merit further enquiries.

Time limits

73. Under Section 123 EqA, a complaint of disability discrimination must be made within 3 months (subject to ACAS conciliation) beginning with the date of the act or such other period as the employment tribunal thinks just and equitable.

74. A failure to make reasonable adjustments is an omission and time therefore runs from the date of the decision not to make the adjustment. In the absence of evidence to the contrary, a person decides upon it when they do an

inconsistent act or, if none, on expiry of the period when they might reasonably have been expected to make the adjustment (*Kingston upon Hull City Council v Matuszowicz 2009 ICR 1170, CA*).

- 5 75. Tribunals have the widest possible discretion to allow discrimination claims to be brought within such period as they think just and equitable. Factors which will almost always be relevant when exercising that discretion are the length of, and reasons for, the delay, and whether the delay has prejudiced the respondent. Factors which may also be relevant include: the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has co-operated with any requests for information; the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action. The tribunal should have regard to the balance of prejudice to the parties in granting or refusing the extension.
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Discrimination arising from disability

- 20 76. Under Section 15 EqA “A person (A) discriminates against a disabled person (B) if— (a) A treats B unfavourably because of something arising in consequence of B's disability, and (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim. (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.”
- 25 77. The tribunal must determine whether the respondent treated the claimant unfavourably because of something. This involves establishing the reason for any unfavourable treatment. The tribunal must then determine whether the something arose in consequence of the claimant's disability (*Basildon & Thurrock NHS Foundation Trust v Weerasinghe [2016] ICR 305, EAT*).

Unfavourable treatment

- 30 78. Unfavourable treatment requires the claimant to have been put to a disadvantage (a “relatively low threshold”), but, unlike less favourable treatment, it requires no comparison with how a comparator was or would be

treated (*Williams v Trustees of Swansea University Pension and Assurance Scheme [2019] IRLR 306*). This raises two questions of fact: what was the treatment and was it unfavourable to the claimant?

Reason for the treatment

- 5 79. The approach to the question as to the reason for the treatment follows the approach taken to direct discrimination (*Pnaiser v NHS England [2016] IRLR 170, EAT*). It is for the claimant to prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has treated the claimant unfavourably because of the something arising ('Stage 1' *prima facie* case). If the claimant satisfies Stage 1, it is then for the respondent to prove that the respondent has not treated the claimant unfavourably because of the something arising (Stage 2) (or that the treatment was objectively justified).
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Something arising in consequence of disability

- 15 80. The something must arise in consequence of the claimant's disability. There must be a connection between the reason for the unfavourable treatment and the claimant's disability. It does not encompass associative or perceptive discrimination.
81. The consequences of a disability include anything which is the result, effect or outcome of a person's disability (Para 5.9 EHRC Code).
- 20 82. There may be multiple causal links between the disability and the something that causes unfavourable treatment.

Respondent knowledge

83. Discrimination does not arise if the respondent did not know, and could not reasonably have been expected to know, that the claimant had the disability. However the respondent does not require to know that the something that arises in consequence of the disability.
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Objective justification

84. The discrimination arising from disability is justified if the respondent can show that the unfavourable treatment is a proportionate means of achieving a legitimate aim. The onus is upon the respondent to establish justification.
85. The legitimate aim must be a real objective consideration. Proportionality entails a balancing exercise of the effects of the unfavourable treatment on the claimant and the employer's reasons for that treatment. The means must be appropriate and necessary to achieve the aim i.e. that it could not be achieved by less discriminatory means.
86. There is a close connection between the duty to make reasonable adjustments and justification of discrimination arising. The EHRC Code 2011 para 5.21 provides: "If an employer has failed to make a reasonable adjustment which would have prevented or minimised the unfavourable treatment, it will be very difficult for them to show that the treatment was objectively justified".

Unfair dismissal

87. Section 94 of Employment Rights Act 1996 ('ERA 1996') provides the claimant with the right not to be unfairly dismissed by the respondent.
88. It is for the respondent to prove the reason for the claimant's dismissal and that the reason is a potentially fair reason in terms of Section 98 ERA 1996. A reason for dismissal is a set of facts known to the employer, or beliefs held by him, which cause him to dismiss the employee (*Abernethy v Mott, Hay and Anderson 1974 ICR 323, CA*). At this first stage of enquiry the Respondent does not have to prove that the reason did justify the dismissal merely that it was capable of doing so.
89. A dismissal is potentially fair if it is for 'some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held' (Section 98(1)(b)). It must be substantial and not frivolous, trivial or inadmissible (*Willow Oak Developments Ltd v Silverwood 2006 ICR 1552, CA*). Use of the word "other" indicates that it does not include capability,

qualifications, conduct, etc. However it may substantially overlap with those reasons.

- 5 90. If the reason for the dismissal is potentially fair, the Tribunal must determine in accordance with equity and the substantial merits of the case whether the dismissal is fair or unfair under Section 98(4) ERA 1996. This depends whether in the circumstances (including the size and administrative resources of the respondent's undertaking) the respondent acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the claimant. At this second stage of enquiry the onus of proof is neutral.
- 10 91. In determining whether the respondent acted reasonably or unreasonably the Tribunal must not "substitute itself for the employer or to act as if it were conducting a rehearing of, or an appeal against, the merits of the employer's decision to dismiss. The employer, not the tribunal, is the proper person to conduct the investigation... The function of the tribunal is to decide whether that investigation is reasonable in the circumstances and whether the decision to dismiss, in the light of the results of that investigation, is a reasonable response" (*Foley v Post Office; Midland Bank plc v Madden [2000] IRLR 827*) The Tribunal must not substitute its own view as to what it would have done in the circumstances. Instead the Tribunal must consider the range of reasonable responses open to an employer acting reasonably in those circumstances.
- 15 92. The tribunal is not conducting a rehearing or an appeal but determining whether the decision to dismiss was procedurally and substantively fair. The range of reasonable responses test applies both to the procedure adopted by the respondent and the fairness of their decision to dismiss (*Iceland Frozen Foods Ltd v Jones [1983] ICR 17 (EAT)*).
- 20 93. Where an employee is disabled, the issue of whether the dismissal is fair is a separate issue as to whether the dismissal amounted to discrimination. Nevertheless a tribunal should not too readily consider that dismissal will be fair where there are reasonable adjustments which can be made. And it will be rare, though possible, for there to be circumstances in which no reasonable adjustments can be made (*Dyer v London Ambulance NHS Trust EAT 0500/13*). Further the approach to objectively justifying a dismissal under
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Section 15 EqA is similar to determining the fairness of a dismissal under Section 98 ERA but not identical given the objective test in one and the application of the band of reasonable responses in the other (*Post Office v Jones 2001 ICR 805, CA*). Although the tests ought ordinarily to lead to the same result (*O'Brien v Bolton St Catherine's Academy 2017 ICR 737, CA*).

5 94. The Tribunal should consider whether any procedural irregularities identified affected the overall fairness of the whole process in the circumstances having regard to the reason for dismissal (*Taylor v OCS Group Ltd [2006] IRLR 613*). In determining whether the respondent adopted a reasonable procedure the Tribunal should also consider whether there was any unreasonable failure to
10 comply with their own policies and procedure. It is irrelevant that the procedural steps would have made no difference to the outcome except where they would have been utterly useless or futile (*Polkey v AE Dayton Services Ltd 1988 ICR 142, HL*).

15 95. The ACAS Code of Practice on Disciplinary and Grievance Procedures provides in summary that: employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions; employers and employees should act consistently; employers should carry out any necessary investigations, to
20 establish the facts of the case; employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made; employers should allow employees to be accompanied at any formal disciplinary or grievance meeting; employers should allow an employee to appeal against any formal decision made. The
25 Code states that it applies to disciplinary issues relating to 'misconduct' and 'poor performance', and what matters is the substance of the reason rather than the label placed upon it. In any event the underlying principles of natural justice may apply to a dismissal for some other substantial reason.

30 96. Compensation is made up of a basic award and a compensatory award. A basic award, based on age, length of service and gross weekly wage, can be reduced in certain circumstances.

97. Section 123 (1) of ERA provides that the compensatory award is such amount as the Tribunal considers just and equitable having regard to the loss sustained

by the claimant in consequence of dismissal in so far as that loss is attributable to action taken by the employer.

98. Section 123(6) ERA provides that where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

99. Where a procedural irregularity renders a dismissal unreasonable it is not relevant to the question of fairness that a proper procedure would have made no difference unless, in exceptional circumstances, it was utterly futile or useless (*Polkey v AE Dayton Services Ltd [1987] IRLR 503 (HL)*). However such considerations are relevant to whether it would be just and equitable to award compensation. Tribunal requires to engage in degree of speculation in assessing the percentage chance and timing of the claimant being fairly dismissed had a proper procedure been followed.

Claimant's Submissions

100. The claimant's brief submissions were in summary as follows -

Failure to make reasonable adjustments

a. He did not raise a claim for reasonable adjustments because he sought to focus on addressing issues with management rather than pursuing matters externally.

Discrimination arising from disability

b. His clinical work was excellent and he didn't agree with their approach to training.

Unfair dismissal

c. There was an unreasonable delay in reaching the decision to dismiss.

d. The dismissal meeting should have focused on redeployment given he had withdrawn his resignation so that it could be considered. The failing student form failed to suggest alternative options.

Remedy

- e. He seeks an award in the middle band because it was not a one off event and because of the impact it had on his mental health.

5 **Respondent's Submissions**

101. The respondent's brief submissions were in summary as follows -

Failure to make reasonable adjustments

- a. The claimant was not unreasonably refused Ms Cassidy as a single CAVA assessor because she was not qualified and in any event he was given Mr Stewart.
- b. This complaint is time barred because the inconsistent act occurred in December 2022 and there was no reasonable explanation for his failure to lodge the complaint until July 2023 given his attendance at work from February to June 2023.

15 *Discrimination arising from disability*

- c. His dismissal was objectively justified because having Ambulance Technicians who are properly trained and suitably qualified is reasonably necessary means of achieving the legitimate aim of them being clinically competent.

20 *Unfair dismissal*

- d. The failure to complete the portfolio was a fundamental term of the work/wage bargain. The claimant was unwilling to perform his contractual duties. OH confirmed that he was fit to do so. The questions provided to OH and the answers provided by them were discussed and agreed with the claimant.
- e. The reason for his dismissal related to the position the employee held.
- f. The procedure adopted was fair given the consultation, investigation, medical advice and hearing.

- g. Redeployment was not mentioned in the invite letter because OH had advised that the claimant was fit to perform his role. It was open to the claimant to raise redeployment at the failing student meeting but he elected not to do so because he wanted to pursue an external career.
- 5 h. There should be a reduction for contributory fault because the claimant's conduct contributed to his dismissal.
- i. There should be a reduction for an unreasonable failure to comply with the ACAS Code.

10 **Discussion and decision**

Failure to make reasonable adjustments - ss.20 & 21 Equality Act 2010 ("EqA")

102. A Trainee Ambulance Technician is required to achieve the Diploma for Ambulance Technician which is awarded by FutureQuals on behalf of the
15 Scottish Qualifications Authority. The diploma is contingent upon the successful completion of a Portfolio of Evidence ordinarily within 52 weeks.
103. If a Trainee Ambulance Technician has not completed their portfolio within 52 weeks they would ordinarily be granted a short extension based upon the length of any authorised absence. Mr McCade, Education Lead applied that
20 practice to the claimant on 24 November 2022 thereby requiring completion of his training portfolio within a short timescale. However that practice did not put the claimant to a substantial disadvantage in comparison with persons who are not disabled. The claimant was given a clear indication that he would be given further significant extension allowing him to complete his portfolio by
25 5 March 2023 or such other reasonable date. There was accordingly no failure to make this as a reasonable adjustment.
104. Due to a shortage of CAVA assessors a trainee's portfolio would be marked by different assessors. The respondent applied that practice to the claimant who had multiple CAVA assessors. Although the claimant took issue with
30 what he considered to be their inconsistent opinions there was no evidence that this affected his ability to complete the portfolio thereby putting him to a substantial disadvantage in comparison with persons who are not disabled. In any event, by November 2022 the claimant had effectively been provided

with a single CAVA assessor with whom he agreed the SMART plan which the claimant felt addressed his concerns. Contrary to the claimant's belief this provision was not removed by Mr McCabe, Education Lead in November 2022. There was accordingly no failure to make this as a reasonable adjustment.

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105. A complaint of discrimination must be made within 3 months (plus ACAS early conciliation) or such further period as the tribunal thinks just and equitable. The relevant decision regarding the length of the extension and the alleged removal of the single CAVA assessor occurred on 24 November 2022 and the claim was not lodged until 1 year later on 30 November 2023. The claimant worked competently as a Trainee Ambulance Technician from November 2022 until June 2023 with the exception of an absence January 2023 which related to his mental health. The claimant was very aggrieved by these perceived failures and this informed his decision to cease work on the portfolio from December 2022 and to resign with detailed reasons in August 2023. Although the claimant was suffering from issues affecting his mental health throughout that period the nature and extent of those issues did not explain the failure to progress those complaints. Had there been a failure to make reasonable adjustments these complaints would have been materially affected by issue of time bar.

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Discrimination arising from disability – s15 EqA

106. The claimant was treated unfavourably by being dismissed.

107. The claimant was dismissed because he had not completed his training portfolio and was unwilling to do so. Neither his mental or physical health directly affected his ability to complete his training portfolio. However his mental health contributed to his decision not to complete it – he was concerned about the stress of completion and he erroneously inferred that he was prevented from completing the SMART plan. Whilst it was not the sole cause (the claimant had already expressed dislike of that style of learning) it was an effective cause of his refusal. He was therefore dismissed because of something arising in consequence of his disability.

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108. The claimant was dismissed pursuant to a legitimate aim, namely to ensure that Ambulance Technicians are clinically competent. The issue is whether his dismissal was a proportionate means of achieving that.
109. With a view to achieving clinical competence Ambulance Technicians are required to be properly trained and to be suitably qualified. The training entails 10 weeks clinical training, 4 weeks emergency driving and 52 weeks of practical placement. They are also required to achieve the Diploma for Ambulance Technician which is awarded by FutureQuals on behalf of the Scottish Qualifications Authority. The diploma is contingent upon the successful completion of a Portfolio of Evidence ordinarily within 52 weeks.
110. In March 2021 the claimant commenced the 10 week clinical training programme which he completed successfully. In May 2021 he commenced 4 weeks of emergency driving training which he also completed successfully. In July 2021 he commenced 52 weeks of practical placement. He worked on placement as a trainee throughout the period from July 2021 to June 2023 with the exception of the following material absences: March/ April 2022 and January 2023.
111. In July 2021 the claimant started work in his portfolio and the initial due date for completion was July 2022. The claimant took issue with that style of learning. This was then revised to November 2022 in light of the plagiarism investigation. This was subsequently revised to December 2022 in light of the standard extension but with the clear indication that he would be given a further significant extension. The claimant had made some albeit insufficient progress to November 2022. To support him he was provided with a CAVA assessor with whom he agreed a SMART plan to complete it by March 2023 which the claimant considered to be realistic and achievable. The claimant then erroneously inferred that the Smart plan had been rejected and he fixated on the restricted completion date despite the clear indication to the contrary. In light of that, together with the stress of completion, he made the decision not to complete his portfolio.
112. The claimant was referred to OH. He was certified as fit to carry out his full range of duties and it was noted that his psychological symptoms were not

impacting on his ability to meet the requirements of his training programme. Redeployment was therefore not considered necessary.

- 5 113. The claimant was called to the Failing Student Meeting which considered whether he required any further adjustment or support that would assist him in completing the portfolio. There were no reasonable adjustments which the respondent failed to take, or support which they failed to give, which would have enabled him to complete the portfolio. At the meeting the claimant stated that he felt well supported and there was nothing that could be done now.
- 10 114. Having Ambulance Technicians who are properly trained and suitably qualified is a reasonably necessary means of achieving the legitimate aim of them being clinically competent. Balancing the effects of his dismissal against the need for clinically competent Ambulance Technicians, it was appropriate and necessary for the respondent to insist upon completion of the portfolio as a condition of employment in circumstances where he had been given
- 15 adjustments, support and additional time to do so. His dismissal was therefore a proportionate means of achieving the legitimate aim of having clinically competent Ambulance Technicians.

Unfair Dismissal - s.98 Employment Rights Act 1996 ("ERA")

- 20 115. The reason for the claimant's dismissal was that he had failed to complete the student portfolio which is a required element of the Diploma and his employment was conditional upon completion of it. That reason was not frivolous, trivial or inadmissible and was therefore a substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- 25 116. The reason he had failed to complete the portfolio and therefore the Diploma was because he had decided not to complete it and his mental health contributed to that decision. The reason for his dismissal therefore overlapped with those of qualifications, capability and possibly conduct.
- 30 117. The respondent is a large employer with significant administrative resources including a dedicated HR function.
118. CW, ASA prepared a Failing Student Report on the failure to complete the portfolio which noted in summary the following: the claimant's employment

was expressly condition upon completion of the Diploma for Ambulance Technician which included a portfolio to be completed within 52 weeks; the initial due date for completion of his portfolio was July 2022; the claimant's initial progress on his portfolio was good; an issue of plagiarism was identified in November 2021 which the claimant admitted; the investigation did not conclude until April 2022 due to staff shortages; the claimant was absent on account of his mental health in March/ April 2022; the due date for completion of the portfolio was revised to November 2022 in light of the plagiarism investigation; from April 2022 progress with his portfolio had been slow and from September to November the claimant did not log on to the portfolio; in November 2022 the claimant had an informal meeting with AS, CTL to discuss progress with his portfolio; in November 2022 MM, Education Lead revised the submission date to 28 December 2022 but with the clear indication that he would be given a further significant extension; MM was then on long term absence and the failure to complete was not raised with the claimant; in January 2023 the claimant was absent for issues related to his mental health; in February 2023 the claimant advised that he was not able to continue or complete the portfolio; the claimant had on several occasions raised issues with his mental health; in March 2023 he attended a meeting with CW, ASA where completion of his portfolio, issues with his anxiety and the affect of his mental health on completion; and the options including redeployment to another role were discussed; the claimant was referred to OH. A copy of the OH report was included with the report together with other relevant documents. The request to be allocated a single CAVA assessor was not referred in the report but was referred to the documents attached and at the meeting. The agreement of a SMART plan was not referred to in the report but was referred to in the documents attached and at the meeting.

119. Although his mental health contributed to his decision not to complete of the portfolio, he was certified by occupational health as being fit to carrying out his full range of duties including being mentally fit to complete the portfolio. It stated that redeployment was not considered necessary / mandatory on health grounds but alternative available roles could be considered by management.

120. In August 2023 the claimant resigned but he was persuaded to withdraw that resignation on the understanding that redeployment could be raised during the failing student meeting.
121. The respondent carried out a reasonable investigation as to the background facts as set out in the Failing Student Report. The claimant was informed of the problem namely his failure to complete the portfolio. He had been given reasonable time and support to do so by virtue of the SMART plan agreed with Mr Stewart, Clinical Team Leader, the ongoing support to be provided by him, and the clear indication by Mr McCabe, Education Lead that he would be given a further significant extension of time.
122. The claimant was called to a failing student meeting in September 2024 to discuss the problem, warned of the risk of dismissal and advised of his right to be accompanied. It was chaired by Donna Higgins, Deputy Director who was fully aware of the background having considered the Failing Student Report and the attached documents including the OH report.
123. At the meeting CW presented a summary of her report and noted that the claimant did not intend to complete the portfolio but OH had confirmed that he was fit to do so. The claimant then provided a detailed response. He did not raise the issue of redeployment to an alternative role and instead advised of his intention to secure external employment. DH asked if there were any further adjustments or support that would assist with completion of the portfolio. The claimant advised that there was nothing that could be done now.
124. Whilst some employers would have considered alternative employment given the comment in the OH report that management could do so, it cannot be said that all reasonable employers of that size and resources would have done so given the statement in the occupational report that he was fit to complete the portfolio and that redeployment was therefore neither necessary nor mandatory and further given the claimant's failure to raise redeployment to an alternative role at the dismissal meeting despite opportunity to do so.
125. In the circumstances (including their significant size and administrative resources) the respondent acted within the range of reasonable responses in treating the claimant's failure to complete the portfolio (and therefore the training) as sufficient reason to justify the dismissal of him as a Trainee

Ambulance Technician. The procedure adopted in reaching that decision also fell within the range of reasonable responses having regard to the reason for dismissal. Accordingly the dismissal was fair in accordance with Section 98 of the Employment Rights Act 1996.

5 Conclusion

126. In conclusion the complaints of failure to make reasonable adjustments, discrimination arising from disability and unfair dismissal do not succeed and are accordingly dismissed.

**Employment Judge: M Sutherland
Date of Judgment: 8 November 2024**

Date sent to parties 08/11/2024