EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr A Lewis	**v**	**Amicus Trust Ltd**

Heard at: Cambridge Employment Tribunal

On: 7, 8, 9, 10, 11, 14 and 15th October 2024 (day 1-7)
18 and 19 November 2024 (day 8-9)
12 December 2024 (day 10)
27, 28 January 2025 (day 11-12) (panel only)
24 February 2025 (day 13) (panel only)

Before: Employment Judge King

Members: Ms M Harris
Ms K Omer

Appearances

For the Claimant: In person
For the Respondent: Mr Arnold (counsel)

RESERVED JUDGMENT

1. The claimant's claim for direct discrimination is not well founded and is dismissed.
2. The claimant's claim for victimisation is not well founded and is dismissed.
3. The claimant's claims for detriments during employment for having made protected disclosures is not well founded and is dismissed.
4. The claimant's claim for automatic unfair dismissal is not well founded and is dismissed.
5. The claimant's claim for unfair dismissal is not well founded and is dismissed.
6. The claimant's claim for disability discrimination having previously been withdrawn is dismissed upon withdrawal.

REASONS

1. This is the judgment of the Tribunal in the above matter which was listed for 10 days commencing on 10th October 2022. Due to Tribunal unavailability, there was only a 7 day window in which to hear the case which necessitated that we go part heard to conclude the evidence. In any event, a 10 day listing was insufficient given the size of the bundles, the number of issues and the number of witnesses in this case.

2. This hearing was held as a hybrid hearing. The respondent and their representatives and the claimant attended in person. All witnesses attended in person save for one witness (James Fleming) who participated via the CVP link and gave his evidence that way. The panel were all in attendance in person.

3. The claimant was represented but his solicitor did not attend the hearing. The solicitor remained on the record and assisted the claimant in between hearing days and as issues arose. We were told that the claimant's solicitor assisted with the claimant's submissions in respect of the legal aspects of those submissions. This was an unusual way of proceeding as all emails between the parties at the hearing and in the evenings on disclosure issues would go through the solicitor not present. The claimant would have benefited from assistance at the hearing with formalities as he often struggled to articulate his questions or focus on pagination and said he was anxious to be a litigant in person. The Tribunal made adjustments to assist him and to enable him to fully participate. Ms Crook attended as an observer with the claimant on most days and we took regular breaks as and when required. When issues arose, we allowed the claimant additional time to consult his solicitor. The panel assisted with locating documents in the six lever arches as required so all parties could have the relevant document in front of them. The respondent was represented by Mr Arnold of Counsel.

4. We heard evidence from the Claimant and were asked to consider two additional witness statements on the claimant's side. Mr Holt who appeared before us but whose short evidence was unchallenged as it was not relevant to the issues we had to determine. We had to regularly remind the claimant that it was not the role of this Tribunal to determine whether the content of the protected disclosures were in fact true. The Tribunal explained on several occasions that the correct legal test was not whether what he alleged was true but whether he had disclosed information which in his reasonable belief tended to show breach of a legal obligation etc. As the respondent had conceded most of the protected disclosures Mr Holt's evidence was of limited value given its contents. The claimant found it difficult to stick to the issues and at times his evidence was not consistent as we have dealt with below.

5. The claimant relied on another witness statement of Sandeep Hullait who did not give evidence before us. The claimant's observer Ms C Crook was the former HR Manager of the respondent and her name arose from time to time in the proceedings but who did not give evidence on either side.

6. The claimant's witness statement and pleadings followed an unusual format in which he would cut and paste emails into witness evidence and this is also how he dealt with the grievances he raised during his employment. This was not helpful when relying on a document as we preferred to see the original source and the chain to avoid it being taken out of context and also because sometimes doing this would mean the document would be edited by word autonumbering and the respondent raised concerns about documents being edited in this way and that this was sinister. It also made the claimant's witness statement very long at 190 pages just for the claimant. It would be normal (particularly for a represented party) to refer to the document in the bundle as these had already been agreed and the claimant was represented at the time the witness statement was prepared.

7. Further, the respondent's witness statements were unusual in that they all followed the same template and this meant that witnesses were

commenting on matters they were not personally involved in which was unhelpful. The respondent's detailed template dealt with the issues including the detriments in detail but failed to deal with detriment 23 which was then the subject of the later disputed without prejudice disclosure. The Tribunal also had to deal with bundles that had large amounts of duplication and that were not presented in the usual order of a Tribunal bundle with pleadings and policies and then chronological documents however, in this case the documents were grouped by grievances. The approach to statements and the bundle which was a result over 6 lever arch files slowed down the hearing and the giving of evidence.

8. An issue arose concerning without prejudice offers and the claimant was permitted to obtain evidence from the claimant's union representative to support the allegations made in this regard against the respondent but we were told that the union representative had retired. Despite being given additional time to provide evidence on this issue, the claimant did not do so during the course of the hearing.

9. After submissions were made and the evidence was closed but before deliberations and the Tribunal reaching any conclusions, the claimant produced another cut and paste document of an email said to be from the DSAR he had received which contradicted evidence before the Tribunal. This email was redacted but did not appear to be in the bundle or having been referred to by either side in oral evidence. Given its contents Employment Judge King ordered the respondent to disclose the original document unredacted. The email was to Janet Prince cc C Crook from James Fleming about the claimant dismissing without prejudice discussions dated 15 September 2021 as set out below.

10. In light of this email and how it appeared to contradict the oral evidence of the respondent's witnesses in particular (but also noting that no express offer is referenced contrary to the claimant's suggestion), the parties were invited to provide submissions on relevance and how this was to be dealt with by the Tribunal in furtherance of the overriding objective which we

considered. The parties having already disclosed other without prejudice documents and having given oral evidence on this issue, the Tribunal decided to consider the email in its deliberations taking note of the respondent's objections and submissions. The claimant did not provide any specific submissions on this point. Due to an administrative error of the Tribunal the original order of Employment Judge King was not sent to the parties until after deliberations had started but the time was extended to allow both parties to respond with the way the Tribunal proposed to deal with this issue.

11. On behalf of the respondent, we heard evidence from Janet Prince CEO at the time, Jackie Park, Ronnie Neill, Brendan O'Mahoney, Adrian Henson. We then went part heard and returned to hear the evidence of Andrew Seabrook, Stephanie Hallett, James Fleming and Miranda Smythe. On day 10 we heard from Elaine Fisher (who was unavailable on the earlier part-heard days) with submissions also being heard on both sides.

12. We feel it important to make some comments regarding the respondent's witness evidence. Miranda Smythe was the most credible of the respondent's witnesses. Her evidence was clear and we felt that she was upfront with her evidence and unlike other witnesses, her evidence did not need to be extracted. She gave evidence that was clearly honest even where this was not helpful for the Respondent's case potentially as she freely gave evidence concerning another Tribunal that was race related and evidence that notes and minutes of the trustee's meetings existed and the Tribunal noted that these had not been disclosed. We accordingly ordered disclosure at the late stage although it transpired that the contents were not determinative on any issue. These were added to the bundle. The respondent voluntarily provided the judgment of its other Tribunal but both sides had this in disclosure and were aware of its existence. Having read the judgment the case did not directly involve any of the witnesses in this case and no allegations were made against them so it was disregarded.

13. We did not hold James Fleming's evidence in high regard even before the disclosure issue below. He seemed to have memory issues over relevant facts or with difficult questions even with basic facts like how many times he had met the claimant, he could not provide the answer. He was more inconsistent than the other witnesses giving evidence on behalf of the respondent. He gave evidence that he had not made any such without prejudice offer to the claimant. Whilst this appeared from the late disclosed email to be true, it was incomplete as he failed to mention that he was in fact asked to open without prejudice discussions with the claimant but that he informed the respondent that he was not interested. The respondent's position in oral evidence was that they had not given authority to make the offer relied on by the claimant and no offer was made. The email of September 2021 disclosed after submissions showed the answer to be more half truth than a lie. A truthful answer to the question about offers would have been that an offer was not made as the claimant was not interested. Whilst the passage of time can impact on the witness evidence of witnesses the Tribunal were particularly concerned about his evidence.

14. Clearly giving evidence was difficult on both sides on the issues upon which the witness (or the claimant when cross examining) felt particularly sensitive. Mr O'Mahoney could not look at the claimant during his cross examination and clearly found the process difficult. Mr Seabrook clearly did not like the claimant and had to be spoken to about challenging the claimant for an apology. His statement also dealt with an incident at Tesco's which had no relevance to the issues other than to paint the claimant in a bad light (which was self-defeating) along with other comments about the claimant's relationship with Ms Crook. It is unusual to find these sort of issues in a statement of a represented party and his conduct did not support the respondent's position.

15. Disclosure in this case was problematic. We spent time at the outset of the hearing dealing with these issues and they also arose at various points in the hearing as outlined above. The claimant made an application for

disclosure at the outset of the hearing. This was for access to his work emails as he wanted to look for evidence and he felt that there would be evidence to support his case and he wanted access to his entire email database. The respondent objected on the basis that this was over 2000 emails.

16. The application for disclosure was refused. It was explained to the claimant that this was not a specific disclosure application but more of a fishing expedition. Detailed reasons for the application being refused were given to both parties at the time. The claimant was informed that if he could be specific that a specific email existed with a rough date and the relevance to the issues in this case then he could remake the application to allow a search of the database to be conducted, if the Tribunal were satisfied that it was relevant and ought to have been disclosed. The Tribunal's approach to ordering disclosure of the other Tribunal claim and minutes of trustee meetings and CEO reports being illustrative that we would make such orders if this was in furtherance of the overriding objective and to ensure the parties were on an equal footing and that the Tribunal had the full evidence to reach its decision.

17. The parties had not placed earlier case management hearing orders in the bundle (save for the March 2024 one) but after the application had been made it was noted with the parties that this application had previously been dealt with at the case management stage by another judge and also refused. The Tribunal had the benefit of the file in this matter and raised this chronology with the parties.

18. The claimant had made the request in writing and this was dealt with by the Tribunal in its letter dated 18 December 2023 asking him to set it out in detail in an application in writing. He failed to do so and raised this again at the case management hearing on 24th January 2024 and the contents of the letter were explained to him and yet again it was dealt with when the matter was listed for a public preliminary hearing to determine the respondent's application for a strike out given the claimant's conduct. The position was again reiterated to him at the hearing on 8 March 2024 but

the claimant waited 6 months to raise it orally again at the hearing even though witness statements were served (their being issues with exchange dealt with at that March 24 hearing) and despite being professionally represented throughout this period.

19. After we rejected the application for disclosure of the entire email database and set out the specific requirements he needed to identify the relevance of a document, the email he wanted to rely on and why, the claimant would raise this in evidence that had he had the evidence he could argue this point or that point. Often unrelated to the actual issues. Even in the claimant's written submissions he raised this again and that the respondent had deliberately withheld the information from him in breach of their disclosure obligations. The claimant clearly did not accept the Tribunal position on this set out over the past 10 months by more than one Employment Judge.

20. The respondent's disclosure was more piecemeal as the Tribunal had to order disclosure of the CEO reports to the board and trustee meetings minutes after the main witnesses had given evidence. These should have been disclosed at the disclosure stage but both parties were represented so we cannot lay the blame solely at the respondent's door. Following Miranda Smythe's evidence, as we have set out above, we also ordered disclosure of another judgment against the respondent concerning race discrimination as we were naturally concerned when Miranda Smythe said that one of the witnesses was referenced in the judgment. The parties had already seen and discounted the judgment for relevance and once we were satisfied that the other Tribunal did not involve any witness before us as a perpetrator of race discrimination we also discounted this document.

21. Both parties prepared written submissions supplemented by oral submissions on the issues. The parties had served witness statements for all of the witnesses in advance and prepared an agreed bundle to which we had regard in the hearing which was substantial for the reasons set out above and ran to almost 3100 pages. There were some issues over

additional documentation for the bundle as outlined above. Prior to this Tribunal there were issues over witness statement exchange.

22. Reading time was considerable in that it took two days given the number of statements and the size of the bundle. However, Mr Holt's attended Tribunal on the second day and given the limited value of his evidence, we interjected him during reading time on the second day so he could be released. The respondent had already indicated to the claimant's solicitor in advance it had no cross examination of this witness as his witness statement was not relevant to the issues. We felt it was not in the interests of justice to have this witness attend for a second day as he had also travelled a considerable distance from his home at Leicester.

23. We agreed at the outset to not refer to tenants by name or properties by house number and street name in this Judgment or during the hearing using initials instead for confidentiality reasons given the work the charity does. We also agreed that if the person had not appeared before us at the hearing then we would use initials to identify them as the parties would know their identity again given the sensitivities of the issues and that this judgment will appear online as it was reserved. This was done by agreement. Whilst the reader may not understand the referencing the parties will do so.

24. At the outset of the hearing, the claims were identified as direct race discrimination and victimisation, detriments for having protected disclosures during employment and unfair dismissal and automatic unfair dismissal. The claimant relied on the protected characteristic of race. The claimant described his race as Black Caribbean. The claimant's disability claims had been withdrawn at an earlier stage before this hearing so this were dismissed on withdrawal. Given we are issuing judgment at this stage this has also been dealt with in this judgment.

The issues

25. The parties had agreed the issues which we revisited at the outset of the hearing and it was agreed that we would only deal with liability at the hearing. This is in part as the time estimate was clearly insufficient so we have not considered the remedy issues identified by the parties on the agreed list of issues at this stage given the time constraints. They are included in the list of issues replicated in this judgment in case they were needed for the scheduled remedy hearing.

26. The parties had agreed a list of issues in advance which was in the bundle and this was edited through the hearing to produce the final list of issues. We spent some time on the list of issues at the outset of the hearing. At the start of the hearing it was version 6 and we ended up on version 8 on the third day before substantive evidence was heard and this became the agreed list of issues.

27. There were three protected acts for the victimisation claim that had got lost in the various drafts of the list of issues alongside three protected disclosures which were noted in the later version. They were added to the final list of issues but numbered A/B etc where necessary to avoid renumbering the complex list of issues. Counsel for the respondent helpfully noted this and accepted the error as this had not been spotted by the claimant's legal representative. PD3 was no longer relied on by the claimant as this was agreed to be a duplicate of PD9. PD7 and PD14 was accepted by the claimant not to be protected disclosures and withdrawn so these are shown below in the list of issues with strike through.

28. There was an error in the date of detriment 9 which was amended from 9 August 2019 to 24 April 2019 by agreement. Detriment 10 "interference" was actually not a separate allegation which is too vague but it is reflected with examples as table 1c so detriment 11-20 were examples of detriment 10 and therefore detriment 10 was a duplication. The date of Detriment 11 was changed from 12 February 2020 to 17-19 September 2019 and also Detriment 18 the date was changed from 1 June 2020 to 19 June 2020. Detriment 21 was part withdrawn in that the claimant no longer relied on the failure to provide him with allegations (as he accepted he had been) but still

relied on the failure to follow the ACAS Code of Practice. Detriment 25 withdrawn in its entirety. We have also adopted the same anonymisation of names and address in the list of issues as the Judgment for online publication.

29. Accordingly, the final agreed list of issues before hearing substantive evidence was agreed to be as follows (for ease in this judgment the issue is referred to by the numbering system below with 28 in front of it for example issue 1 time limits is referred to as 28.1 and so on):

Equality Act 2010 claims—jurisdictional Issues

Time limits

1. Have the Claimant's claims of race discrimination and victimisation been brought within three months of the acts complained of, taking into account the effect of the 'stop the clock' provisions in respect of early conciliation? (EqA 2010, ss 123(1)(a) and 140B))

2. In respect of any complaints which are out of time, do they form part of a continuing act, taken together with acts which are in time? (EqA 2010, s 123(3)(a))

3. If the complaints were not submitted in time, would it be just and equitable to extend time? (EqA 2010, s 123(1)(b)

Direct Race discrimination contrary to section 13 of the Equality Act 2010

4. Did the Respondent treat the Claimant less favourably than it treats or would have treated others by (EqA 2010, s 13) *[361]*:

    4.1 Not providing the Claimant with a company vehicle (van) for private and business use from 1st October 2018 to 2nd March 2022.

4.2 Suspending the Claimant from work from 15th September 2021 until 2nd March 2022.

5. Was any less-favourable treatment accorded to the Claimant because of the Claimant's race? (EqA 2010, s 13). The Claimant describes his race as Black Caribbean.

6. In relation to the complaint in 4.1 Is Jackie Park an appropriate comparator? In relation to the complaint in 4.2 are Jackie Park and MS the correct comparators?

7. Are there facts from which the tribunal could decide, in the absence of any other explanation, that the Respondent discriminated against the Claimant? (EqA 2010, s 136(2))

8. If so, has the Respondent shown that it did not discriminate against the Claimant? (EqA 2010, s 136(3))

Victimisation contrary to section 27 of the Equality Act 2010

9. The protected acts identified by the Claimant in Table 2a of the Further and Better Particulars of Claim served on 15 February 2022 (the Further and Better Particulars) are accepted by the Respondent as being protected acts within the meaning of section 27(2) of the Equality Act 2010?

Victimisation – Table 2a - Protected acts *[379]*

Date	Who	Act	**Respondent's Response**	**# in bundle**
25 May 2019 **Protected Act 1A**		Formal grievance against Veterans Manager AP, for continued racial harassment and defamation	Admitted	1007
19th June 2019 **Protected Act 1**	Janet Prince	Complaint to Janet Prince about continued racial bullying harassment by AP, Jackie Park.	Admitted	1580 – 1582, 1772 – 1773
19th June 2019	Janet Prince	Formal grievance request made to Janet	Admitted	1773

Protected Act 2		Prince against Jackie Park for harassment.		
9th September 2019 **Protected Act 3**	Janet Prince	Following Leicester staff raising complaints about racial harassment and bullying by residents in the Veterans House, I forwarded the details of these to Janet Prince.	Admitted	804
5th September 2020 **Protected Act 4**	Janet Prince	Following Northampton staff raising complaints about racial harassment and bullying, by residents, I forwarded the details of these to Janet Prince.	Admitted	152

10. Did the Respondent subject the Claimant to the detriments set out in Table 2b of the Further and Better Particulars because the Claimant had done a protected act? (EqA 2010, s 27(1))

Victimisation – Table 2b- Detriments *[379]*

When	Person involved	Detriment	Witnesses	Respondent's Response	# in bundle
20 June 2019 **Detriment 1**	Jackie Park	Jackie Park undermining my authority by raising malicious false complaints about my staff team in both Northampton and Leicester.	Email Evidence	The Claimant has not identified the emails to which he refers, but in any event it is denied that any complaints against other members of staff amount to a detriment suffered by the Claimant. It is denied that malicious complaints were made by Jackie Parks about any members of staff.	1876 – 1880
12 February 2020	Jackie Park	Jackie Park, giving me	Email Evidence	The Respondent cannot identify an	2167 – 2175,

Detriment 2		orders to move old furniture.		email of 12 February, only an email of 10 December 2019, in respect of which the Claimant complained by email on 12 and 13 February 2020. The email of 10 December 2019 from Jackie Park did not give the Claimant an order to move old furniture and the words used were "Can you pleased make sure staff and residents now clear up their own mess". It is denied that this was a detriment suffered by the Claimant.	specifically 2168 338
13 February 2020 **Detriment 3**	Jackie Park	Jackie Parks continued interference with my job role.	Email Evidence	As above	159
27 February 2020 **Detriment 4**	Jackie Park	Undermining authority by giving my staff in Leicester orders without my knowledge or permission	Email Evidence	The Respondent believes that this is a reference to an email of 27.02.20 in which the Claimant complains that Jackie Park had introduced a change to their "NTV procedure". There was in fact no change to the policy in question and Jackie Park's involvement was due to this project being a veteran's project. Jackie Park is responsible for all veterans that reside with Amicus Trust. It	2124 – 2126

				is denied that the Claimant's authority was undermined or that he suffered any detriment.	
5 September 2020 **Detriment 5**	Janet Prince	Following a complaint by my staff at Northampton about bullying and harassment, Janet Prince ignored my concerns and request for an investigation.	Email Evidence	The Respondent believes that this relates to a resident that resided at the Respondent's Northampton project and was moved to HS, Wellingborough following a complaint made by the resident against the Claimant. It is admitted that the resident was difficult to manage due to suffering from ADHD and following his move Jackie Park, as a senior member of staff, was asked to assist junior staff with this resident and work with him to achieve independent living. It is denied that complaints by staff were ignore or that this amounted to a detriment suffered by the Claimant.	152 – 153
3 August 2021 **Detriment 6**	Ronnie Neil	Informal disciplinary meeting against me	Email Evidence	This meeting took place over two years after the last protected act relied upon and was held to discuss potential allegation of misconduct against the Claimant. It was	311

				entirely unrelated to any of the protected acts identified by the Claimant.	

Equality Act 2010 claims—remedy

11. What compensation, if any, should the Respondent be ordered to pay to the Claimant? (EqA 2010, s 124(2)(b)) In particular:

    11.1 what financial losses has the Claimant sustained as a result of any acts of discrimination which the tribunal finds to be made out?

    11.2 has the Claimant made reasonable attempts to mitigate his losses?

    11.3 what injury to feelings, if any, has the Claimant sustained?

    11.4 what personal injury, if any, has the Claimant sustained?

    11.5 did the Respondent unreasonably fail to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures? If so, would it be just and equitable to increase the award of compensation? If so, by what percentage (up to a maximum of 25%)? (TULR(C)A 1992, s 207A(2))

    11.6 does the compensatory award need to be grossed up to take into account the impact of taxation?

Protected Disclosure Claims - Jurisdictional Issues

12. Time Limits

    12.1 Have the Claimant's detriment claims been brought within three months of the acts complained of, taking into account the effect of the 'stop the clock' provisions in respect of early conciliation? (section 48(3)(a), ERA 1996)

12.2 In respect of any acts which are out of time, do they form part of a series of similar acts and, if so, has the Claimant's claim been brought within 3 months of the last of the acts complained of? (section 48(3)(a), ERA 1996)

12.3 If the complaints were not submitted in time, was it "not reasonably practicable" for the claim to be presented in time. (sections 48(3)(b) and 111(2)(b), ERA 1996)

Protected disclosure

13. Were any of the matters identified by the Claimant in paragraph 28 of the Particulars of Claim and paragraphs 1 to 4 and Table 1a and 1b of the Further and Better Particulars qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will need to decide in relation to each disclosure alleged by the Claimant:

13.1 Did he disclose information?

13.2 Did he believe the disclosure of information was made in the public interest?

13.3 Was that belief reasonable?

13.4 Did he believe it tended to show that:

14.4.1 A person had failed, was failing or was likely to fail to comply with any legal obligation.

14.4.2 Was that belief reasonable?

Table 1a (emails) *[376]*
(para. 28(a))

Email	Recipient	The protected disclosure	**Respondent's Response**	**# in bundle**
26th October 2018 **PD1A**	Jackie Park	Gas meter emergency control valve (ECV) located in room 1 within a locked cupboard, resident(s) have no access to turn of gas in an emergency (gas escape) breach of Gas Safety Regulation 13(3, 4) would advise that clear notices be place in prominent positions within all projects giving the gas emergency number (0800 111 999) to call in the first instance with regards to suspected gas escapes.	Admitted	691
29th October 2018 **PD1B**	Jackie Park & Janet Price	Daily, weekly, Monthly paperwork checks appear to be fabricated. Out of date notices and certificates on notice board i.e. gas certificate	Admitted	1719
12th April 2019 **PD1**	Jackie Park & Janet Prince	The correct wording for Emergency Control Valves (EVC) location is accessible rather than unlocked. So, in layman's terms, if a client suspects a gas leak, they should have access to the key that locks the room or compartment to be able shut the gas supply off immediately.	In issue – disclosure of information / reasonable belief.	2180 - no evidence in bundle that Janet Prince copied
15th April 2019 **PD2**	Jackie Park & Janet Prince	Further to my previous observation /advice with regards accessible Gas ECV, please see attached email. Staff reporting engineers concerns about locked ECV in HMO.	Admitted	2230 – 2231
~~24th April 2019~~ ~~**PD3**~~	~~Janet Prince~~	~~Email sent by Janet Prince, after I raised serious concerns in that morning's management meeting about gas safety in our HMO's, no resident is allowed to have any form of~~	~~This is not a qualifying disclosure. An email sent by Janet Prince cannot be a~~	~~88~~

		~~contact with any Gas/Electric consumables whether verbal or physically. This is the staff teams responsible!~~	~~qualifying disclosure by the Claimant.~~	
4th May 2019 **PD4**	Janet Prince	I'm told he will be making his boss aware of the situation; I presume they are P4P and if they are the landlords they will know its potentially a criminal offence (HSE RIDDOR 11(2)) to have Emergency Control Valves (ECV) inaccessible.	In issue – belief information tends to show health and safety of individual is being endangered / reasonableness of any belief	1721 – 1724
22nd May 2019 **PD5**	Jackie Park & Janet Prince	Please see attached gas warning notices issued by the gas engineer today. Locked ECV warning notice.	Admitted	1840 – 1845, specifically 1840
23rd May 2019 **PD6**	Jackie Park & Janet Prince	As I'm a Gas Safe Registered Engineer (631232) I have a duty in law under my Gas health and safety licence to make the responsible person at Amicus aware of the notice (attached email).	Admitted	2198 - 2199, specifically 2198
20th June 2019 **PD6A**	Jackie Park	I have advised you before that this practice is illegal, and places persons and property at Risk(AR), as a registered gas engineer we are only allowed to advise the responsible person(s) of 'AR' situations, which I, and my colleagues have done.	Admitted	95

Table 1b (conversations with Janet Prince) *[377]*

(para. 28(b))

Date	Where	What was said	Witnesses?	**Respondent's response**	**# in bundle**

~~31/12/2018~~ ~~**PD7**~~	~~Phone call & Email~~	~~Fire service attendance, evidence of fire evacuation documents falsification.~~		~~The Claimant merely advised Janet Prince that the fire brigade were on their way to silence a fire alarm, but that there was no fire.~~ ~~In issue – disclosure of information / belief in tending to show / reasonableness of any belief~~	~~118 – 119~~
15/04/2019 **PD8**	Phone call & Email	Staff members reporting concerns raised by gas engineer about locked ECV.		Repetition of PD2	2230 – 2231
24/04/2019 **PD9**	At Head Office	Breach of gas regulations by locking emergency EVC'S, in senior managers meeting.	WB, C Crook, Jackie Park, AP,	Admitted	Nothing in bundle
03/05/2019 **PD10**	Phone call & Email	Staff member DG reporting concerns raised by gas engineer about locked ECV.		Admitted	96 – 98, specifically 98
12/05/2020 **PD11**	Phone call & Email	Health & Safety manager using cellars during COVID-19 which has no ventilation, signs of damp, and no risk assessment.		Admitted.	698
15/05/2020 **PD11A**	Phone call & Email	The health & Safety managers were putting lives at risk, and	C Crook, AP, Jackie Park,	Admitted	2210

		I may report them to the HSE.	Andrew Seabrook		
12/10/2020 **PD12**	Phone call & Email	Falsification of Health & Safety fire evacuation test documents.		Admitted	2165

Para. 3 F&BPS

(para. 28(c))

- **PD13 -** 12th October 2020, 06:53 **page 2165**

  Falsification of Health and Safety documents, fire evacuation drills etc.

  PD13 is a repetition of PD12.

- ~~**PD14 -** 12th October 2020, 08:22 **page 112**~~

  ~~Falsification of Health and Safety documents, fire evacuation drills, etc. confirmation email of custom and practice at Amicus Trust.~~

  ~~**This would appear to be a reference to an email form Janet Prince and cannot therefore be a disclosure by the Claimant**~~

- **PD15 -** 19th October 2020, 14:43 **276 (and see [2104])**

  Falsification of Health and Safety documents, fire evacuation drills etc.

  In issue – belief disclosing information in the public interest (this was a private interest matter) / reasonableness of any such belief

Automatically unfair dismissal (section 103A, Employment Rights Act (ERA)1996)

14. What was the principle reason the Claimant was dismissed and was it he had made a protected disclosure?

Detriment (Employment Rights Act 1996 section 48)

15. Did the respondent subject the claimant to the detriments identified by the Claimant in Paragraph 29 (**page 7**) of the Particulars of Claim and Table 1c of the Further and Better Particulars?

16. Was any detriment suffered done on the ground that the Claimant had made one or more protected disclosures?

i. **Detriment 7 -** My treatment by Janet Prince in reaction to my protected disclosures on 02nd March 2022, dismissing and belittling my concerns.

Paragraph 29.i. This is a reference to the letter dismissing the Claimant (as confirmed by Paragraph 5 of the Further and Better Particulars of Claim). The Claimant cannot rely on his dismissal as a detriment ERA section 47B(2)

ii. **Detriment 8 -** My treatment by Janet Prince in reaction to my protected disclosures on 26th October 2018 and onwards to my dismissal March 2022 dismissing and belittling my concerns.

Paragraph 29.ii. It is denied that the Respondent dismissed the Claimant's concerns or belittled him. The Respondent dealt with the Claimant's concerns reasonably and, where appropriate, investigated them. In any event, if there was a failure to address any of the Claimant's concerns, which is denied, this is not itself a detriment Blackbay Ventures Ltd (t/a Chemistree) v Gahir [2014] 3 WLUK 813

iii. **Detriment 9 -** My treatment by Janet Prince on ~~9 August 2019~~ 24th April 2019, responding angrily to me in a senior manager meeting and commenting by way of email dated: 24th April 2019 ''. "No resident is allowed to have any form of contact with any Gas/Electric consumables whether verbal or physically." **Page 88**

Paragraph 29 iii. It is denied that Janet Prince reacted angrily to the Claimant at a meeting on 24 April 2019 (the date of the meeting having been clarified in Paragraph 5 (iii) of the Further and Better Particulars of Claim). Janet Prince merely explained to the Claimant and others why it was not appropriate for vulnerable residents to have access to the mains gas and electricity supply for their own safety and that if it was appropriate to turn off the gas or electricity in an emergency, then this was the responsibility of onsite staff. This is confirmed

in the email sent to the Claimant, AP and WB at 14.45 of 24 April 2019. It is further denied that this amounted to a detriment suffered by the Claimant

iv. **Detriment 10 -** My treatment by Janet Prince after 26 October 2018, allowing Jackie Park and other staff members to belittle me at work and making me feel excluded, and incompetent, not allowing me to do my job, effectively setting me up to fail at every opportunity. She did this by constantly interfering with my staff members, thus giving them the impression that I was subordinate to her, and less value as a senior manager, I have several emails contained in the evidence bundle repeatedly reporting my concerns about her bullying action to the second respondent who again ignored me allowing the abuse to continue. See table 1c for specific examples to make up detriment 10

Paragraph 29 iv. It is denied that the Claimant was belittled or bullied by Jackie Park as alleged in this subparagraph or at all and it is further denied that Janet Prince allowed such behaviour. No evidence of such behaviour was found by the external investigators appointed by the Respondent to investigate the Claimant's grievances. With regard to the specific matters raised by the Claimant in Table 1c. of the Further and Better Particulars of Claim, the Respondent responds as follows:

Table 1c Ms Jackie Parks' alleged interference *[378]*

Date	What happened	Who was involved	**Respondent's response**	**# in bundle**
~~12 February 2020~~ 17-19 September 2019 **Detriment 11**	Asking my Corby staff to unlawfully evict a vulnerable 18 year old, staff involved	SD	The Respondent believes that this may be the wrong date as they have no record of an eviction of an 18 year old in February 2020. However, on 19.09.19 an 18 year old resident was evicted due to supplying drugs to school children whilst at the school gates. It is denied that this was "interference" or that it was a detriment suffered by the Claimant	1112-1115

01 June 2019 **Detriment 12**	Asking my Northampton staff to unlawfully dump commercial waste using their own vehicles at council domestic tidy tips	CD, JN	This is denied. Staff were asked to remove bin bags which contained household waste, because they had omitted to place bins out for collection and this could have caused a rat infestation. It is denied that staff were asked to dump commercial waste. This was a legitimate request by the Property Manager and was not "interference" or a detriment suffered by the Claimant.	1876-1880
17 September 2019 **Detriment 13**	Asking my Corby staff, SD, to unlawfully dump commercial waste using their own vehicles at council domestic tidy tips	SD	As above	Nothing in bundle – C to identify
19 September 2019 **Detriment 14**	Asking my Corby staff, SD, to unlawfully dump commercial waste using their own vehicles at council domestic tidy tips	SD	As above	Nothing in bundle - C to identify
08 November 2019 **Detriment 15**	Asking my Corby staff, KM, to unlawfully dump commercial waste using their own vehicles at council domestic tidy tips	KM	As above	840
01 December 2019 **Detriment 16**	Northampton Staff members JN, having a meeting with my staff members and not informing me.	JN	It is not admitted that this meeting took place. The Respondent cannot recall this meeting and further, it is not admitted that this amounted to "interference" or a detriment suffered by the Claimant. Jackie Parks, in her role as Property Manager, had legitimate reasons for meeting with the Claimant's staff on occasions.	Nothing in bundle - C to identify

01 March 2020 **Detriment 17**	Giving my Bedford staff PH incorrect information, with regards to waste clearance.	MB, Jackie Park	It is denied that staff at the PH, Bedford project were given incorrect information regarding waste clearance or that this amounted to "interference" or a detriment suffered by the Claimant.	1600 – 1601
~~01~~ 19 June 2019 **Detriment 18**	Interfering with my Northampton staff members, then making malicious reports about them to the CEO.	CD, JN	The Property Manager is responsible for repairs in all of Amicus Trusts properties and instructions were therefore often given by Jackie Park if properties were below standards. It is denied that this was "interference" or that it was a detriment suffered by the Claimant. It is denied that malicious complaints were made by Jackie Park in relation to staff members.	Nothing in bundle - C to identify
11 December 2019 **Detriment 19**	Asking my Northampton staff, JN, CD, to unlawfully dump commercial waste using their own vehicles at council domestic tidy tips	JN, CD	This is denied. Staff were asked to remove bin bags which contained household waste. It is denied that staff were asked to dump commercial waste. This was a legitimate request by the Property Manager and was not "interference" or a detriment suffered by the Claimant.	2159 – 2162
18 September 2020 **Detriment 20**	Directly emailing my staff in Luton ordering them to perform task over my head.	PM	The email in question related to a joint project between Central Beds and Amicus Trust, which the Chief Executive Officer was managing at the time and for which the Claimant did not have responsibility. It was therefore appropriate for Jackie Park to liaise directly with the member of staff concerned and the Claimant emailed that member of staff on 21 September 2020 to confirm this. It is therefore denied that this was	839

			"interference" or a detriment suffered by the Claimant.	

v. **Detriment 21 -** ~~The failure to provide me with details of any allegations (Evidence of Email audit) made against me and~~ the failure to follow the Acas Code of Practice on Disciplinary and Grievance Procedures in relation to these allegations and my dismissal.

Paragraph 29.v.It is denied that the Claimant was not provided with the details of the disciplinary allegations against him or that there was a failure to follow the Acas Code. The Claimant was provided with sufficient detail of the allegations to enable him to understand the case against him and was provided with the investigation report and supporting pack of documents in advance of the disciplinary hearing. With regard to the further particulars given at Paragraph 5(v) of the Further and Better Particulars of Claim:

(a) Paragraph 6 of the Acas Code was followed as different people carried out the investigation and the disciplinary hearing

(b) It is denied that there should be a right of appeal. Although the Claimant's dismissal followed a disciplinary process, he was not dismissed for misconduct. He was dismissed for Some Other Substantial Reason (SOSR) and the Acas Code does not therefore apply to the dismissal, nor does it give a right of appeal

NB – there are no Paragraphs 29 vi or vii in the Claimant's Particulars of Claim [360]

viii. The manner (as opposed to the fact of) my dismissal, communicated to me on 02 March 2022 (***The Respondent repeats the response at paragraph 45.1 of the Amended Grounds of Resistance (see Paragraph 29.i response above). The Claimant cannot rely on his dismissal as a detriment in the circumstances of this case***), and in particular:

i. **Detriment 22 -** The absence of any recognised procedure; which was consistent with CIPD 3.1 – 4.3 the respondents, and their agents will be required to provide strict evidence to prove this was the case at all times.

i. It is denied that there was a breach of the CIPD Code of Conduct or that this is relevant

ii. **Detriment 23 -** SOSR Used as an egregious reason to dismiss me for Whistleblowing. Both respondents after my whistleblowing on H&S concerns was to get me to leave Amicus Trust by continually victimizing and bullying me, after I made my grievance I was advised by James Flemming, that Amicus wanted me to leave and they would pay me a month's pay with a reference, I refused, as I wanted to stay, do my job, and protect my staff and vulnerable clients my refusal of their payoff annoyed Both respondents to the extent, that a disciplinary was raised in bad faith accusing me of gross mis-conduct, which is instant dismissal.

ii. The Claimant was dismissed for SOSR and this was a lawful basis for dismissal. It is denied that the Claimant was dismissed for whistleblowing or that any alleged protected disclosure played any part in the reason for his dismissal

iii. **Detriment 24 -** The lack of opportunity provided to respond to the allegations of SOSR

iii. It is denied that the Respondent was required to give the Claimant an opportunity to respond to its decision on SOSR or to offer a right of appeal. Further or in the alternative, this would not have changed the outcome as it was clear from the Claimant's position during the grievance, grievance appeal and disciplinary processes that he did not accept any decisions that were not in his favour and had no intention of trying to rebuild relationships with his senior management colleagues

~~ix. **Detriment 25** - In the absence of any founded allegations of gross misconduct, the failure to pay me for my contractual notice period of 2 weeks. You were paid your notice plus leave entitlement.~~

~~***ix. It is denied that the Claimant was not paid his contractual notice entitlement. He was paid in lieu of his notice period in full***~~

x. **Detriment 26 -** The failure to follow an appeal procedure in line with the Acas Code of Practice on Disciplinary and Grievance Procedures.

x. The Respondent repeats its comments above. There was no entitlement under the Acas Code to an appeal. Further or in the alternative, it is extremely unlikely that an appeal would have changed the outcome

Remedy for Protected Disclosure Detriment and/or Automatic Unfair Dismissal

17. What financial losses has the detrimental treatment caused the claimant?

18. Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

19. If not, for what period of loss should the claimant be compensated?

20. What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?

21. Is it just and equitable to award the claimant other compensation?

22. Did the Respondent unreasonably fail to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures? If so, would it be just and equitable to increase the award of compensation? If so, by what percentage (up to a maximum of 25%)? (TULR(C)A 1992, s 207A(2))

23. Did the claimant cause or contribute to the detrimental treatment by their own actions and if so, would it be just and equitable to reduce the claimant's compensation? If so, by what proportion?

24. Was the protected disclosure made in good faith?

25. If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?

Unfair Dismissal—substantive issues

Reason for dismissal

26. What was the reason or principal reason for the claimant's dismissal? was it a potentially fair reason? (era 1996, s 98(1), (2)).

27. The Respondent relies on the potentially fair reason of: Some Other Substantial Reason (SOSR), specifically that there had been an irreconcilable breakdown in the relationship between the Claimant and his senior colleagues.

SOSR

28. Was SOSR the sole or principal reason for the dismissal?

29. In particular can the Respondent:

29.1 establish an SOSR reason for the dismissal

29.2 which could justify the dismissal of an employee holding the job in question

(Willow Oak Developments Ltd (t/a Windsor Recruitment) v Silverwood [2006] EWCA Civ 660)

30. Was the decision to dismiss for SOSR reasonable in all the circumstances (including the size and administrative resources of the employer's undertaking?)

31. In particular did the Respondent:

31.1 follow a fair procedure?

31.2 act reasonably in treating the reason as a sufficient reason for dismissal?

(ERA 1996, s 98(4))

Unfair dismissal—Remedy

Compensation

32. What basic award should be made to the Claimant? (ERA 1996, s 119.)

33. Are there any grounds on which the basic award should be reduced, e.g. contributory fault? If so, by how much? (ERA 1996, s 122)

34. What compensatory award should be made to the Claimant, taking into account what is just and equitable in all the circumstances having regard to the loss sustained by the Claimant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer? (ERA 1996, s 123) In particular:

34.1 what past losses has the Claimant sustained as a result of his dismissal?

34.2 what future losses is the Claimant likely to sustain as a result of his dismissal?

34.3 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

34.4 what amount should be awarded for loss of statutory rights?

34.5 to what extent, if any, did the Claimant contribute to his dismissal? (ERA 1996, s 123(6))

34.6 if the dismissal is found to be procedurally unfair, what is the percentage likelihood that the Claimant would have been dismissed fairly in any event, and when would such fair dismissal have taken place? (Polkey v Dayton [1987] IRLR 503)

34.7 can the Respondent show that the Claimant has not made reasonable attempts to mitigate his losses? If so, by what date and at what rate of pay and relevant benefits could the Claimant have been expected to have obtained alternative employment if such reasonable attempts had been made?

34.8 did the Respondent unreasonably fail to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures? If so, would it be just and equitable to increase the award of compensation? If so, by what percentage (up to a maximum of 25%)? (TULR(C)A 1992, s 207A(2))

34.9 does the compensatory award need to be grossed up to take into account the impact of taxation?

34.10 what is the statutory cap on the maximum compensatory award in this case? (ERA 1996, s 124)

The Law

Discrimination

30. Race is a protected characteristic under s10 of the Equality Act 2010.

31. Direct discrimination is dealt with under s13 of the Equality Act 2010 as follows:

> *(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*
> *(2) …..*

32. In cases of direct discrimination a comparator is used and this is dealt with in s23 of the Equality Act 2010 which states as follows:

(1) On a comparison of cases for the purposes of section 13, 14, there must be no material difference between the circumstances relating to each case.

(2) …….

33. Victimisation is prohibited by s27 of the Equality Act 2010 as follows:

(1) *A person (A) victimises another person (B) if A subjects B to a detriment because—*
- *(a) B does a protected act, or*
- *(b) A believes that B has done, or may do, a protected act.*

(2) Each of the following is a protected act—
- *(a) bringing proceedings under this Act;*
- *(b) giving evidence or information in connection with proceedings under this Act;*
- *(c) doing any other thing for the purposes of or in connection with this Act;*
- *(d) making an allegation (whether or not express) that A or another person has contravened this Act.*

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

34. S39 of the Equality Act 2010 applies the Equality Act provisions to work as follows:

Employees and applicants

(1) An employer (A) must not discriminate against a person (B)—
- *(a) in the arrangements A makes for deciding to whom to offer employment;*
- *(b) as to the terms on which A offers B employment;*

(c) by not offering B employment.

(2) An employer (A) must not discriminate against an employee of A's (B)—

(a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

(3) An employer (A) must not victimise a person (B)—

(a) in the arrangements A makes for deciding to whom to offer employment;

(b) as to the terms on which A offers B employment;

(c) by not offering B employment.

(4) An employer (A) must not victimise an employee of A's (B)—

(a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

35. S123 of the Equality Act 2010 is also relevant as to the time limit in which to bring a claim which states as follows:

(1) Proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(2) ……..

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

36. We also need to consider the burden of proof in discrimination cases and this is set out in s136 of the Equality Act 2010 which is as follows:

Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

(5) This section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to—

(a) an employment tribunal;

(b) …

Protected disclosures

37. The relevant law on protected disclosures is contained within the Employment Rights Act. The law as relevant to this case is set out in s43 ERA 1996 which states as follows:

s43A Meaning of "protected disclosure".

In this Act a " protected disclosure " means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

s43B Disclosures qualifying for protection.

(1) In this Part a " qualifying disclosure " means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part " the relevant failure ", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

s43C Disclosure to employer or other responsible person.

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure

(a)to his employer, or

(b)……

38. The right not to suffer a detriment is found in s47B as follows:

s47B Protected disclosures.

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

(a) by another worker of W's employer in the course of that other worker's employment, or

(b) by an agent of W's employer with the employer's authority,

on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

(1D)……

(2) This section does not apply where—

(a) the worker is an employee, and

(b) the detriment in question amounts to dismissal (within the meaning of Part X).

(3) For the purposes of this section, and of sections 48 and 49 so far as relating to this section, " worker ", " worker's contract ", " employment " and " employer " have the extended meaning given by section 43K.

39. Under s48(3) Employment Rights Act 1996 complaints must be brought within the time limits set out in that Act:

s48 Complaints to Employment Tribunals .

(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(4) For the purposes of subsection (3)—

(a) where an act extends over a period, the "date of the act" means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(4A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (3)(a).

Unfair Dismissal

40. The claimant has the right not to be unfairly dismissed as follows:

s94 The right.

(1) An employee has the right not to be unfairly dismissed by his employer.

41. Dismissal under Section 95 of the Employment Rights Act 1996 is not in dispute. Section 98 ERA is relevant in that it provides:

S98 General.

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

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

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

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)—

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

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

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

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

(6) ……

Automatic unfair dismissal

42. In respect of the automatic unfair dismissal claim, the right not to be dismissed is found in s103A Employment Rights Act 1996 as follows:

s103A Protected disclosure.

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

43. There was no dispute about time limits for the automatic unfair dismissal claim so the relevant section of the Employment Rights Act 1996 is not repeated here as any such claim would be in time.

44. The claimant provided written submissions with the assistance of his solicitor for the legal section. This referenced a number of cases to which we have had regard as applicable as follows:

British Home Stores Ltd v Burchell [1978] IRLR 379
Iceland Frozen Foods v Jones [1982] IRLR 439
Polkey v AE Dayton Service Ltd [1987] IRLR 503 HL
Taylor v OCS Group [2006] ICR 1602 CA
A v B [2003] IRLR 405
Illea v Gravett [1988] IRLR 497
Sunshine Hotel Limited v Mr Goddard UKEAT/0154/19/OO
Mr I Rampahi v Department for Transport UKEAT/0352/14DA
Diosynth Ltd v Thomson [2006] IRLR 284 (CSIH)
Chhabra v West London Mental Health NHS Trust [2013] UKSC 80
Sieberer v Apple Retail UK (No reference but related to a dismissal for harassment so not relevant to the issues)
Williams v Brown (UKEAT/0044/19)
Kilraine v London Borough of Wandsworth [2018] ICR 1850
Twist DX Ltd v Armes (UKEAT/0030/30)
Hibbins v Hesters Way Neighbourhood Project [2009] ICR 319
Babula v Waltham Forest College [2007] ICR 1026
Korashi Abertwe Bro Morgannwg University Local Health Board [2012] IRLR 4
Chesterton Global Ltd v Nurmohamed [2018] ICR 731
Dobbie v Fenton [2021] IRLR 679
Juesudason v Alder Hey Children's NHS Foundation Trust [2020] ICR 1226
Treadwell v Barton Turns Development Ltd [2024] EAT 137
Timis v Osiprov [2019] ICR 655
Wicked Vision Ltd v Rice [2024] ICR 675
International Petroleum v Osipov UKEAT0058/17
Croydon Health Services NHS Trust v Beatt [2017] ICR 1240
Panayiotou v Chief Constable of Hampshire Police [2014] IRLR 500
Martin v Devonshires Solicitors [2011] ICR 352
Kong v Gulf International Bank (UK) Ltd 2022 ICR 1513
Macdonald v Ministry of Defence [2033] ICR 937
O'Neill v Governors of St Thomas More Roman Catholic Voluntarily Aided Upper School [1997] ICR 33

45. In addition, when making his disclosure application the claimant referred to two cases (neither being relevant to the issue but referred to here for completeness):

Ms R Kaur v Sun Mark Ltd & others [2024] EAT 41
University of Dundee v Mr P Chakraborty [2022] EAT 150

46. The respondent provided helpful written submissions on the legal principles in advance of submissions day to assist the claimant for which we are grateful but also provided written submissions on the case facts more substantively which he supplemented orally during submissions. Counsel for the respondent made reference to a number of cases in his submissions to which we have had regard as applicable as follows:

Blackbay Ventures Ltd (t/a Chemistree) v Gahir [2014] 3 WLUK 813
Willow Oak Developments Ltd (t/a Windsor Recruitment) v Silverwood [2006] EWCA Civ 660
Ms Anne-Marie Alexis v Westminster Drug Project [2024] EAT 188
Chapman v Simon [1994] IRLR 124
Chandhok v Tirkey [2015] IRLR 195
HSBC Asia Holdings BV v Gillespie [2011] IRLR 209 EAT
Prince v Surrey County Council UKEAT/0450/10/SM
Nagarajan v London Regional Transport [1999] IRLR 572 HL
Chief Constable of West Yorkshire v Khan [2001] ICR 1065 HL
Shamoon v Chief Constable of the RUC [2003] UKHL 11 [2003] IRLR 285
Hewage v Grampion Health Board [2012] IRLR 870 SC
Amnesty International v Ahmed [2009] ICR 450
Boulding v Land Securities Trillium (Media Services) Ltd UKEAT/0023/06
Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38
Kilraine v London Borough of Wandsworth [2018] IRLR 846
Western Union Payment Services UK Ltd v Anastasiou UKEAT/0135/13/LA
Chesterton Global Ltd v Nurmohamed (Public Concern at work intervening) [2017] IRLR 837 CA
Fincham v HM Prison Service EAT 0925/01 and 0991/01

Babula v Waltham Forest College [2007] ICR 1026
Hibbins v Hesters Way Neighboruhood Project [2009] ICR 319 EAT
Soh v Imperial College of Science, Technology and Medicine EAT 0350/14
Korashi Abertwe Bro Morgannwg University Local Health Board [2012] IRLR 4
Fecitt v NHS Manchester [2012] IRLR 64
De Souza v Automobile Association [1986] IRLR 103
London Borough of Harrow v Knight [2003] IRLR 140 EAT
Turner v Vestric Ltd [1980] IRLR 23
Matthews v CGT IT UK Ltd [2024] EAT 38
Gallacher v Abellio Scotrail Ltd UKEATS/ 0027/19
Optikinetics Ltd v Whooley [1999] 1 ICR 984
Parker Foundry Ltd v Slack [1992] ICR 302
Warrilow v Robert Walker Ltd [1984] IRLR 304
W Devis & Sons Ltd v Atkins [1977] ICR 662
Chaplin v H J Rawlinson Ltd [1991] ICR 553
Hollier v Plysu Ltd [1983] IRLR 260
N Notaro Homes Ltd v Keirle and ors [2024] EAT 122
Jagex Ltd v McCambridge [2020] IRLR 187
Nelson v BBC (no 2) [1979] IRLR 346 CA
London Ambulance Service NHS Trust v Small [2009] IRLR 563
Hendricks v Commissioner of the Police for the Metropolis [2003] IRLR 96
Adedeji v University Hospitals Birmingham NHS Foundation [2021] EWCA Civ 23
Jones v Secretary of State for Health and Social Care [2024] IRLR 275

The facts

47. The claimant was employed by the respondent having commenced employment on 1 October 2018. The claimant was the Operations Manager (North) reporting to Janet Prince, CEO. At the time there was another Operations Manager WB who left shortly after the Claimant started. Jackie Park was (at the time the claimant started) Property Manager and responsible for health and safety alongside an external H&S consultant. Then when WB left the respondent, Jackie Park was given the role of Operations Manager (South). This meant that she had a dual role that of Property Manager and that of Operations Manager (South). Janet

Prince in evidence described her as being “wonder woman” who got stuck in and did everything asked of her and more.

48. There was some confusion over who was responsible for what properties as this appeared to change over time. Certainly, at the time frame we are looking at the claimant described properties in Northampton, Leicester, Luton, Bedford and Corby as his “staff” and thus his properties. The veteran properties in these patches were however managed by Jackie Park.

49. Ronnie Neill was brought into the respondent as Health and Safety Manager in January 2020. Jackie Park was no longer responsible for Health and Safety at this point albeit she was originally the internal contact for the appointed external H&S consultant.

50. The respondent is a registered charity which provides support and accommodation and rooms for the homeless. It now provides approximately 400 rooms across 80 houses across the East of England for individuals aged 16-65 who are primarily homeless individuals, many of whom had complex needs and the work of the charity also includes accommodation for veterans of the British Forces who were homeless or at risk of homelessness.

51. The respondent had a board of trustees and Miranda Smythe was the chair of trustees. Reporting to the board was Janet Prince CEO at the time. Reporting to Janet Prince CEO were members of the senior management team (SMT) namely the Claimant, Jackie Park (Operations Manager South) Brendan O’Mahoney (IT Manager), C Crook (HR Manager) Ronnie Neill (H&S Manager) (although she joined later), Andrew Seabrook (Finance Manager) and Adrian Henson (Mental Health Lead).

52. The claimant received a car allowance. The respondent accepted that Jackie Park had a company van albeit they asserted it was not for personal use. Jackie Park was both Operations Manager for the South and also

Property Manager. The claimant was an Operations Manager for the North. Jackie Park had additional responsibilities for property management that the claimant did not. One of these responsibilities was the maintenance and upkeep of houses to a high standard that meets the needs of the clients as set out in her job description. It also included responsibility for rubbish clearance when a tenant left the property and to ensure that the houses were upkept. The claimant asserted that Jackie Park had a works van for work and personal use as well as a car allowance (the allowance was not in dispute).

53. The respondent said that Jackie Park was supplied with a works van for the property aspects of her role as this included setting up new properties and taking away rubbish and old furniture in the van. This also included the need to transport furniture, bedding and supplies for the properties. We do not accept the claimant's submission that the two roles held by Jackie Park could be delineated so that she only did property management and therefore only used the van, on a set day of the week and did not do both roles in one day. Operationally the roles were intertwined and flexibility was needed.

54. Jackie Park accepted she took the van home at night. There was no evidence that it was left on site other than when she went on holiday. There was no evidence that anyone else used the van although the respondent said they could have done. There was a suggestion in evidence and in the grievance hearing that if the claimant wanted to borrow the van he could do so. The respondent explained in evidence that Jackie Park took the van home at night as part of her Property Manager role and not as part of the Operations Manager role. Further that she did so because she would run errands before or after work and collect cleaning materials and Ikea furniture. Therefore, the respondent said that it was for work use.

55. Andrew Seabrook gave oral evidence that he had checked with the auditors and that there was no personal use for HMRC purposes. There was no supporting evidence of this audit nor indeed were the mileage logs for the van disclosed to show the errands being run. The claimant took issue with this as part of the failure to disclose evidence by the respondent. This

prevented the Tribunal from looking at why she was using the van as this would have presumably supported or not their assertion as to the frequency and nature of these errands. However, it was not in dispute she used the van.

56. An issue arose in oral evidence about Jackie Park getting a speeding ticket at 3am in the same van. The claimant relied on this as evidence that she was using this for personal use given the time of the speeding ticket. We can see why he would take that view giving the hour in question. Additional disclosure was provided during the hearing when this issue arose by disclosing the email that Jackie Park sent appealing the speeding ticket on the basis that she was attending a police officer call out and had been asked to arrive quickly to one of the properties. We accept that this journey was work use. She explained in evidence why she had taken the van.

57. Jackie Park confirmed in evidence that she had a travel allowance (like the claimant's car allowance for the Operations Manager role) and also claimed mileage. It was confirmed in evidence that mileage records were kept for the van (and for the claimant as well) but Andrew Seabrook never looked at them as he had no reason to query it.

58. The claimant relies on not providing him with a company vehicle (van) for private and business use from 1 October 2018 to 2 March 2018 as an act of direct race discrimination and relies on the comparator Jackie Park in respect of this allegation.

59. On 26 October 2018 the claimant made protected disclosure 1A [PD1A] by email to Jackie Park copied to Janet Prince and one other person about H&S issues on Wellingborough projects and specifically property 109JP and an issue over the ECV location being in breach of Gas Safety Regulation 13. The respondent accepts that the claimant made a protected disclosure in this email. [PD1A]

60. The claimant relies on detriment 8 as being his treatment by Janet Prince in relation to his protected disclosures on 26 October 2018 and onwards to

his dismissal March 2022 dismissing and belittling his concerns. This is said to relate to dismissing and belittling the protected disclosures he made. This is a very general statement relied upon. We have made findings of fact in relation to this allegation in this judgment where this was referred to by the parties. The respondent gave evidence that the things that the claimant repeated over the period had been looked at by the respondent, Ronnie Neill and the landlords as required. The first protected disclosure in time was PD1A on 26 October 2018 and the last alleged protected disclosure PD15 on 19 October 2020 (18 months before he was dismissed).

61. On 29 October 2018 the claimant made another protected disclosure PD1B by email sent to various recipients citing issues over general management practices and potential health and safety breaches. The respondent accepts that the claimant made a protected disclosure in this email. [PD1B]

62. In December 2018 the claimant originally relied on PD7 which was withdrawn at this hearing and was said to have taken place on 31 December 2018. This related to a fire alarm and that the fire brigade could not turn off the alarm but there was no fire and this alleged protected disclosure was disputed had it not been withdrawn as the respondent asserted that there was no disclosure of information tending to show a relevant failure.

63. On 18 December 2018 the claimant was informed by letter that a formal grievance dated 14 December 2018 had been made against him by VU for bullying and harassment. VU had resigned citing the claimant's conduct towards her. The grievance was investigated by Adrian Henson and not upheld as he felt that there was sufficient evidence to support VU's feelings which were subjective. The outcome was communicated to VU by letter dated 2nd January 2019. This was the first grievance raised against the claimant for bullying and harassment.

64. On 23 February 2019 AS raised a grievance against the claimant for bullying and harassment. This grievance was not upheld against the claimant and this was also investigated by Adrian Henson. The conclusion found that "*there was evidence of a breakdown in relationship between AS and the claimant*" but this was not due to unprofessional or deliberate actions. There was "*an issue with communication and the interpretation of the claimant's management style*". This was the second grievance against the claimant for bullying and harassment.

65. On 12 April 2019 the claimant says that he made protected disclosure 1 [PD1]. The claimant relies on an email in the bundle sent to Jackie Park but this does appear to have been sent to Janet Prince. The email is part of a chain talking about Gas Safe Warning notices. The respondent contests this protected disclosure as not being a qualified disclosure [PD1]. The email set out that as long as the gas safety engineer followed a set process the gas safety engineer was protected from issues and he outlined the correct wording for the EVC issue and the types of notices. It does not highlight any specific issues and he simply noted the information Jackie Park had given him.

66. On 15 April 2019 the claimant made protected disclosure 2 [PD2]. This relates to an email sent to Jackie Park and Janet Prince concerning the accessible Gas ECV. The respondent concedes that this amounted to a protected disclosure. [PD2] The claimant also relies on this email and also refers to a phone call (we have heard no evidence on any phone call) as protected disclosure 8 as well but PD8 is a repeat of PD2 not a separate occasion.

67. On 24 April 2019 the claimant says he made protected disclosure 3 [PD3] (subsequently withdrawn as a duplicate of PD9) and protected disclosure 9 [PD9]. PD9 was a discussion at head office where the claimant says he raised concerns in the management meeting about gas safety at HMO's. The respondent accepts that he did raise these concerns in this meeting and that this amounted to a protected disclosure. [PD9]

68. The claimant alleges that in the same management meeting he suffered Detriment 9 (the date was changed from 9th August 2019 to 24th April 2019 by agreement) in that Janet Prince responded angrily in the management meeting and on the same day emailed the claimant and others to say "*No resident is allowed to have any form of contact with any gas/electric consumables whether verbal or physically. This is the staff teams responsibility.*" The sending of the email is not in dispute. In evidence, Janet Prince accepted that she spoke a little bit louder than usual in the meeting. We have to determine whether she was angry with the claimant by raising her voice a level. We do not find that she became angry at the claimant even though this was not the first time he had raised the same issue but she was however frustrated. She was assertive about the need for the residents not to have access to the gas/electric consumables and was concerned regarding the resident's vulnerability. This was the same issue the claimant had raised 5 months earlier and as far as she was concerned this had been discussed and explained to the claimant.

69. On 3 May 2019 the claimant made protected disclosure 10 [PD10] by phone. The respondent accepts that this amounted to a protected disclosure. We heard little evidence on this but it is not in dispute and as the respondent accepts it took place we accept that concession. The page reference agreed by the parties for this disclosure is an email to the claimant from a staff member about the ECV issue. The claimant then forwards this email to Janet Prince which forms part of protected disclosure 4 below. The claimant says that a telephone call took place this day but is not specific as to with whom. Had the respondent not conceded this issue we would not have any evidence to support the allegation that a protected disclosure was made.

70. On 4 May 2019 the claimant says that he made protected disclosure 4 [PD4] by sending an email to Janet Prince on 4th May 2019 concerning matters raised by a gas engineer concerning access to safety device and raising matters of HSE Riddor and HSE gas legislation. The respondent

does not accept that this amounts to a protected disclosure as they contest whether the claimant held a reasonable belief that it tended to show a breach of legal obligations/health and safety. The respondent's position on this is confused as they accept protected disclosure 10 [PD10] which is a page reference to the email and call but not protected disclosure 4 [PD4] which is actually the same email.

71. In the email relied on as PD4, the claimant provides information from the gas engineer and access to the safety device. The claimant points out the legal obligations of the landlord and that it is a criminal offence citing the legislation for there not to be ECV access. He sets out the process if the gas engineer issues an ID and AR notification and the costs implications and states that the landlord should be aware as any deviation from the law is non negotiable.

72. On 22 May 2019 the claimant made protected disclosure 5 [PD5] to Jackie Park and Janet Prince by sending information from the gas engineer to them both. The respondent accepts that this amounted to a protected disclosure. [PD5]

73. On 23 May 2019 the claimant made protected disclosure 6 [PD6] to Jackie Park and Janet Prince by email which is a follow-up email from PD5 and that as a gas safe registered engineer he had a duty to raise health and safety issues. The respondent accepts that this amounted to a protected disclosure. [PD6]

74. On 25 May 2019 the claimant raised a formal grievance against AP for racial harassment and defamation and he raised his grievance to Janet Prince. The claimant relies on this as protected act 1A [PA1A]. The respondent accepts that this was a protected act. AP was employed by the respondent as Veteran's Manager. This was the first grievance the claimant raised against other employees within the respondent.

75. The claimant's first grievance was heard by Adrian Henson and the respondent categorised this grievance as bullying and harassment with a

racial motive. The grievance was not upheld and the claimant appealed against this and the appeal was heard in July 2019. The appeal was heard by Janet Prince and the appeal was not upheld. In the outcome to appeal letter dated 5th July 2019 Janet Prince confirmed that the claimant had confirmed at the meeting that "*you wanted to work professionally with all your peers on the management team and that you would like to attend a mediation meeting with AP".* Mediation was suggested between AP and the claimant.

76. On 1 June 2019 an incident occurred which the claimant relies on as Detriment 12 which is in fact part of detriment 10 "interference" in that Jackie Park emailed the claimant about rubbish at properties and when the staff would be available to assist with removal and that staff were not following procedures. The claimant relies on detriment 12 as being on the 1 June 2019 but the documents upon which he relies are dated 20 June 2019 so whilst he did not correct this error it must be an error. The emails on 20 June 2019 are also relied on by the claimant as Detriment 1 for the victimisation claim in that the claimant relies on the emails as undermining his authority by raising malicious false complaints about his staff team in both Northampton and Leicester.

77. In the email of 20 June 2019 at 07.05 the claimant makes reference to "information produced in bad faith". The claimant agreed with Jackie Park that the staff were not following procedures, and so this cannot be her raising false malicious complaints about his staff team. In two separate emails in the chain he agreed with her about staff not following said procedures.

78. On 7 June 2019 NW raised a grievance against the claimant. The grievance was heard by Adrian Henson in respect of her allegations as to bullying and harassment by the claimant. The grievance was not upheld as the respondent felt that there was no evidence to uphold or support the nature of the grievance. This was the third grievance by staff against the claimant for bullying and harassment. The respondent did not refer back

to the other grievances and the fact that there had now been three grievances by staff against the claimant in six months and that he had only been there for a short period of time. It did not expressly conclude whether the problem was in fact with the claimant and his management style or whether it was a by product of him trying to effectively manage staff as a new starter who objected to being effectively managed as the claimant asserted.

79. On 19 June 2019 the claimant emailed Janet Prince setting out that he wished to raise a formal grievance against Jackie for harassment. He stated that it was related to the harassment by AP (which he had already raised a grievance, had this dismissed and appealed unsuccessfully). The claimant relies on this as protected act 2. The respondent accepts that the email is a protected act. [PA2]

80. Detriment 18 related to beer cans left at a property and in the list of issues the date was changed 1 June to 19 June. This was an email from Jackie Park to the claimant copying in Janet Prince with the title re health and safety nightmare. The email was said to be an example of detriment 10 interference by Jackie Park. The claimant accepted in evidence that Jackie was responsible for rubbish clearance but he felt that this had been sent to Janet to make him look incompetent. In cross examination , he went further and alleged that Jackie Park planted the beer cans and sent the photos to make the claimant look bad. Alternatively, that they were not from that property but somewhere else. We do not accept that this was the case.

81. On the same day the claimant emailed Janet Prince to complain about “an orchestrated campaign of harassment/victimization between Jackie Park and AP”. The claimant relies on this as Protected Act 1. The respondent accepts that the email is a protected act. [PA1] The respondent did not treat this complaint as a formal grievance as the claimant had already raised a formal grievance against AP as protected act 1A (which had been dealt with and dismissed) and then on the same day as this complaint a formal grievance against Jackie Park protected act 2.

82. On 20 June 2019 the claimant made protected disclosure 6A. The claimant relies on the email sent to Jackie Park which referred to illegal practices and the gas ECV's. The Respondent accepts that the email amounted to a protected disclosure. [PD6A]

83. On 5 August 2019 Brendan O'Mahoney raised a grievance against the claimant for bullying and harassment. This is the fourth grievance raised by staff of the respondent against him. This is the first grievance raised by another member of the SLT against him. Adrian Henson was appointed to hear the grievance. On this occasion the grievance was upheld with the conclusions being that:

- "*BO was upset and anxious about coming to work, particularly when he knows AL is going to be at Head office."*
- *"AL showed no recognition of this at all. He claimed that he had done nothing wrong and even that BO may be threatened by him professionally. He took no responsibility for any negative feelings on the part of BO*."
- *"AL will not let a point go even when he is wrong as in the above. This often causes friction, people feel he is undermining them and questioning competency. This could be seen as bullying type behaviour and the frequency of it could be interpreted as harassment."*
- *"Two staff members verified BO's version of events and said that they believed there is a problem with the way AL treated him."*
- *"BO does not want mediation as he feels that this will not work. He is intimidated by AL and doesn't believe that mediation will change his behaviour at all. Also AL feels that he has done nothing wrong so how committed would he be to mediation?"*
- *"Whether this behaviour is deliberate or not, the effects are plain to see. AL showed no remorse and no acceptance of responsibility for his actions. These actions were clearly construed as acts of bullying and harassment on the part of BO and others."*

84. With the benefit of hindsight this is clearly an insightful interpretation of what is to come. Of particular relevance are that the claimant would not let a point go – something we have already seen with the grievance against AP by this point and that when challenged he tries to undermine the person or question their competency. We see this later in the grievance process with HR. As a result of the grievance being upheld against him the claimant was invited by letter dated 21 August 2019 to a disciplinary hearing before Andrew Seabrook.

85. Whilst we do not have the letter confirming the disciplinary outcome in the bundle, it is not in dispute that the claimant received a written warning as a result of the allegations of bullying and harassment against Brendan O'Mahoney. Andrew Seabrook's evidence was that he went against HR recommendations by Ms Crook which were to give the claimant a verbal warning as Andrew Seabrook felt it was serious enough to warrant a formal written warning. Given the allegation of bullying and harassment the respondent could have sought to sanction for gross misconduct with a final written or dismissal but despite that the claimant had done protected acts and made protected disclosures by this point it did not. The claimant was treated with leniency.

86. On 9 September 2019 the claimant did a protected act PA3. The claimant sent an email to Janet Prince setting out that his staff are continually complaining about feeling racially discriminated and harassed in that project by the veterans. This was not a reference expressly to the claimant but some of his staff and something he was raising on their behalf. The respondent accepts that the complaint is a protected act. [PA3]

87. On 17 September 2019 the claimant says that he was subject to detriment 13, which is that his Corby member of staff SD was asked to unlawfully dump commercial waste using their own vehicles at council domestic tip tidies. The claimant relies on the same point in respect of 19th September 2019 as detriment 14 and also on 8th November 2019 as detriment 15 in

connection with KM being asked to do the same thing. There were no documents in the bundle the claimant could point to for detriment 13/14 but he relied on an email sent from KM to Jackie Park in which he was copied in asking about risk assessments for transporting rubbish in respect of detriment 15. It is not denied that the requests to remove rubbish were made generally and that the email relied on for detriment 15 was sent, the dispute was as to whether this was unlawful or indeed legally amounted to a detriment. These are all part of detriment 10 "interference" and are dealt with below.

88. The claimant changed the date of detriment 11 to be 17-19 September 2019 and this appears to relate to an eviction of JW which he said was Detriment 11. The allegation is that Jackie Park asked his Corby staff SD to unlawfully evict a vulnerable 18 year old and this forms part of detriment 10 "interference". The claimant relies on emails in the bundle which do not support his position that this was done behind his back and following the initial request from Jackie Park the claimant himself instructed SD to progress things and questioned that she had not actioned it previously. We heard evidence that 157GR was primarily a veteran property and the claimant gave this address in the email chain as the place for the police to meet staff and collect the resident although we heard no evidence as to whether JW himself was a veteran. As a veteran property it fell under Jackie Park's responsibility.

89. We also heard evidence that a Councillor had contacted Jackie Park as there was an allegation that this resident was selling drugs to school children and Janet Prince gave the instruction to evict and Jackie Park expressed that she needed to get back to the Councillor within the hour as to the action that they were taking to deal with the concerns raised by a member of the public. The claimant assisted with the process and liaised with the police which we saw in the email evidence on this point.

90. On 1 December 2019 the claimant relies on an incident as detriment 16 (which is part of 10 "interference") and that Jackie Park had a meeting with

his Northampton staff member JN without informing him. The respondent denied that such a meeting took place, however the respondent accepted that in her role as Property Manager she may have legitimate reasons for meeting staff from time to time. There is insufficient evidence for us to conclude that as a matter of fact there was such a meeting on that date. The claimant was not able to give evidence about any meeting as the point was that he was not present. There were no documents in the bundle that relate to this specific detriment. We accept the respondent's submission that even if there was such a meeting it was more likely it was because of her property management role as she visited many properties in this capacity.

91. On 11 December 2019 the claimant emailed Jackie Park copying in Janet Prince to say he found the emails the day before on the topic of rubbish clearance to be unprofessional and bullying. The claimant relies on the emails and the instruction in asking his Northampton staff to deal with rubbish by Jackie Park as "interference" as detriment 19 (part of detriment 10). His email about Jackie is not treated as a grievance by the respondent at this stage. Again the date is wrong as the email the claimant considered to be "unprofessional and bullying" was dated 10 December 2019.

92. The email on 10 December 2019 related to the rubbish left in the garden by residents at 39 St PR and that the landlord were doing an inspection the following week. Jackie Park offered him use of the van to help the staff clear the rubbish and that she had been trying to sort things. The claimant considered the email to be "disturbing" although on no reasonable interpretation could it be said to disturbing or bullying. In response to the claimant's email Janet Prince emailed both the claimant and Jackie Park to say that "I am absolutely dismayed! I cannot believe what I am reading…" She asked to see the claimant in her office the next morning and that she would see Jackie later that day as planned. We are not told what happened as a result, but clearly both were spoken to.

93. On 12 February 2020 the claimant relies on an incident as Detriment 2 and another incident that same day he relies on for Detriment 11. Taking Detriment 2 first. Jackie Park emailed Ronnie Neill copying in the claimant and Janet Prince concerning issues at two address and particularly with regards to a replacement sofa. Jackie said "*Michael has reported the sofa is in poor condition and needs replacing. Ashley – if this is the case please can you assist with getting the sofa up to street level one day next week and I will take it to the tip. Im (stet) sure Bob will help you and Michael move it.*" The claimant objected to this and relies on the email as being Jackie Park giving him orders to move old furniture. He then forwarded the email to Janet Prince the same day saying that he is was "*her equal as Operations Manager, and not her subordinate, such emails could be mis-interpreted as bullying*"

94. In his oral evidence, the claimant said that he took particular issue with this as he was a man who dressed for work each day in the same way he dressed for tribunal in a suit. He objected to the suggestion that his role involved moving furniture as he was not dressed to do so. It is not in dispute that the claimant was asked to assist the issue is how the email is interpreted and then whether it amounts to a detriment for having done a protected act. The claimant gave evidence that he was particularly upset by the email and in cross examination about the need to muck in with the charity as a team he confirmed he did not subscribe to that ethos and gave the impression that he considered moving furniture beneath him. Jackie Park gave evidence that further she was "female and getting on in years" so needed some assistance with some of the heavy items of furniture and was asking for help.

95. The second incident said by the claimant to be on this date (12 February 2020) was accepted to be an error of the date and it moved to 17-19 September 2019 which is dealt with above.

96. On 13 February 2020 the claimant relies on Detriment 3 that Jackie Park was continually interfering with his role. In fact the document the claimant

refers to is a continuation of the complaint to Janet Prince about the moving of the sofa which he forwarded again on the 13 February 2020 saying that he was being treated "*as a second class employee, which is not right.*" We consider that Detriment 3 is not a new detriment but that it is a repeat of Detriment 2.

97. On 27 February 2020 the claimant says he was subject to Detriment 4. This was an email on 24 February 2020 from Jackie Park to 21 workers and three additional workers cc'd who managed veteran houses. The email was cc'd to Janet Prince as well but was not sent to the claimant. The claimant was made aware of the email when it was forwarded from one of his workers and he then raised this with Janet Prince as a bullying complaint on the same day. He said "*once again I have to make a complaint to you about way I'm treated as Operations Manager compared to my comparator" "I feel as though I am deliberately undermined and made to look incompetent and of less importance in front of Amicus staff. Which I find to be a form of bullying and harassment."* The claimant confirmed in evidence that 5 of the 21 workers were his staff and the three cc'd were also his staff albeit they worked in veteran accommodation.

98. Jackie Park was responsible for veteran properties. Part of the Property Manager's job description was to liaise with landlords but part of the Operations Manager's role was to seek authority from the CEO before issuing notices to evict. The email sets out a new procedure to be followed "with immediate effect" introduced by the landlord if staff wanted to issue a notice to evict. The claimant accepted in cross examination that "his staff" worked at 157-159 GR which was two distinct properties but which housed veterans. The claimant also accepted in evidence that Janet Prince had overall responsibility for issuing eviction notices.

99. On 1 March 2020 the claimant alleges that Detriment 17 took place which is part of the interference detriment 10. The claimant says that incorrect information was given to his staff at a Bedford property regarding the location of a skip. This relates to information given to the claimant's staff

not something the claimant was expressly said to him. The claimant later complained to Janet Prince about the skip arriving and the staff and him being unaware in an email of 23 March 2020. The claimant said in cross examination that this made him look incompetent and did not accept that if Jackie Park gave them incorrect information this instead made her look incompetent. He maintained that this was a detriment to him and she was interfering.

100. Janet Prince then replied on 24 March 2020 with a very curt email about "*please don't tell such excuses*" and various comments about the staff being lazy and that she had told him to with 5 explanation marks. In response the claimant replied to say that he shared her frustration. He complained that he needed to take ownership of his projects without third party interference and communication from only one direction his line manager and not the other OM. He explained he struggled to understand why the other OM is involved with his projects and most of the time appears to deliberately undermine his competence and create extra work for him and his staff. It is then clear that the matter was discussed further offline and Janet sent an email to the claimant on 25 March 2020 saying the matter was now resolved and the email would be placed on his personal file. This email does not form part of the claimant's complaints despite it being one of the most strongly worded email we had seen and it was clear that Janet Prince was getting frustrated with the claimant complaining that Jackie Park was interfering all the time.

101. On 12 May 2020 the claimant on a phone call and by email made protected disclosure 11 [PD11]. The nature of which concerned the use of a cellar as working space without a risk assessment and that this was a breach health and safety. The respondent accepts that this was a protected disclosure. [PD11]

102. On 15 May 2020 the claimant made protected disclosure 11A [PD11A]. The respondent accepts that this was a protected disclosure. This was an

email to Janet Prince again concerning the use of cellars as working space. [PD11A]

103. It is to be remembered that by now in the chronology we were in the covid pandemic and we heard evidence from that the claimant that he was at a period of time shielding on medical advice. We were not given evidence as to the dates of this or what the medical reasons were for this. The respondent witnesses gave evidence that he was the only member of the SMT to be shielding and that he rarely went out after the pandemic to site and that this meant Jackie Park had to do more. The claimant disputed this and said his mileage logs would prove otherwise. This is however not an allegation in the case but it is relevant only in so far as the chronology and what was happening at that time and that there were fewer issues for a period.

104. On 20 August 2020 Jackie Park raised a grievance against the claimant by email to Ms Crook attaching a grievance form. The grievance concerned emails the claimant had sent to her the night before. The emails concerned rubbish clearance sent by Jackie and he complained she had cc'd Janet Prince which could be seen as bullying and harassment. She complained about the nature of his email as being unhelpful, upsetting and disappointing as she thought they were all a team. She said it was not acceptable and there was no way her original email could be seen a bullying and harassment. This was the second grievance against the claimant raised by the SMT and the fifth grievance raised against him by colleagues.

105. The same day there was a discussion between Ms Crook and Jackie Park where it was agreed an informal approach would be taken. She was offered mediation and this was confirmed by email on 20 August 2020 and that Ms Crook would meet with the claimant to discuss the matter. On 2 September 2020 Ms Crook emailed Jackie Park to arrange a mediation meeting following the grievance.

106. On 5 September 2020 the claimant emailed Jackie Park (but addressed the email to Janet Prince as noted in the bundle) raising a racial bullying complaint on behalf of one of his members of staff JM in Northampton. This was that the member of staff felt racially targeted by a resident JH but that Jackie Park was complicit or encouraged JH's racist actions towards JM. The claimant relies on this email as protected act 4. The respondent accepts that this was a protected act. [PA4]

107. We are not clear how the email went to Janet Prince when it was sent to Jackie Park, as this email chain appears in the claimant's ET as part of his cut and paste emails. Janet Prince does though reply to the claimant to say "*please leave the matter to me*" as she had a letter of concern directly and the person at Northampton that is said to be racist has been removed from their project. She said she would address the matter with the senior at Northampton and that she felt it would be better for him "*to stay out of this please as you have been involved."* The claimant relies on this email response as detriment 5 that Janet Prince ignored his concerns and request for an investigation. The claimant also accepted in evidence that Janet Prince had overall responsibility for issuing eviction notices and he further accepted in cross examination that she did deal with his concerns but that what she did was wrong in his view as she should not have moved the resident but evicted him.

108. On 7 September 2020 Jackie Park replied to C Crook concerning the offer of mediation made by email on 2 September 2020 to say " *I am really sorry but I am not happy with all this racist crap he keeps throwing out. I do not want any contact with the guy.*"

109. Jackie Park's witness evidence was that she effectively withdrew her grievance as she did not want to have mediation with the claimant. She would rather have left the organisation than have mediation with him. She said she was hugely offended that rather than acknowledging that there were legitimate concerns about his projects and the way they were managed, he instead accused her of racism.

110. There was no evidence that the clearly deteriorating relationship between the two Operations Managers was being managed effectively by the respondent or changes were being made to divide responsibilities or proactively manage the situation by Janet Prince. It is clear to us now with the benefit of hindsight that the relationship had already deteriorated at this stage.

111. On 18 September 2020 the claimant said that he was subject to Detriment 20. This is part of detriment 10 "interference". Jackie Park emailed PM and copied the claimant concerning a resident CM to deal with paperwork for a resident for benefits. The claimant felt that this was emailing his Luton staff ordering them to perform tasks over his head. The claimant did not appear to have taken issue with the email Jackie sent at the time. Instead he informs the recipient that "*as previously advised this property is a project between Central Beds and Amicus which the CEO is currently managing*" and tells PM to "*contact Jackie direct for information*". Whilst PM may have been one of the claimant's staff, this email clearly related to a project Jackie and Janet were working on and the claimant acknowledged this at the time.

112. On 12 October 2020 the claimant is said to have made protected disclosure 12 [PD12] (repeated as protected disclosure 13 [PD13]) and he withdrew protected disclosure 14 [PD14] as this was not made by him. This concerns an email about the Luton project and deliberate falsification of H&S documentation. The respondent accepts that PD12 and PD13 are protected disclosures and PD14 was withdrawn. [PD12, PD13 and PD14]

113. On 19 October 2020 the claimant is said to have made protected disclosure 15. This email was to Janet Prince forwarding an email from CJ. The email makes reference to bringing into disrepute the respondent and that the claimant wanted to bring action for defamation. It does go on to state "*During my P4P inspection checks, I discovered several H&S records which were deliberately falsified even confirmed by several residents who told me that they had never had any fire evacuation drills etc*

since they have been with Amicus." The claimant further provided a link to an article by Croner which provided detail of fraud, forgery and falsification in the field of workplace health and safety which can put people's lives at risk.

114. On 10 November 2020 PM raised a complaint about the claimant by email to Janet Prince. The grievance was around his management style and issues at the Luton project. The respondent deemed the foundation of the grievance to be harassment which related to perceived actions by the Operations Manager who was the claimant. This was the sixth grievance against the claimant of a similar nature by colleagues.

115. The grievance outcome was communicated to PM by letter dated 18th November 2020 and the grievance was not upheld. It was heard by Ronnie Neill. She did however conclude that "*it was evident during the meeting that the working relationship between yourself and claimant has irretrievably broken down. It is therefore recommended that you are either moved to a different location or you are managed by an alternative Operations Manager.*"

116. During this period the claimant was off work sick and his fit note expired on 2 June 2021. As the claimant had been off a period, the claimant was asked to attend a return to work interview on 14 June 2021.

117. On 10 June 2021 the claimant was asked whether he objected to Ronnie Neill being present at the return to work interview and he gave his consent on the same day. In this same email the claimant raised a complaint against Jackie Park and complained of discrimination compared to Jackie Park Operations Manager and he asked for information about the taxable value of the company vehicle (i.e. the van) and what she had received for a car allowance and queried the difference. The complaint was of a similar nature to the allegation of direct race discrimination before this Tribunal.

118. On 16 June 2021 there was a meeting to discuss the claimant's concerns which was chaired by Andrew Seabrook. In the meeting they discussed

his perceived views of interference, that he was paid less than Jackie Park considering the benefits namely the car/car allowance and issues over IT and deletion of his emails.

119. On 16 June 2021 the claimant confirmed by email to Andrew Seabrook and Ms Crook that the concerns he had were now addressed and resolved satisfactorily and that they could now draw a line under the matter. The claimant however raises these two matters as part of his claim now in allegation 4.1 direct discrimination and as part of the detriments for having made protected disclosures in respect of interference.

120. In July 2021 the respondent discovered that the claimant sent emails to his home address. These emails concerned the health and safety information, confidential information about residents and staff including photos. This came about as the claimant raised a complaint that MS had breached his confidentiality by sharing his personal information. This was a strange complaint made by the claimant when he had shared his fit note with her and she had simply forwarded it on as she was a more junior member of staff. Brendan O'Mahoney looked at the claimant's emails to determine what happened which led to the discovery of his misconduct.

121. On 21 July 2021 Brendan O'Mahoney prepared a report on what he described as the home email incident. He identified that a data breach had occurred under GDPR and that this should be reported to the ICO given the nature of the information sent. The report confirmed that 61 items contained data that were related to the respondent and its business operational data. The emails were sent over a prolonged period with the first being on 22 August 2019 and the last being 26 August 2020. The respondent classified 8 of these as serious breaches. The emails in question were reproduced in the bundle and covered almost 300 pages of information.

122. On 27 July 2021 the claimant attended an incident at a property with MS and wore a body cam. It is not in dispute that the claimant attended the property with a video on his person to record the incident.

123. On 29 July 2021 the respondent was notified by MS as part of her incident report that the claimant wore a bodycam to an incident. The claimant was then told orally not to do so by Janet Prince. He was then sent an email the same day by Janet Prince informing him not to wear such devices as they are not permitted. The claimant was invited to a meeting on 2 August 2021 to discuss the matter by email that day and was told that Ronnie Neill would be present as H&S manager to ascertain why he would need to wear such equipment at the respondent.

124. The claimant then replied to Ronnie Neill and C Crook to say that he wore the bodycam in situations where he feared his safety was at risk. After the claimant was given the instruction not to wear a body cam by Janet Prince, the claimant emailed the landlord of the property in question 30 minutes later and asked for their policy on wearing bodycam's on a property and it was clear that he did not agree with the instruction given.

125. On 2 August 2021 there was a meeting between the claimant and Janet Prince to discuss the email he had sent to the landlord and the claimant was told an investigation was to be carried out. The claimant relies on this meeting as what he terms as being an informal disciplinary meeting as a Detriment 6. The respondent accepts the meeting took place. There are notes of the meeting in the bundle but these are not signed by the claimant.

126. Janet Prince outlined that it was an informal meeting to discuss use of the bodycam and that Ronnie Neill had been asked to attend in her position as H&S Manager to hear any concerns the claimant may have. The claimant was told in the meeting that in light of the incident and his contact with third parties an investigation would be held. She confirmed that the matter would now be treated under the disciplinary process later that day by email.

127. The claimant alleges that the meeting on 2 August 2021 was a detriment – detriment 6 for having done a protected act. He alleges Ronnie Neill's

attendance was an act of harassment and discrimination to victimise him and stated in cross examination that he did not know why she was there and also wrongly stated he had not told the respondent before the meeting it was worn for safety reasons. Given the clear email evidence to the contrary this is not correct and we do not accept the claimant's evidence on this point.

128. On 3 August 2021 the claimant went off sick. On that day the claimant emailed Janet Prince to complain of the incident on 2 August 2021 and that Ronnie Neill is deliberately orchestrating a campaign of harassment discrimination and victimisation against him with staff members MS. This was not treated as a grievance at this stage by the respondent.

129. On 4 August 2021 the claimant emailed Janet Prince complaining of work related stress due to "*constant harassment discrimination and victimisation*". He felt that Brendon (IT manager) had now "*joined the hate mob*" against him. He told Janet Prince "*Janet, you are the only person left in Amicus that I have trust in, words are comforting but positive action speak louder.*" Again this complaint was not treated as a grievance by the respondent at this stage.

130. On 7 August 2021 Adrian Henson conducted a preliminary investigation into the allegations of misconduct concerning the emails and bodycam. He recommended that the matter proceed to a formal investigation under the disciplinary process. He identified a number of concerns with regard to the claimant's conduct namely the poor judgment to wear the bodycam, the breach of confidentiality in doing so, serious acts of insubordination in emailing the landlord after being given the instruction and that this could bring the respondent into disrepute.

131. On 8 August 2021 the claimant raised a grievance against Ronnie Neil, MS, Brendan O'Mahoney and Adrian Henson. The complaint was that they were involved in an orchestrated campaign of intent to target him and set him up to fail. In essence formalising his email complaints of 3/4 August 2021 against these individuals. James Fleming was appointed as

external investigator of this grievance. He was the owner of an external HR agency who had not worked with the respondent previously. This was now the claimant raising additional complaints against 3 other members of the SMT in addition to him having previously complained about Jackie Park.

132. On 20 August 2021 the claimant raised a grievance against Brendan O'Mahoney about him accessing the claimant's emails. This was added to the other grievance already raised so this could also be investigated by James Fleming.

133. On 3 September 2021 James Fleming reported back on the August grievances raised by the claimant and they were not upheld albeit his grievance did not appear to deal with all of the complaints the claimant raised and focused on the grievances against Brendan O'Mahoney and Ronnie Neill. The grievances were not upheld but James Fleming made a number of recommendations. These were mediation and an independent health and safety audit be conducted.

134. In connection with mediation, James Fleming commented that "*To facilitate your successful return to work, it is important that you begin to develop positive working relationships with colleagues. To support this, I am recommending that you go through a process of mediated meeting with Ronnie and Brendan to support the development of more positive relationships*." He also recommended the audit and commented that "*I am aware that you have significant concerns about the environment in which you work and the Trust's compliance with Health and Safety Regulations. Although it is my view that the Amicus Trust are fulfilling their obligations, I am recommending that a (stet) independent health and safety audit is conducted by a third party who is not affiliated to the Amicus Trust or Housing Association. The aim is to give you confidence that all Health and Safety Regulations are being appropriately adhered to*". It is noted that even at this stage it was identified that there were issues with the working relationships.

135. On 15 September 2021 the claimant's sickness absence ended and he returned to work and was suspended from work in light of the allegations against him. The suspension was confirmed by letter. The claimant complains that this act of suspension until 2nd March 2022 (as outlined below) was an act of direct race discrimination in that he was treated less favourably than his comparators MS and Jackie Park.

136. On 15 September 2021 James Fleming informed Janet Prince that he "*followed this up with a without prejudice conversation with his union rep*" and that "*I had the without prejudice conversation with the union representative and Ashley did not want to enter into negotiations. As a result he would like to come back to work on Friday when his sicknote comes to an end*." This was the email that was disclosed late after submissions as outlined above. It is clear to us that contrary to what the respondent asserted there was a without prejudice discussion with the union representative. Mr Fleming was not totally forthcoming when answering questions on this point as set out at the outset of this judgment. Secondly, it was clear that this was a planned conversation that was sanctioned by Janet Prince despite the evidence that she gave no such authority to make such an offer. Whilst the email does not refer to an express offer, it is disingenuous for the respondent to assert no offer was made and that the claimant's credibility is in question for the shift in his position from being made to him to being made to the rep when this was accurate and even if the respondent did not put a period of time or sum it, it was clear that the respondent wanted to enter into such discussions.

137. On 15 September 2021 the claimant raised a grievance against Janet Prince by email sent to Miranda Smythe raising concerns over his treatment and race discrimination. The claimant outlined that it was a complaint against Janet Prince in the title of the email and that the on going bullying and harassment which he said appears to have been sanctioned by his direct line manager (i.e. Janet Prince) who has continually ignored his requests for help both verbal and via email and that it had made him ill. He made reference to being treated badly due to his

race or colour of his skin and for doing his job correctly in bringing potentially life threatening, illegal health and safety practices to the organisation's attention. The claimant asked for a meeting with the member of the board of trustees so he could discuss the matters. This was treated as a grievance against Janet Prince.

138. Elaine Fisher was appointed to hear the grievance against Janet Prince. This was his second formal grievance and by now he had raised grievances against all of the SMT except Ms Crook and Andrew Seabrook.

139. On 16 September 2021 the claimant appealed James Fleming's outcome from his August grievance. This was subsequently heard by Kate Marston as set out below but initially this was assigned to Elaine Fisher who confirmed her appointment by letter dated 24 September 2021 when she invited him to attend an appeal meeting. We also heard that the claimant reported James Fleming to CIPD for failing to uphold his grievance.

140. On 30 September 2021 Elaine Fisher wrote to the claimant to say that she had been asked to hear the grievance against Janet Prince and as she felt there was some overlap with the appeal against the outcome of James Fleming grievance she asked for his permission to hear both together at the appeal meeting.

141. The claimant replied the same day by email to say that he did not consent to this and he wanted to keep the complaints separate. As a result of this the respondent took the decision that Elaine Fisher would hear the claimant's grievance against Janet Prince CEO only and a replacement would be appointed for the appeal against the outcome of the grievance heard by James Fleming.

142. On 6th October 2021 the claimant attended the grievance meeting with Elaine Fisher concerning the claimant's grievance against the CEO Janet Prince. The claimant was accompanied to this meeting by his union representative MF as before.

143. On 14 December 2021 Elaine Fisher delivered her report on the grievance to Miranda Smythe against Janet Prince which was not upheld. The scope and conclusions were set out to Ms Smythe over 11 pages of a4 in a detailed letter. There is no evidence that this went to the claimant directly as it is summarised in the outcome letter referred to below.

144. Her conclusions about the claimant set out a number of relevant points. She highlighted the number of grievances against him albeit some of them had not been upheld. She set out her observations when meeting the claimant and dealing with him in the process commenting that her observation is "*one of controlling behaviours, with a wish to advise me on my role and to use challenging and aggressive terminology regarding my independence and professionalism when he was unhappy with the direction of questioning I was taking in order to obtain the facts. In addition, in reviewing the evidence Ashley provided in support of his grievance it is of note that he wished to reinforce that he was over qualified for his position based on his skills and experience, appeared to get involved in areas outside the scope of his role and responsibilities and openly shared his personal opinion (often negative and critical). He also attempted to impose his recommendations in area which were outside his areas of responsibility by issuing directions to individuals who has responsibility for those areas of work. Overall, I found that Ashley's general communication style to be negative and authoritarian in style."*

145. She also noted that during the course of her investigations a number of concerns had become apparent "*concerning the breakdown in the working relationship between Ashley and his senior management colleagues as well in all likelihood, members of his project teams.*" She suggested a number of steps be taken before he returned to work including an OH consultant's report, a well being meeting with Janet to discuss the report, a formal mediation session with his work colleagues 1:1 and then a wider team meeting and a facilitated meeting with the teams to discuss a way forward.

146. On 16 December 2021 Miranda Smythe wrote to the claimant by email to confirm that she had received and considered the findings of the grievance outcome into the grievance against Janet Prince. Elaine Fisher recommended that the Board did not uphold the claimant's grievance and she set out she accepted the decision not to uphold the grievance. The claimant was given the right of appeal within 7 calendar days. The claimant did not appeal this outcome within the time limit.

147. On 12 January 2022 the claimant's appeal against the James Fleming grievances was heard by Kate Marston of a different external HR company (not involved to date) and not upheld. There was a delay in the meeting being held when the claimant challenged how she had his personal details and then the claimant failed to attend the meeting.

148. The meeting was agreed to be rearranged on 12 January 2022 and Kate Marston set out her recommendations to Miranda Smythe by letter dated 14 January 2022. She worked at a different organisation to those who heard the first grievance heard by James Fleming and the second grievance around this time heard by Elaine Fisher. She observed that there was a gap in expectations of what the claimant wanted to receive during a grievance and what he is entitled to which aggravated the situation. In summary, she felt that "*the case had been tricky to follow, as there is a lot of information and other than those in document 2 it has not been well organised – I have already stated, I would personally complete my report in a different manner to that of James Fleming, but I have not found any reason to find that his investigation was unfair, the outcome was unfair or that there was any evidence presented that makes the outcome flawed. As I been chairing the grievance I would have also made the same recommendations James Fleming made, and I consider the outcome to be fair.*"

149. By letter dated 14 January 2022 Miranda Smythe wrote to the claimant to confirm the outcome of his grievance appeal. She confirmed that "*having considered Kate's review she was satisfied that the decision not to uphold your appeal was the correct one. I therefore confirm that the grievance is*

not upheld and no further action will be taken in respect of your grievance appeal." She confirmed that there was no further right of appeal.

150. On 24 January 2022 the claimant was informed by letter of the same date (erroneously stated to be 2021 not 2022) that a formal investigation was to commence into the conduct allegations. This was outlined to be following his suspension on 15 September and that the disciplinary process had been halted whilst his grievances were investigated. Now that that process had concluded the disciplinary investigation process could now continue. There were two formal allegations the first being "*that you wore inappropriate equipment namely a body-camera whilst on duty in Amicus Trusts accommodations*" and secondly "*that you also committed malpractice of emails which includes sending emails relating to the use of bodycams to a third party organisation and forwarding emails to your Amicus email account to your personal email account.*" The claimant relies on failings with the ACAS Code of Practice and the CIPD Code as Detriments 21 and 22 with regard to this process.

151. On 28 January 2022 the claimant was invited via letter sent by email to his union representative to an investigatory meeting to discuss the misconduct allegations with Stephanie Hallett who was appointed as an external HR company run by Elaine Fisher. The allegations were unchanged from the letter above.

152. On 2 February 2022 the claimant attended the investigatory meeting. In respect of the first allegation, he accepted that he wore a body cam but stated that it was necessary for his own safety. In respect of the second allegation, there was no dispute that he sent the emails in question as the claimant accepted this. Stephanie Hallett found that this contravened the IT policy and the GDPR policy.

153. On 9 February 2022 Stephanie Hallett gave her recommendations following the investigation into the disciplinary allegations. The recommendation was that Janet Prince consider what action should be taken based on Stephanie Hallet's findings on both issues. He report

confirmed that the allegations were in effect substantiated and that the matter should now proceed for her consideration as to how best to proceed. She suggested that if Janet Prince did decide to proceed to disciplinary hearing she should appoint someone else to carry out the disciplinary process.

154. On 10 February 2022 the claimant was invited by letter to the disciplinary hearing in respect of the same two conduct allegations. He was given the right to be accompanied and two dates were given to the claimant as availability. The claimant was advised that the allegations were serious and if upheld may constitute gross misconduct which may result in the termination of his employment with immediate effect. The claimant was provided with a copy of the disciplinary investigation report by Stephanie Hallet referred to above.

155. On 17 February 2022 the claimant provided a disciplinary statement in advance of the hearing with a number of enclosures which are largely cuts and pastes of emails. His documentation commented on the investigation report and the exclusion of the respondent's internal HR Manager C Crook. He made a number of statements in that disciplinary statement referring to Adrian Henson's document being produced in "*bad faith*" and that it was a "*falsified document*", that there was "*scurrilous collusion between MS and Ronnie Neil*l" and that MS supplied a story which is "*bad faith*", that Adrian Henson had "*fabricated*" the transcript of the call with the ICO and that this was done in "*bad faith*". He made further allegations about Brendon O'Mahoney creating documents on 15 July 2021 and making statements in "*bad faith*", that Jackie Park made statements in "*bad faith*", that Janet Prince has made statements in "*bad faith*". Despite not having appealed his grievance within the time frames he continued to repeat his concerns that Janet Prince was sanctioning or allowing to continue the bullying, discrimination and victimisation. His document revisited previous issues already determined in the respondent's processes.

156. The claimant also highlighted that Jackie Park used her personal mobile to send messages to Janet Prince and others including photos of rubbish etc. This is something he raised again in the hearing but there was no evidence that she sent any emails or photos to her own personal email address as the claimant had done. The only email traffic was incoming messages to the Trust from her personal phone. We heard evidence that at the time staff were not provided with work phones.

157. On 18 February 2022 the disciplinary hearing took place with Elaine Fisher. The claimant was represented by his union at this meeting as before and it was agreed that the remainder of the hearing would convert to questions being sent to the claimant to respond to. The claimant was asked in the meeting about the allegations but Elaine Fisher also raised with him that she had an issue she wanted to raise and that was how he felt he could come back to work. The claimant replied that he wanted to come back and receive an apology. The union representative interjected to set out that she was asking him about the relationship with colleagues and it was agreed that he would provide this answer in writing as set out below. Questions were sent to the claimant to answer in writing after the meeting.

158. It transpired as part of the disclosure between the parties (and transcripts appeared in the agreed bundle) that the claimant had covertly recorded a number of meetings during the disciplinary stage. The claimant covertly recorded a number of the meetings which appeared to start with the return to work meeting on 14 June 2021 with Janet Prince and Ronnie Neill, the grievance meeting held by Elaine Fisher on 6 October 2021, the grievance appeal meeting held by Kate Marston on 14 January 2022, the disciplinary investigation meeting with Stephanie Hallet on 2 February 2022 and the disciplinary meeting with Elaine Fisher on 18 February 2022. The Tribunal therefore had the benefit of both notes of the meeting which had not been agreed by the claimant at the time but transcripts that were agreed.

159. On 21 February 2022 the claimant provided his written comments to the questions as agreed but these were largely “no comment”. The claimant

was not being helpful to his own situation despite having union representation at that stage.

160. On 28 February 2022 the disciplinary outcome was given to Janet Prince and the recommendation was that although the allegations should not result in his dismissal, it was recommended that he get a first written warning for the first allegation in respect of the bodycam and final written warning for conduct in respect of the second allegation in respect of the emails. She did not give those sanctions as she had no authority to do so but that was her recommendation to Janet Prince.

161. Elaine Fisher recommended those sanctions but then set out that she had "*an overarching concern about the ability for him to now return to the workplace and effectively work and positively engage with you, as his line manager, his senior management colleagues as well as members of his team.*" She referred to her concern (she having already expressed some reservations on the first occasion when she heard the grievance about Janet Prince referred to above) that despite the internal processes in respect of his two grievances and the appeal he continued to assert these same matters and did not accept it had not been upheld. Further that from written documents he had supplied that evidence had been provided in "*bad faith*" and are engineered for "*malicious intent*.""

162. She considered that there were irreconcilable differences between the claimant and his colleagues, that these had been building up for some time given the number of grievances either brought by or against the claimant. She set out in considerable detail that the respondent should seek legal advice as to whether they had reached the SOSR dismissal point given the breakdown in the relationships at that point. She set out his refusal to accept the findings of the processes which was evident that he had also made a complaint to the Charities Commission about the respondent. She could see nothing in his answers to the questions that indicated he wanted to repair the working relationship with colleagues or that he accepted the findings. She considered the breakdown in the relationships to be

irretrievable. The disciplinary statement supplied by the claimant was littered with allegations against most of the SMT.

163. Janet Prince gave evidence that she discussed the report with Miranda Smythe. Miranda confirmed she had not seen the contents of the report but understood the gist of it. Janet Prince accepted in evidence that it was her decision but that she "sense checked" it with Miranda Smythe. She did not circulate the report but said that she would have done if the chair of the board had concerns.

164. On 2 March 2022 the claimant was informed that his employment would terminate for some other substantial reason (SOSR) with immediate effect and that he would be paid a period of notice paid in lieu (PILON). The claimant was provided with this decision in writing and was not offered the right of appeal against the decision which was signed off by Janet Prince. The letter was erroneously dated 2021 not 2022.

165. The claimant was informed that the recommendations as to sanction of first and final written warning respectively had been given as well as the recommendation as to whether dismissal was warranted for SOSR due to the serious and irreconcilable breakdown in the relationship between the claimant and his colleagues. She set out that ordinarily the outcome of the process would be that he would be subject to sanctions short of dismissal but instead she was not imposing that sanction but dismissing for some other substantial reason

166. Janet Prince set out her reasons for termination in detail and the contents of the letter cannot easily be cut and paste into this judgment. Elaine Fisher's recommendations to her cover six sides of A4 and Janet's five sides of A4. She set out the history between the claimant and his colleagues in the number of grievances raised on both sides and that in considering that history she was not attributing blame but it established that there is now very little trust between the claimant and other members of the SMT including her. That he did not seem to want to rebuild relationships and had made no suggestion as to how they could be

repaired. She set out that the claimant felt her and others were conspiring against him and that his colleagues had now lost trust in the claimant also and would rather leave than work with him again. She considered that his return to work would be detrimental to his colleagues and the respondent overall.

167. She considered other ways of resolving the matter despite the fact he made no suggestions. She considered deployment was not possible in an organisation their size and that given he did not accept the outcomes of the grievances mediation was unlike to work and she could see that there was no reasonable prospect of resolving the situation. He was dismissed with immediate effect but paid for one month's notice in lieu.

168. The dismissal itself is relied on by the claimant as being an automatic unfair dismissal but he relies on the disciplinary process in various ways as detriments during employment as detriments as follows:

168.1 Detriment 7 that the contents of the letter of dismissal was a detriment for having made a protected disclosure in that it belittled him. The claimant also relies on the fact that he was dismissed which we have dealt with below.

168.2 Detriment 21 in that the respondent failed to follow the ACAS Code of Practice on Disciplinary and Grievance procedures in relation to the allegations and my dismissal.

168.3 Detriment 22 in that there was a failure to follow the CIPD procedure 3.1 to 4.3 by the external HR consultants (multiple)

168.4 Detriment 23 that SOSR was an erroneous reason to dismiss and when he refused the without prejudice offer to leave disciplinary matters were raised in bad faith to accuse him of gross misconduct.

168.5 Detriment 24 that he did not get an opportunity to respond to the allegations of SOSR.

168.6 Detriment 26 that there was a failure to follow an appeal procedure under the ACAS Code of practice.

169. The claimant commenced ACAS EC on 19 January 2022 and the certificate was issued on 1 March 2022.

170. On 10 March 2022 the claimant submitted his ET1 to the Tribunal. As set out above in the initial summary the case had a number of applications and case management hearings including the preliminary hearing on 8 March 2024 where another judge was critical of the way the claimant had conducted himself.

171. After the internal processes were concluded the claimant reported Elaine Fisher and James Fleming to CIPD. No action was taken by them against anyone who the claimant raised complaints about. The claimant also reported the respondent to the Charity Commission.

Conclusions

Direct Race discrimination contrary to section 13 of the Equality Act 2010

Issue 28.4 - Did the Respondent treat the Claimant less favourably than it treats or would have treated others by (EqA 2010, s 13):

172. We have first looked at whether the treatment alleged occurred as a matter of fact. Whether this amounted to less favourable treatment or not compared to his comparators is dealt with under the question of whether this was race related. It is not in dispute that the claimant is of a different race to his named comparators who are white.

Issue 28.4.1 - Not providing the Claimant with a company vehicle (van) for private and business use from 1st October 2018 to 2nd March 2022.

173. The claimant was aggrieved that Jackie Park received a car allowance for use of personal vehicle when she was not using it and we can see why he would feel that way. The purpose of the car allowance to compensate for

wear and tear on vehicle, tyres, lease costs etc in addition to any mileage pay. It is to ensure that an employee can have a reliable mode of transport for work but she already had use of the van.

174. As a charity this does not seem like a good use of funds. It is apparent from the evidence that no one was looking at the situation regularly as Andrew Seabrook gave evidence that he had no reason to check claims made. Given his role he had every reason to do so and he should have been ensuring the charity was spending funds wisely so we do not accept that. We also do not accept that the auditors having no concern means that the van was not being used for personal use. He had not checked so could not be sure and if the auditors were given the same information as the Tribunal about her using it for errands but not the full picture as to the frequency, this does not satisfy us that it was not being used for personal use.

175. What troubled the Tribunal was that she was driving this van home what appeared to be every night and whilst we can accept that given her Property Manager role, she would need the van to run rubbish to the tip, collect furniture and supplies but we do not accept that this was daily or that driving it home every night was not personal use. We have had no evidence from the respondent as to the tax position on this but do not draw a conclusion as to whether this should have been a benefit in kind in terms of benefit that she had as this is outside the remit of this Tribunal, we are simply considering the use of the van in the pleaded case and whether she used it for personal use. The suggestion in evidence and in the grievance hearing that if the claimant wanted to borrow it, he could simply ask Jackie is indicative of the fact it was Jackie's van. We have as set out above, seen one email where he was offered to use the van to clear the rubbish himself.

176. The real issue for the claimant we feel is not that Jackie Park had a van and he did not, as we do not believe he would have wanted a van to drive around in given his comments about the moving of furniture which came later in evidence. His real issue was that the claimant felt that she was pocketing the money for a car allowance and using the van every day except when on

holiday. However, the disparity of pay this may have caused (we had no evidence as to the salaries of both Operations Managers or whether Jackie Park was paid additional compensation for doing two roles) is not how the case is pleaded. The case he advances is that not providing the van to the claimant like his comparator was race discrimination.

177. We conclude that it is more likely than not Jackie was using the van for personal and business use as she was using it to drive to and from work daily. As such it is correct that the claimant was not given a van in the same way as his comparator Jackie Park.

Issue 28.4.2 - Suspending the Claimant from work from 15th September 2021 until 2nd March 2022.

178. Turning now to the second allegation of race discrimination. As a matter of fact, the claimant was suspended from work and he was suspended for the period indicated above. In his original particulars of claim the claimant said this was 7 months and that the disciplinary was raised in bad faith but the respondent disputed that this was the case and that it was actually 5.5 months but for the pleaded case it matters not. The fact of suspension and the period are not in dispute.

Issue 28.5 - Was any less-favourable treatment accorded to the Claimant because of the Claimant's race? (EqA 2010, s 13). The Claimant describes his race as Black Caribbean.

Issue 28.6 - In relation to the complaint in 4.1 is Jackie Park an appropriate comparator? In relation to the complaint in 4.2 are Jackie Park and MS the correct comparators?

179. For direct race discrimination to occur, less favourable treatment must be because of race. We need to consider the reason why the claimant was treated less favourably and this can include an examination of the employer's (or decision maker's) conscious or subconscious reason for the

treatment in accordance with *Nagarajan v London Regional Transport and others..* Taking the van first, the respondent's reason for the van was that this related to the property manager role the claimant did not occupy but Jackie Park did. We accept the evidence that a van is clearly preferrable to a car for trips to the tip, removing rubbish and purchasing large scale cleaning supplies and new furniture etc. These were not tasks the claimant did or indeed wanted to do.

180. What the claimant will need to show is that he has been treated less favourably than the comparator whose circumstances are not materially different to his. The claimant relies on Jackie Park as his comparator for the van. However, in order to be a comparator in accordance with s23 Equality Act 2010 there must be no material differences between them. They are a different race that is not in dispute but they occupied different roles. Jackie Park was named by the claimant (who had legal advice) as his comparator. We accept that she is the one who had the van and did not share the claimant's race but there is a material difference in that Jackie Park undertakes the role of Property Manager which necessitates errands being run and the claimant does not. It is not in dispute that the claimant was not provided with a van for work and personal use during that period and she was. We accept that she had use of the van for work and personal use by reason of the property management role.

181. In order for the claimant to succeed in a claim for direct discrimination he must establish a prima facie case of discrimination in accordance with s136(2)-(3) Equality Act 2010. Where the claimant relies on a real comparator, a tribunal requires a difference in treatment and a difference in race but there must be more as this would only indicate the possibility of discrimination. A prima facie case requires the tribunal to conclude from all the evidence that there could have been discrimination to shift the burden. In this case the claimant relies on a named comparator and not the hypothetical comparator.

182. The comparator relied upon is not a valid comparator in our view. The claim therefore must fail in respect of the van. Factually we have found that the claimant was not provided with a van for work and personal use and Jackie Park was. However, the claimant has not established that he was treated less favourably than Jackie Park as she is not a valid comparator given she held two roles and we accept the respondent's position the van came with the role the claimant did not occupy. We remind ourselves that our role is to adjudicate on the claim presented as per *Chandhok v Tirkey*.

183. We consider that even if they both had the same job title (which is not the case) the claimant did not get a van for reasons not related to his race. Given his objections to assisting with a sofa removal and the responses he made to emails about rubbish removal, we would not have found that the claimant would have removed rubbish or conducted these tasks even if he had been offered the van.

184. Turning now to the second allegation of the suspension and the length of time. The claimant will need to show is that he has been treated less favourably than the comparator whose circumstances are not materially different to his. The claimant relies on two actual comparators Jackie Park and MS. However, in order to be a comparator in accordance with s23 Equality Act 2010 there must be no material differences in the comparators and the claimant. This is not the case here as neither Jackie Park nor MS were suspended so time is not shorter in respect of their suspension as there was none. Neither were subject to disciplinary action and neither raised grievances during that disciplinary process. Neither wore a body cam or sent work emails to their personal email address to warrant suspension so it cannot even be said that the comparator and the claimant did both those things and the claimant was suspended and the comparators were not. There are a number of material differences in our view such that neither comparator is a valid comparator within the meaning of s23 Equality Act 2010.

185. In order for the claimant to succeed in a claim for direct discrimination he must establish a prima facie case of discrimination in accordance with s136

Equality Act 2010. Where the claimant relies on a real comparator, a tribunal requires a difference in treatment and a difference in race but there must be more as this would only indicate the possibility of discrimination. A prima facie case requires the tribunal to conclude from all the evidence that there could have been discrimination. In this case the claimant relies on a named comparator and not the hypothetical comparator.

186. Neither comparator relied upon is a valid comparator in our view for the suspension allegation, there was no difference in treatment as the circumstances are materially different in a number of ways. The claim therefore must fail in respect of the suspension.

187. The claimant cannot compare the length of his own suspension to those of his comparators since they were not suspended. They did not commit acts of potential gross misconduct as the claimant did so there is no suggestion that they should have been so suspended. We do not accept the sending of photos from Jackie Park's personal phone to her work email address or that of others is comparable conduct. The claimant sent multiple emails with confidential data from his work email address to his personal email address.

Issue 28.7 - Are there facts from which the tribunal could decide, in the absence of any other explanation, that the Respondent discriminated against the Claimant? (EqA 2010, s 136(2))

Issue 28.8 - If so, has the Respondent shown that it did not discriminate against the Claimant? (EqA 2010, s 136(3))

188. For completeness in respect of the van we found no evidence of race discrimination in the decision not to allocate the claimant a van for work and personal use during that period. His role did not require it and we do not think he would have needed or wanted the van as he had no such errands to run. His reaction to the request for assistance to remove the sofa

demonstrates he would not have wanted these aspects of the role in any event.

189. The way the respondent structured the roles with one Operations Manager also carrying out the Property Manager role was a source of most of the disputes in this case. There was friction between the Operations Managers on a regular basis and the claimant saw Jackie Park as interfering with his roles. Even if there was less favourable treatment and the burden had been shifted there was an alternative explanation for the treatment advanced by the respondent. The obvious issue to us was the disparity in roles and the friction the dual role caused. We can understand the claimant's frustrations as Janet Prince thought Jackie Park was "wonder woman" always going over and beyond and she had been there a long time. We think anyone coming into the other Operations Manager's role would have felt that way as felt less favoured but we do not accept that consciously or subconsciously this was done by Janet Prince for race reasons. They had a close relationship and Jackie Park's contribution to the charity was significant over a prolonged period.

190. For completeness in respect of the suspension allegation, the claimant had two genuine allegations of misconduct against him one of which was said to be gross misconduct. We do not consider the act of suspension in these circumstances as wrong. The delay in the period of suspension itself was actually caused by the claimant not caused by the respondent which prolonged the period during which the claimant was suspended on full pay.

191. The claimant raised grievances which had to be dealt with first as if they had been upheld the allegations were such that they may have impacted on any subsequent disciplinary. There were three different grievances. There was the grievance firstly against a number of the SMT on 8th August 2021, a second against Brendan O'Mahoney on 20 August 2021 and then finally one against Janet Prince on 15 September 2021. The respondent lost 4 months dealing with the grievance against Janet Prince and the appeals against other grievances. At the claimant's request the disciplinary hearing was

adjourned for him to answer written questions and this was a further delay of 6 weeks in between the meeting and the decision. This was not unreasonable. The length of the suspension was in our view driven by the claimant so is down to his own actions and there is no less favourable treatment and there were no racial motives on the side of the respondent for the period of suspension. The delays were largely of the claimant's own doing.

192. On balance, given the above, we do not find that the claimant's claims of race discrimination are well founded and they are dismissed.

Victimisation contrary to section 27 of the Equality Act 2010

Issue 28.9 - The protected acts identified by the Claimant in Table 2a of the Further and Better Particulars of Claim served on 15 February 2022 (the Further and Better Particulars) are accepted by the Respondent as being protected acts within the meaning of section 27(2) of the Equality Act 2010?

193. The respondent accepts that the following are all protected acts within the meaning of s27 (2) of the Equality Act 2010, protected act 1A, 1, 2, 3 and 4. The dates of the protected acts are 25 May 2019, 19 June 2019 x2, 9 September 2019 and 5th September 2020. The grievances are outlined in the findings of fact above but none of the formal grievances relate to the two issues of the van and the suspension but they do raise race discrimination on behalf of the claimant or on other occasions on behalf of another member of staff to meet the definition of being a protected act within the legislation. Even if the respondent had not conceded these as protected acts we would have found that they were but rightly so this was conceded.

Issue 28.10 - Did the Respondent subject the Claimant to the detriments set out in Table 2b of the Further and Better Particulars because the Claimant had done a protected act? (EqA 2010, s 27(1))

194. Before we take each of the six detriments in turn, we remind ourselves of the relevant legal principles which will apply to all of the detriments.

195. We need to examine whether each of the factual allegations that form the detriments happened as a matter of fact first. If they happened as a matter of fact, then is it treatment of such a kind that a reasonable worker would take the view that it was to his detriment in accordance with *Shamoon v Chief Constable of the RUC* and the claimant would need to feel that way.

196. The tribunal reminds itself that victimisation need not be consciously motivated. If the respondent's reason for subjecting the claimant to a detriment was unconscious it could still constitute victimisation as per *Nagarajan.* The protected act needs not be the main or only reason for the treatment. It does however need to be the real reason. The reason why. We must ask ourselves why the claimant was subject to the matters he complained of, if we find they did take place as a matter of fact.

197. We remind ourselves of the tests in *Igen v Wong* and *Nagarajan* that the protected act must have a significant influence which is more than trivial, be the cause, the activating cause, a substantial and effective cause, a substantial reason or an important factor. We have this in mind when considering the reason why the claimant was subject to the matters he complains of. We do not repeat these legal tests again below under each heading.

198. **Detriment 1** – this was said to have occurred on 20 June 2019 and related to the allegation that Jackie Park undermined his authority by raising malicious false complaints about his staff team in Northampton and Leicester to victimise him for doing a protected act. By this point three protected acts had been done.

199. We spent some time in the hearing looking at the email in question which formed the basis of this complaint. It related to clearance of rubbish from a Northampton property and was about how staff had failed to leave rubbish in bags at two properties and failed to take clothing to the clothes bank as

outlined above in the findings of fact. The claimant engaged with the email sent by Jackie Park and expressly agreed with her that there was an issue with waste management and later in the email chain that he fully agreed that staff were not following procedures. He provided an explanation for the issues and asked questions of her. The claimant did not at the time assert that it undermined him. This detriment is also relied on for detriment 12 in connection with the protected disclosure complaint.

200. The email was sent as a matter of fact. Was it reasonable for the claimant to consider it to be a detriment to him. We do not consider that highlighting to the claimant that staff for which he was responsible were not dealing with rubbish could be a detriment to him. The email was copied to one other person not all of his team members to undermine him. It appeared to be a valid complaint and the claimant agreed that this was the case at the time. The removal of rubbish was part of the property management role as identified and it was right for the person responsible for that to highlight a failing in the staff the claimant was managing.

201. Even if it was a detriment, was it because he did a protected act? Jackie Park visited the property to clear rubbish as part of her property management role, we have found as a fact that this was part of her other role as she was responsible for rubbish clearance and ensuring properties were set up to be occupied. Therefore, even if we had found that this was a detriment to the claimant, we would find that the email was triggered by the state of the properties visited by Jackie Park and not the protected act. When this point was put to the claimant in cross examination, he accepted that was the case and we therefore do not find that detriment 1 was a detriment to the claimant nor was it an act of victimisation.

202. **Detriment 2** – this allegation relates to the sofa and the claimant alleges that on 12 February 2020 Jackie Park gave the claimant an order to move old furniture as an act of victimisation. Again, we spent some time in the hearing examining the email in question and it is clear that as a matter of fact the claimant was not ordered to move the sofa. Jackie Park asked the

claimant to assist with getting the sofa to street level and suggested he ask two other male workers to assist. The claimant replied to the email in question as set out above in our findings of fact. In cross examination, he felt that it was an order due to him wearing a suit every day to work as a member of the SMT and that he did not subscribe to the charity ethos that everyone "mucks in" as given in evidence by Janet Prince and set out in our findings of fact. This is in our view part of the issue that contributed to the breakdown in relationships as seen below.

203. The claimant was clear in his evidence that he felt humiliated with the request and saw it as an order as he felt that the task was beneath him and the role he occupied. We accept as a concept that it could be a detriment to be ordered by a colleague in an office to clean the loos for example but it is clear to us that it is a request for assistance not an order.

204. We therefore find that whilst the email was sent, it was not an order nor could it be interpreted by a reasonable person as anything other than a request for assistance. If it was a detriment, (which we do not accept) then we went onto consider the reason why. The email makes it clear that it was a request for assistance so she could take the sofa to the tip and further Jackie Park confirmed in evidence that she was "female and getting on in years" so needed some assistance with some of the heavy items of furniture which we accept. We therefore find that it was done because the sofa needed to go to the tip and not because the claimant did a protected act. Jackie Park visited the property to clear old furniture as part of her property management role. We have found as a fact that this was part of her other role as she was responsible for clearing old furniture like the sofa and ensuring properties were set up to be occupied. The timing of this allegation close to the second and third protected act is coincidental in our view. Therefore, it was not an act of victimisation even if the pleaded case was made out and it constituted a detriment.

205. **Detriment 3** – this is in essence a repeat of detriment 2 but that on the 13 February 2020 Jackie Park continued to interfere with his role in order to victimise him for doing a protected act. Given our findings above and in

particular that Jackie Park visited the property to clear old furniture as part of her property management role, we have found as a fact that this was part of her other role as she was responsible for clearing old furniture like the sofa and ensuring properties were set up to be occupied. She was therefore not interfering but carrying out her property management responsibilities. These were not responsibilities the claimant held so her organising the removal of the old sofa cannot be seen to be interference in his role or a detriment to him personally.

206. For the same reasons as detriment 2 we find that this was not done because the claimant did a protected act.

207. **Detriment 4** – this is an allegation concerning an email sent on 27 February 2020 that the claimant said undermined his authority by giving his staff in Leicester orders without his knowledge or permission to victimise him for having done a protected act. By the time of this allegation the claimant had done four of the five protected acts.

208. It is clear that the email was sent to staff who Jackie Park was responsible for as this was explored with the claimant in cross examination but it was copied to staff who had veteran responsibilities. The claimant was not responsible for veteran properties as he accepted in cross examination. The claimant also accepted in cross examination that the people to whom the email was sent would have cause to issue notices to evict. As a matter of courtesy since he was managing those staff, we accept that he should have been copied into the email. This would have been more to keep him in the loop as he was not involved in veteran properties but some of his staff would have been.

209. The claimant clearly felt very strongly about this email, irrationally so in our view. Had it been sent to all staff and not copied to him rather than simply being about veteran properties we may have considered things differently. We found the level of upset the claimant felt about this email to be totally irrational. In evidence the claimant when being cross examined about this email said that he found it so upsetting and compared himself to a rape

victim giving evidence and having to relive the issue. We find this simply extraordinary. No reasonable worker faced with that specific email would have taken that view.

210. We ask ourselves whatever the reasonableness of the claimant's perception as to detriment, did Jackie Park do this to victimise the claimant? She had a legitimate reason to issue the email but could have handled it better. To succeed in this element of the claim, the claimant needs to show that Jackie waited 5 months from the last protected act which was not actually about Jackie Park but about the treatment of his staff by veterans because he did that protected act. We do not find this. We find that she sent the email to all staff involved in veteran's properties including the staff the claimant managed as she was responsible for veteran properties and there had been a change in procedure. The procedure was not changed to get at the claimant and given the geographical spread of the properties communicating a change of process in an email cannot be criticised.

211. **Detriment 5** – this relates to the allegation that on 5 September 2020 Janet Prince ignored the claimant's concerns and his requests for an investigation following a complaint by his staff in Northampton about bullying and harassment and that this was an act of victimisation.

212. The email in question was sent to Jackie Parks and not Janet Prince but when Janet Prince did reply, she did not as a matter of fact ignore his concerns. She did ask him to "stay out of this" as he had been too involved and informed him she would address the matter. Further that the alleged racist resident had been removed from the property.

213. In cross examination the claimant accepted that Janet Prince did deal with his concerns but in his view she handled the matter poorly. She moved the resident to another property and the claimant took the view that she should have served a notice to vacate instead. We do not find that the pleaded case is met as a matter of fact as the claimant did accept that Janet Prince did not ignore his concerns. We do not accept that Janet Prince as CEO with overall authority to evict and make decisions deliberately or recklessly

made a bad decision because the claimant did a protected act. Deciding to move a veteran rather than evict given the vulnerability of some of the residents cannot be criticised and even if it could it is not clear to us how this could amount to a detriment to the claimant personally. We remind ourselves that we must look at the pleaded case but also that it cannot be suggested that Janet Prince decided to move a resident and not evict him because the claimant did a protected act. The claimant has failed to establish this was a detriment as a matter of fact or that it was a detriment to him.

214. **Detriment 6** – this allegation related to 2 August 2021 and that Ronnie Neill was part of an informal disciplinary meeting and that she was present for an unknown capacity to deliberately orchestrate a campaign of harassment and discrimination against him by MS and senior management for having done a protected act.

215. This was a short meeting held to explore the allegation that the claimant was wearing a bodycam when on duty but was not part of the formal disciplinary process. The notes of the meeting, which were not agreed by the claimant at the time show she was asked to attend in her capacity as Health and Safety Manager to hear the claimant's concerns.

216. It is not correct as a matter of fact that she was present in an unknown capacity as the claimant was aware in advance that she would be there. As set out in our findings of fact above, Janet Prince informed the claimant by email on 29 July 2021 that she would be present at the meeting and the claimant did not enquire why this was the case or to challenge that position. He instead responded directly to Ronnie Neill the same day and he informed her that he wears his bodycam in situations where he feared for his safety. The claimant asserted before the Tribunal that Ronnie Neill did not know about the safety aspect before the meeting which is not correct.

217. The claimant also asserted at the Tribunal hearing that he was shocked and humiliated to find Ronnie Neill in the meeting as she was subordinate to him.

This is also factually incorrect. Both Ronnie Neill and the claimant were managers for the SMT and the claimant gave evidence that all members of the SMT were on the same level and reported to Janet Prince so it is not correct that she was a subordinate or that he did not know she was going to be there. He cannot have been shocked when she was and the email correspondence is quite clear on this point, that he knew in advance and took no issue with it.

218. Even if her being present could be said to be a detriment to the claimant, we would need to examine why she was present. We do not find that she was present because the claimant did a number of protected acts the year before. We find that she was present as Health and Safety Manager because the Claimant had told her he had safety concerns. This is a legitimate reason for her to be in attendance. Further we note that it would not be abnormal to have a notetaker present with a representative of the employer when they are exploring why an employee had committed an alleged act of misconduct and Ronnie Neill was the only other person present apart from the claimant and Janet Prince. Ms Crook was not present as well in a HR capacity.

219. As such, we find that the claimant's claim for victimisation is also not well founded and is dismissed.

Equality Act 2010 claims—jurisdictional Issues

220. Given that we have not upheld any part of the claimant's Equality Act claims for race discrimination or victimisation, we have not gone onto consider whether any specific aspect was within time or whether if not it is just and equitable to extend time in accordance with issues 28.1-28.3 above.

Protected disclosure claims

221. We decided to take our conclusions in a more natural order when looking at the protected disclosure complaints than the list of issues. We decided to

leave the jurisdictional issues on protected disclosures until after we had decided whether there were protected disclosures firstly, then whether the claimant had suffered any detriments on the ground that he made one or more protected disclosure before looking at jurisdiction. We considered this sensible as we would need to determine the disputed protected disclosures and any detriments established before we could look at the dates and whether any were in time. We also decided to look at the reason for the dismissal as part of the unfair dismissal claim as a separate heading but to deal with dismissal overall at the end since this did not have jurisdictional time points.

Protected disclosures

Issue 28.13 - Were any of the matters identified by the Claimant in paragraph 28 of the Particulars of Claim and paragraphs 1 to 4 and Table 1a and 1b of the Further and Better Particulars qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will need to decide in relation to each disclosure alleged by the Claimant:

222. The respondent accepts that the claimant made a number of protected disclosures. The respondent accepts PD2, PD5, PD6, PD6A, PD9, PD10, PD11, PD11A, PD12 and PD13.

223. There are some disclosures that are disputed and the legal test needs to be applied to these disputed disclosures. The disputed protected disclosures were PD1, PD4 and PD15.

224. PD3 was a repeat of the accepted PD9. PD8 is a repeat of the accepted PD2. PD13 is a repetition of PD12.

225. PD7 and PD14 was withdrawn by the claimant in the hearing.

226. The list of issues at paragraph 28. 13 identified the issues as to whether or not the disputed disclosures were protected disclosures within the meaning of the Employment Rights Act 1996 as follows:

Issue 28.13.1 - Did he disclose information?

Issue 28.13.2 - Did he believe the disclosure of information was made in the public interest?

Issue 28.13.3 - Was that belief reasonable?

Issue 28.13.4 - Did he believe it tended to show that:

Issue 28.13.4.1 - A person had failed, was failing or was likely to fail to comply with any legal obligation.

Issue 28.13.4.2 - Was that belief reasonable?

227. Turning to those protected disclosures in dispute, we start by reminding ourselves of the legal tests in determining whether they were protected disclosures. The disclosure of information is to convey facts and cannot be a statement of position in accordance with the established principles of *Cavendish Munro* and more recently *Kilraine*. The information must be in the public interest as per *Chesterton Global* and must identify the breach of legal obligation in some way but it is not necessary for this to specify the legislation or specific wording from it in accordance *Fincham*.

228. The claimant must have a reasonable belief that the information he discloses does tend to show one of the listed matters with sufficient factual content and specificity that it is capable of showing the matter then that belief will be reasonable in accordance with *Kilraine*. It is not necessary for the belief to be correct, a claimant with a mistaken belief provided it is reasonably held in accordance with *Babula*. We have also had regard to

the first 6 steps on whether the disclosure is protected when considering the guidance of the EAT in *Blackbay* on how we should approach this matter.

229. Our conclusions are as follows taken in respect of each of the disputed protected disclosures PD1, PD4 and PD15. Taking PD1 first.

230. **Protected Disclosure 1 [PD1]** – this was in dispute as the respondent did not accept that the claimant was disclosing information of wrongdoing to satisfy the *Cavendish* requirements and therefore disputed that this amounted to a protected disclosure. PD1 related to the email of 12 April 2019. We have dealt with the wording of this email in our findings of fact above. The email discloses information but it does not in our opinion disclose information that shows a breach of the relevant legislation nor does it highlight to the respondent that the claimant felt that there was a reasonable belief that there was any breach of the relevant legislation. In actual fact, the claimant appears to just note the information provided by Jackie Park. Just because this is about the gas safety subject does not make it a protected disclosure.

231. The disclosure of information is to convey facts and cannot be a statement of position in accordance with the established principles of *Cavendish Munro* and more recently *Kilraine*. As such this email does not meet these tests. Further the email must identify the breach of legal obligation in some way but it is not necessary for this to specify the legislation or specific wording from it in accordance *Fincham*. This email merely set out that as long as the gas safety engineer followed a set process then the gas safety engineer was protected. It does not in our view demonstrate that the claimant considered the respondent or another was in breach of the legal obligation.

232. The claimant must have a reasonable belief that the information he discloses does tend to show one of the listed matters with sufficient factual content and specificity that it is capable of showing the matter then that belief will be reasonable in accordance with *Kilraine*. In light of our conclusions it

does not do so. We therefore find that protected disclosure 1 is not a protected disclosure within the meaning of the legislation.

233. **Protected Disclosure 4 [PD4]** – this is odd as the respondent accepts PD10 which is the call (we heard no evidence about) but an email which is then forwarded on and the Claimant relies on this as PD4 they do not. We find that this is a protected disclosure as the claimant provides information from the gas engineer about access to the safety device. The claimant points out the legal obligations of the landlord and that it is a criminal offence citing the legislation for there not to be ECV access. He sets out the process if the gas engineer issues an ID and AR notification and the costs implications and states that the landlord should be aware as any deviation from the law is non-negotiable.

234. We believe that the claimant disclosed information which in his reasonable belief showed that if the ECV was inacceptable this would be a breach of legal obligations and health and safety and that the landlord had these responsibilities which it needed to follow and not doing so was non-negotiable. We therefore find that protected disclosure 4 is a protected disclosure within the meaning of the legislation.

235. Protected Disclosure 15 [PD15] - The respondent did not accept the email was a protected disclosure in the list of issues but appears to concede this in its submissions with "*PD15 is accepted*". For completeness we have determined this issue in any event. It is clear to us that the email of 19 October 2020 (the last of the protected disclosures) is a protected disclosure. As we have set out in our findings of fact whilst the claimant made reference to defamation and a private law matter not in the public interest he does make a protected disclosure. The respondent in our view originally focused on the wrong part of the email.

236. The email sets out the claimant's concerns about the falsification of H&S documentation and the issues over fire drills and breaches of H&S law. It is this part which is a protected disclosure and is similar to nature to protected disclosure 12 which they accepted in the list of issues. The link provided in

the body of the email can be seen as making reference to fraud, falsification and forgery in the title. We have set out in our findings of fact above the information conveyed and the references to fraud and forgery and breaches of the H&S laws are specific enough to provide information on a breach of legal obligations and raise health and safety concerns [PD15]. We therefore find that protected disclosure 15 is a protected disclosure within the meaning of the legislation.

237. In summary, we find that PD4 and PD15 are protected disclosures and PD1 is not for the reasons stated above. Regardless of our findings in this regard, the respondent has already conceded a number of protected disclosures so our findings and conclusions on these remaining three to uphold two of them and not the third do not materially impact on the issues in the case. The claimant had clearly made a number of protected disclosures over an extended period.

Protected disclosure detriment claims contrary to s48 ERA 1996

Issue 28.15 - Did the respondent subject the claimant to the detriments identified by the Claimant in Paragraph 29 (**page 7**) of the Particulars of Claim and Table 1c of the Further and Better Particulars?

Issue 28.16 - Was any detriment suffered done on the ground that the Claimant had made one or more protected disclosures?

238. Firstly, we remind ourselves of the legal tests in respect of detriments for having made protected disclosures as set out above and in summary as follows. Firstly where the employer is the respondent a detriment cannot be the dismissal of the claimant. A detriment claim can be brought in this regard under the authority of *Timis* against a director for example but this does not apply here.

239. We have considered whether for the detriments short of dismissal the making of the protected disclosure played more than a trivial part in the treatment the claimant received in accordance with the test in *Fecitt*. The question is whether the protected disclosure materially influenced the employer's treatment of the claimant and whether consciously or subconsciously the protected disclosure was more than the trivial reason or ground in the putative victimiser for the treatment complained of in accordance with *International Petroleum*.

240. For there to be a detriment the Tribunal must find that the reason for the act complained of a reasonable worker would or might take the view that they had been disadvantaged in the circumstances in which he had thereafter to work in accordance with *Shamoon* and *De Souza*.

241. Turning now to each alleged detriment we have considered whether it happened as a matter of fact, whether legally it amounted to a detriment and to the claimant personally before considering as appropriate whether it was done on the ground that the claimant had made one or more protected disclosures. Taking each detriment in turn (starting this section with detriment 7 as this is the first detriment relied upon for the protected disclosure claim) we conclude as follows:

242. **Detriment 7** – this allegation relates to the decision to dismiss the claimant on 2nd March 2022 and the contents of the letter which belittled him. The claimant cannot rely on the dismissal itself as a detriment in accordance with s47B (2) Employment Right Act 1996. The claimant's only reference to belittling his concerns related to the contents of the letter dismissing him.

243. We have considered the contents of the letter which as we have outlined above was lengthy and detailed. On a proper and objective consideration of the letter of dismissal we do not accept that the letter belittled him. It sets out clearly and in detail the reasons for the dismissal. In cross examination the claimant could not point to a specific part of the letter that he considered belittled him. The claimant said it was not the contents of the letter itself but

the fact it came from Janet Prince and not Miranda Smythe. We remind ourselves that we must look at the pleaded case and not how it evolved in evidence.

244. We do however for completeness comment on the allegation that it was the fact that the letter came from Janet Prince and not Miranda Smythe that the claimant took issue with during evidence. This is more relevant for the dismissal claims below but we do have some sympathy with the claimant's position that it should not have been from her and how that would make him feel.

245. However, sensitivities aside, the claimant's grievances against Janet Prince were not upheld and he had not appealed that decision back in December 2021. She was his line manager and was responsible for operational issues within the business and was following recommendations made to her not a decision that she made alone. She sense checked this with Miranda Smythe, chair of the Board as set out in our findings of fact. Given all of these factors we consider it was appropriate for her to send that letter and do not accept that this can amount to a detriment to the claimant. We do not find that this detriment is made out factually or that it could amount to a detriment within the meaning of *Shamoon*. It was not reasonable for him to take that view and he would be dismissed either way whoever signed it off.

246. Even if the receiving of the letter from Janet Prince and not Miranda Smythe could amount to a detriment (and indeed that was the pleaded case), we do not find that the decision to send the letter from Janet Prince was in any way influenced by any of the protected disclosures (the last being 19 October 2020) eighteen months earlier but simply because she was the CEO, his line manager and responsible for operational matters. This allegation is therefore not upheld.

247. **Detriment 8** – this relates to the allegation that as a result of having made protected disclosures over a prolonged period the respondent namely Janet Prince ignored and belittled his concerns namely the protected disclosures themselves. We heard evidence that Ronnie Neill and others looked at and

addressed the points he was raising. If there was a failure to address any of the Claimant's concerns, which is denied, this is not itself a detriment in accordance with *Blackbay*. We do not find this detriment is made out as a factual allegation, the allegation is vague and without substance. Whilst they may not have been resolved always to his satisfaction it is not correct to say that they were ignored. It is also a circular argument that makes no logical sense that because he made a protected disclosure the respondent failed to investigate the protected disclosure. This allegation fails.

248. **Detriment 9** – this allegation relates to two matters, firstly that Janet Prince responded angrily to him in a senior management meeting on 24th April 2019 (date changed by the claimant from August) and in an email afterwards by commenting about residents not having any contact with gas or electric consumables. We take each in turn.

249. We have found as a matter of fact that Janet Prince did not get angry with the claimant in this meeting as set out above. None of the other witnesses who were present recalled such an incident. However, had we found that she did, we would have found that it was not because the claimant made a protected disclosure in that meeting but that he merely kept repeating the same point even when he had been told that it had been looked at. We have considered the point in *Panayiotou* but feel that any employee who kept raising the same point would cause the same frustration although this is a mute point in any event as we have not found as a fact that Janet Prince responded angrily to the claimant in the meeting.

250. Turning now to the email of 24 April 2019 referred to above in our findings of fact in more detail. The email is sent to others including the claimant WB and AP and the claimant has not provided any evidence or suggested that they too were whistle-blowers but the email was sent to them too. The alleged detriment is the reference to residents not being allowed any form of contact with the gas and electric consumables. This cannot in our view be a detriment to the claimant personally. We accept the respondent's submission on this point that a proper and objective reading of the email is that it reminds all staff concerned that the staff members need to assist the

residents. It does not meet the definition of a detriment and was not to the claimant personally. It was sent to other non whistle-blowers so cannot be materially influenced by any protected disclosure.

251. In evidence, the claimant said that Janet Prince was prepared to put residents at risk to punish him for making protected disclosures which is not credible. We do not uphold detriment 9 for these reasons.

252. **Detriment 10** relates to the interference by Jackie Park in his role. As set out above it was agreed that detriments 11-20 are examples on which the claimant relies for detriment 10. As such in order to determine whether detriment 10 is upheld we need to look at detriment 11-20 first.

253. **Detriment 11** the date of this incident was changed to 17-19 September 2019 and it relates to Jackie Park instructing one of the claimant's staff SD to unlawfully evict a vulnerable 18 year old resident. The claimant confirmed in cross examination that it was his position that in order to subject the claimant to a detriment Jackie Park asked SD to unlawfully evict the tenant which we do not accept as this is in our view too far fetched. The issue is whether this example shows that Jackie Park was interfering in the claimant's role and if so whether she did so because she was materially influenced by the protected disclosures.

254. Firstly we do not make any findings as to whether this was an unlawful eviction or not, we are not properly placed to do so. We have found in our findings of fact that 157 GR was a veteran's property primarily and therefore Jackie Park was involved in the property. Secondly, that she was contacted by a local Councillor given the nature of the issues at the property and had to follow up. These are in our view legitimate reasons for why she became involved so it cannot be interference. Further, the claimant at the time supported the process and liaised with the police. We do not accept the claimant's position in cross examination that he did so as he felt he had no choice. He was clearly vocal with anything he disagreed with during the employment relationship. The matter was clearly urgent and we do not accept that Jackie Park was interfering. The claimant supported the action

at that time and we do not accept that the respondent would do something against the very ethos and purpose of the charity to get back at the claimant as he suggested. We do not uphold detriment 11 for these reasons.

255. **Detriment 12** was in essence the same as detriment 1 relied upon for the victimisation claim. This was said to have occurred on 20 June 2019 and related to the allegation that Jackie Park undermined his authority by raising malicious false complaints about his staff team in Northampton and Leicester to victimise him for doing a protected act. The claimant says that this is part of detriment 10 interference by Jackie Park.

256. We spent some time in the hearing looking at the email in question which formed the basis of this complaint. It related to clearance of rubbish from a Northampton property and was about how staff had failed to leave rubbish in bags at two properties and failed to take clothing to the clothes bank. The claimant engaged with the email sent by Jackie Park and expressly agreed with her that there was an issue with waste management and later in the email chain that he fully agreed that staff were not following procedures. He provided an explanation for the issues and asked questions of her. The claimant did not at the time assert that it was false or undermined him.

257. The email was sent as a matter of fact. Was it reasonable for the claimant to consider it to be a detriment to him. We do not consider that highlighting to the claimant that staff for which he was responsible were not dealing with rubbish could be a detriment to him. The email was copied to one other person. It appeared to be a valid complaint and the claimant agreed that this was the case at the time. The removal of rubbish was part of the property management role as identified and it was right for the person responsible for that to highlight a failing in the staff the claimant was managing. Therefore, it was entirely proper that it would be Jackie Park raising this. It is perhaps illustrative of the difficulties that having two roles caused in the claimant's eyes but as she was responsible for rubbish clearance it was not interference merely part of her role as Property Manager.

258. Even if it was a detriment, was the act materially influenced by the fact the claimant did a protected act/s? Jackie Park visited the property to clear rubbish as part of her property management role. We have found as a fact that this was part of her other role as she was responsible for rubbish clearance and ensuring properties were set up to be occupied. Therefore, even if we had found that this was a detriment, we would find that the email was triggered by the state of the properties visited by Jackie Park and not the protected act. When this point was put to the claimant in cross examination, for detriment 1 (the same as this detriment 12) he accepted that was the case and we therefore do not find that detriment 12 was a detriment to the claimant nor was connected to the protected disclosures. We do not uphold detriment 12 for these reasons.

259. **Detriment 13** – this relates to Jackie Park asking SD on 17 September 2019 to unlawfully dump commercial waste using their own vehicles at council domestic tidy tips. It is an example of Detriment 10 which is said to be Jackie Park's interference in his role. There was no evidence of this allegation in the bundle or in witness statements. As a general concept the respondent accepted that it was part of Jackie Park's responsibilities as Property Manager to remove rubbish and maintain the standards of the properties. This was all properties not just those she managed in her Operations Manager role. We accept the respondent's point that asking someone else to do something cannot legally be a detriment to the claimant personally but the claimant relies on this as part of the interference allegations.

260. As such whilst there is no evidence to find that this detriment occurred on the date in question, it cannot be interference if she is performing her role responsibilities which are not part of the claimant's role nor one he would want to adopt. Given his views on being asked to assist with a sofa whilst wearing a suit, it is reasonable to conclude that he would certainly consider clearing rubbish and going to the tip itself beneath his role. We do not find that she was interfering with the claimant's role as this related to rubbish removal.

261. Even if it could be interpreted as interference (which we do not accept) we accept that when it comes to rubbish clearance she had a legitimate reason to be involved and that this was in no way materially influenced or even trivially influenced by the claimant having made protected disclosures, she was simply doing her job. We do not uphold detriment 13 for these reasons.

262. **Detriment 14** – this is the same allegation as detriment 13 save that the date is changed to 19 September 2019. Again there was no evidence before us to support this allegation and the general concept related to rubbish clearance. It is part of the examples of detriment 10 interference by Jackie Park. We repeat our conclusions here on detriment 13 as they would all be the same. We do not uphold detriment 14 for these reasons.

263. **Detriment 15** again relates to the removal of rubbish but there was evidence that KM was asked to do so on this date as we had email evidence in the bundle as set out in our findings of fact above. We accept that there was a request by Jackie Park to KM on this date to remove rubbish. We make no finding that this was unlawful or the nature of the waste as we are not in a position to do so. We accept the respondent's point that asking someone else to do something cannot legally be a detriment to the claimant personally but the claimant relies on this as part of the interference allegations.

264. Whilst there is evidence that KM was asked to remove rubbish by Jackie Park, it cannot be interference if she is performing her role responsibilities which are not part of the claimant's role nor one he would want to adopt. We do not find that she was interfering with the claimant's role as this related to rubbish removal.

265. Even if it could be interpreted as interference (which we do not accept) we accept that when it comes to rubbish clearance she had a legitimate reason to be involved and that this was in no way materially influenced or even trivially influenced by the claimant having made protected disclosures, she was simply doing her job. We do not uphold detriment 15 for these reasons.

266. **Detriment 16** - On 1 December 2019 the claimant relies on an incident as detriment 16 (which is part of detriment 10 “interference”) and that Jackie Park had a meeting with his Northampton staff member JN without informing him. We have not found that as a matter of fact any such meeting occurred that day but as the respondent accepted that in her role as Property Manager she may have legitimate reasons for meeting staff from time to time.

267. We conclude that if there had been a meeting (and there is no evidence about what was discussed) then it is more likely than not that it was not interference with the claimant’s role but that she was there in her role as Property Manager she did attend properties regularly and had a legitimate need to meet staff for that role so this cannot be an interference. We do not uphold detriment 16 for these reasons.

268. **Detriment 17** The claimant says that incorrect information was given to his staff at a Bedford property regarding the location of a skip on 1 March 2020. This relates to information given to the claimant’s staff not him directly. We note the respondent’s point that this cannot be a detriment to him personally but the claimant relies on this as an example of interference for detriment 10 so we look at whether this was interference by Jackie Park.

269. We conclude that it cannot be interference if she is performing her role responsibilities which are not part of the claimant’s role. We do not find that she was interfering with the claimant’s role as this related to rubbish removal. Even if it could be interpreted as interference (which we do not accept) we accept that when it comes to rubbish clearance, she had a legitimate reason to be involved and that this was in no way materially influenced or even trivially influenced by the claimant having made protected disclosures, she was simply doing her job. We do not uphold detriment 17 for these reasons.

270. **Detriment 18** related to beer cans and it was an email from Jackie Park to the claimant copying in Janet Prince on 19 June 2019. It is not in dispute that the email was sent and we have dealt with this in our findings of fact

above. The claimant relies on this again as an example of detriment 10 interference. The subject matter was once again about rubbish clearance and we do not accept the claimant's submissions that this was fabricated or planted rubbish to make him look bad.

271. We conclude that it cannot be interference if she is performing her role responsibilities which are not part of the claimant's role. We do not find that she was interfering with the claimant's role as this related to rubbish removal. Even if it could be interpreted as interference (which we do not accept) we accept that when it comes to rubbish clearance she had a legitimate reason to be involved and that this was in no way materially influenced or even trivially influenced by the claimant having made protected disclosures, she was simply doing her job. We do not uphold detriment 18 for these reasons.

272. **Detriment 19** – this is the same allegation as detriment 12 save that it relates to a different date of 11 December 2019 and involves the same allegation and same staff from Northampton JN and CD. The claimant says that this is part of detriment 10 interference by Jackie Park. As found in our findings of fact the email giving instructions to Northampton staff about rubbish was sent on 10 December 2019. The 11 December 2019 is when the claimant complains that this is bullying.

273. The email was sent as a matter of fact. Was it reasonable for the claimant to consider it to be a detriment to him. We do not consider that highlighting to the claimant that staff for which he was responsible were not dealing with rubbish could be a detriment to him. The removal of rubbish was part of the property management role as identified and it was right for the person responsible for that to highlight a failing in the staff the claimant was managing. Therefore, it was entirely proper that it would be Jackie Park raising this.

274. Even if it was a detriment, was the act materially influenced by the fact the claimant did a protected act/s? Jackie Park had a responsibility to clear rubbish as part of her property management role. We have found as a fact

that this was part of her other role as she was responsible for rubbish clearance and ensuring properties were set up to be occupied. Therefore, even if we had found that this was a detriment, we would find that the email was triggered by the state of the properties visited by Jackie Park and not the protected act. We do not uphold detriment 19 for these reasons.

275. **Detriment 20** – this relates to an incident on 18 September 2020 involving PN and that Jackie Park emailed him directly asking him to perform tasks over the claimant's head. This is part of the allegation of interference by Jackie Park relied on for Detriment 10. We have found as a matter of fact that PM may have been one of the claimant's staff but that the email clearly related to a project Janet and Jackie were working on which the claimant himself highlighted to the member of staff and the claimant also told the member of staff to direct his queries to Jackie Park. It cannot be said to be interfering with his role if the project does not involve him. Jackie Park was right to email the member of staff directly with what he needed to do and she copies the claimant in to make him aware. We find that it cannot be interference where there is a legitimate reason to send the instruction and that she copied the claimant in for awareness and it was proper to do so.

276. Even if it was a detriment (which we have not found it to be), was the act materially influenced by the fact the claimant did a protected act/s? Jackie Park was working on the project with Janet and this was a legitimate reason to send the email in question which is inoculate as it simply relates to completing a housing benefit form for a tenant. Therefore, even if we had found that this was a detriment, we would find that the email was triggered by the need to complete tasks for the project she was working on and not the protected act. We do not uphold detriment 20 for these reasons.

277. **Detriment 10** – we now revisit this allegation as we have made conclusions on the examples relied on by the claimant to support this allegation of interference as detriments 11-20. We have not upheld any of the detriments the claimant relies on and therefore we conclude that the claimant has not succeeded with detriment 10 either. The issues all relate to the

complications caused by the dual role of Jackie Park, they related to her project or veteran properties or there were legitimate reasons for the acts complained of so in our view they are unconnected and not influenced at all by the protected disclosures.

278. **Detriment 21** As outlined above the claimant withdraw part of this allegation related to the failure to provide details of the allegations against him which left one element and that was the failure to follow the ACAS code in the failure to follow the ACAS Code of Practice on Disciplinary and Grievance procedures in relation to the allegations and his dismissal. The Tribunal during oral submissions discussed with the parties whether the ACAS Code of Practice applies to the dismissal and invited their views. The respondent relied on the ACAS Code not applying in SOSR dismissals.

279. The *ACAS Code of Practice on Disciplinary and Grievance Procedures* only applies to "disciplinary situations". This includes misconduct and poor performance, but specifically excludes dismissals for redundancy or the non-renewal of a fixed-term contract (*paragraph 1, ACAS Code*). It is possible that the ACAS Code applies to SOSR dismissals as there is conflicting EAT authority on this point. In *Lund v St Edmund's School, Canterbury UKEAT/0514/12*, the EAT held that the Acas Code did apply to a dismissal for SOSR in circumstances where the relationship between the parties had broken down, due to the fact that the disciplinary procedure had been invoked when conduct issues emerged. It was the fact that disciplinary proceedings had been initiated which was the crucial factor. The EAT went on to express the view that the ACAS Code applies to SOSR dismissals where the disciplinary procedure has been, or ought to have been, invoked.

280. However, in *Phoenix House Ltd v Stockman and another UKEAT/0264/15*, where the employee had been dismissed as a result of an alleged breakdown in the working relationship, the EAT held that the ACAS Code does not apply to dismissals for SOSR. While elements of the ACAS Code are capable of being, and should be, applied to SOSR dismissals, Parliament could not have intended to impose a sanction for failure to

comply with the letter of the ACAS Code in this situation, without stating so expressly. What is required when an SOSR dismissal is contemplated in these circumstances is that the employer should fairly consider whether or not the relationship has deteriorated to such an extent that the employee cannot be reincorporated into the workforce without undue disruption.

281. The claimant did not in evidence or submissions, outline any specific detail as to the issue the claimant relies on as a breach of the code of practice. The Code has a number of elements including the need to hold an investigation to establish the facts, hold a meeting to which the employee has the right to be accompanied and that when action is decided, the employee informed of the result and that the employee is given the right of appeal.

282. In the claimant's further and better particulars he gave two specific examples of the failures of the Code that he relied on. The first was paragraph 6 regarding different people carrying out the investigation and secondly under paragraph 26 that there should be the right of appeal. We take each in turn.

283. We have had regard to paragraph 6 of the Code and this says that in respect of misconduct cases where practicable a different person should carry out the disciplinary investigation and the disciplinary hearing. In this case the allegation must relate to the misconduct allegations otherwise there would be no need to hold the disciplinary. In this case we have set out in our findings of fact above who has dealt with which aspects of the disciplinary process. Adrian Henson informally investigated the misconduct issues. There was then an external investigation by Stephanie Hallett, external HR, who held an investigation meeting with the claimant and delivered the outcome to investigation with a recommendation that thought should be given to next steps. The investigation report was detailed but in any event the claimant accepted that as a matter of fact he had committed those two allegations but he had an explanation as to why.

284. The matter did then proceed to disciplinary as Janet Prince decided based on the investigation that there was misconduct. This is quite clear since the

claimant accepts the allegations but advances mitigation for doing what he did. A letter inviting the claimant to a disciplinary with Elaine Fisher was sent and the claimant attended the disciplinary hearing on 18 February 2022 with his union representative since he was given the right to be accompanied. Elaine Fisher made her recommendations on next steps to Janet Prince and the recommendation was that a first written warning and final written warning be given.

285. It is quite clear to us that different people were involved in the respective stages of the disciplinary process. We therefore do not uphold the first part of the claimant's allegation for detriment 21 that there was a breach of paragraph 6 as a matter of fact.

286. Turning now to the right of appeal. It is not in dispute that the claimant was not given the right of appeal in connection with the SOSR dismissal. It is not in dispute that the claimant was not given the right of appeal against the misconduct allegations but it is critical to note that the respondent did not actually impose the written warning or final written warning. This is clear from Janet Prince's letter of 2 March 2022. Had the respondent imposed those sanctions then the claimant should have had the right of appeal and to not offer one would have been a breach of the ACAS Code.

287. It is not clear that the respondent had to follow the ACAS Code in respect of SOSR dismissals given the conflicting case law. The most recent authority *Phoenix House Ltd* says that the respondent did not need to do so for an SOSR dismissal. Further the claimant alleges a breach of paragraph 26 of the Code and it is important to look at the wording of the Code which states that:

"Where an employee feels that ***disciplinary action taken against them is wrong or unjust they should appeal against the decision.*** *Appeals should be heard without unreasonable delay and ideally at an agreed time and place. Employees should let employers know the grounds for their appeal in writing.*

288. We have emphasised the relevant wording in bold. Given the wording of the Code in the paragraph that the claimant relies there can be no

conclusion that as a matter of fact this paragraph has been breached. As set out above there was no disciplinary action taken as the warning were not actually imposed. We therefore find that there was no breach of the Code in respect of the matters the claimant relies upon for detriment 21. The issue of fairness or otherwise of the process will be considered further below as it is not relevant to this allegation as pleaded.

289. **Detriment 22** this allegation relates to the alleged breach of the CIPD code. The CIPD Code is not a matter the Tribunal ordinarily considers as to fairness and allegations before it. The CIPD Code is a code of professional conduct which wets out standard and behaviours (obligations) for all member of CIPD to adhere to. The claimant has set out the specific paragraphs of the Code upon which he relies namely paragraphs 3.3, 4.2 and 4.3 of the CIPD Code which state as follows:

3.3 comply with prevailing laws and not encourage, assist or collude with others who may be engaged in unlawful conduct, taking action as appropriate.
4.2 challenge others if they suspect unlawful or unethical conduct or behaviour, challenging as appropriate
4.3 ensure that their professional judgment is not compromised nor could be perceived as being compromised because of bias, or the undue influence of others

290. The claimant has not specified (despite being given the opportunity to do so), exactly who the allegation is aimed at (simply the respondents and their agents) and in what way expressly this was breached. The claimant appears to aim this at all of those with or who had had CIPD membership which would include the external HR representatives and Janet Prince who was a former member.

291. The claimant accepted that these paragraph of the CIPD Code were general principles – asking us to find that someone did something contrary to those specific examples. We also know that the claimant reported Elaine Fisher and James Fleming to the CIPD but that no action was taken. We have no evidence before us that anyone did something in breach of the CIPD code.

The claimant has failed to establish what the detriment is and as such it must fail.

292. **Detriment 23** – This is said to be that SOSR was used as egregious reason for dismissal. The reason for dismissal is properly dealt with as an automatic unfair dismissal under s103A as dismissal cannot be a detriment where this claim is against the employer. We have dealt with this further below.

293. The agreed list of issues also makes reference to the respondent "*wanting to get rid of*" the claimant after he raised concerns and a grievance to get him to leave and making him "*an offer to leave*" and that "*the disciplinary was raised in bad faith*". The list of issues says that "*I was advised by James Fleming.*" The claimant's case shifted during his cross examination to via union representative rather than a direct conversation. The union representative had retired but the claimant was told to contact the union to see if evidence could be obtained which the claimant never managed to produce during the hearing.

294. As identified above there was an issue over the failure to disclose an email from James Fleming to Janet Prince which did not get disclosed until after submissions but before deliberations. We were concerned by this as it formed in its redacted state part of the DSAR disclosure and was likely in the respondent's possession or control and given the agreed list of issues before the hearing was disclosable. Likewise, the claimant discovering the redacted DSAR email after the case had closed when disclosure had already taken place and when bundles were agreed and he had legal representation is not without blame. It should have been in the bundle.

295. As outlined above, the respondent's evidence on this point was concerning. It painted both Janet Prince and James Fleming in a bad light as neither were totally honest or entirely forthcoming in the hearing. Much was made by the respondent's representative of the claimant's shifting position on this issue but this was slightly disingenuous when their own position was not without fault. Janet Prince was the only one with authority on the SMT to make the offer and the email was sent to her. Concerns have been raised

at earlier hearings about the way the claimant conducted this litigation but we give him the benefit of doubt in how this information came to light.

296. Whilst we note the respondent's position that the email should be disregarded, came too late and had not been dealt with in evidence. When they failed to disclose it, we do not accept that. It came late but not after we had delivered judgment and as we have set out above their position was that there had been no such offer. Both parties were invited to make submissions on the issue and given a chance to respond. Whilst there is no evidence of an exact offer that the claimant relies on, their evidence that no such offer was made was incorrect and should have been that no specific offer was made as the claimant did not want to have without prejudice discussions. We do not accept Janet Prince's evidence that she had not given authority to Mr Fleming to make such an offer. We conclude that you would only have those discussions if you had in mind to make a settlement offer. We find that whilst no specific offer was made, there were discussions around 15 September 2021 with a view to ending the claimant's employment.

297. The question for the Tribunal is whether this was a detriment in which the protected disclosures materially influenced the employer's treatment of the claimant in accordance with *Fecitt*. We have in mind that the last protected disclosure was over 12 months earlier. It is clear to us that the claimant felt that Janet Prince wanted him gone as he would have been acutely aware that the offer could only have come from Janet or the board and we see it as no coincidence that he raised a grievance against Janet Prince at that time as he had expressed previously that she was the only one she could trust.

298. By the time the discussion happened it is also to be noted that the claimant had been suspended and there were serious disciplinary action pending for the claimant, he had gone off sick for a period. He had already raised grievances against three members of the SMT and external HR consultant James Fleming has been appointed. We note that it is not uncommon for respondent's to be alive to the extensive use of management time and cost

and this was a charity. The claimant had already committed the serious misconduct and the evidence was clear on that.

299. We do not consider that the protected disclosures influenced the decision by the respondent to have those exit discussions at that point. The protected disclosures needed to be material and more than trivial but by that time the protected disclosures had all died down and those discussions had closed. What was more relevant at that time was the grievances against the SMT, the claimant's sickness absence and the misconduct allegations. We note the test in *Fecitt* and we debated this issue for a considerable period given the conflicting evidence we heard on both sides but we did not consider the protected disclosures were a factor. They were part of the history and background to get to that point but had become trivial and in deciding to have those discussions we are satisfied that the other factors referred to above were the material influences and not the protected disclosure. We considered how far we should take the conflicting respondent's evidence on this and whether it undermined other evidence as a whole and concluded that it did not.

300. The allegations of conduct issues are in our view valid matters that arose at that stage. We do not accept that they were raised in bad faith or that the respondent was not entitled to treat the allegations as serious misconduct. No sanction was awarded but this does not mean the allegations were in bad faith. The claimant has failed to establish his pleaded case that the SOSR was an erroneous reason and as such it must fail.

301. **Detriment 24** – this is said to be the lack of opportunity to respond to the allegations of SOSR. We have found that there is no express requirement to follow the ACAS Code of Practice on SOSR dismissals but we can consider the process followed and it must still be fair. It is correct to say that the recommendations made to Janet Prince that the case may have reached a point that SOSR should have been considered. It is also not in dispute that this did not result in a further meeting with the claimant.

302. It is however not correct to say that the claimant was not given the opportunity to respond to the SOSR allegations. We have both the minutes and the transcript of the covert recording of this meeting. It is quite clear that Elaine Fisher during the disciplinary hearing raised with the claimant her concerns that the relationship had broken down. The claimant was represented by the union at that meeting. The claimant felt he could simply return to work with an apology from others. The union representative explained to the claimant that what Elaine Fisher was asking was about the working relationships with colleagues and it was agreed that he could have more time to respond to this point in writing.

303. Elaine Fisher sent the written question to the claimant and he was given a further opportunity to set out his position and away from the meeting seek union advice on the responses. The claimant chose to reply with "no comment" answers. It is therefore not correct to say that the claimant was provided with a lack of opportunity to respond to the allegations of SOSR. He was given two chances, firstly in the meeting and secondly to follow up in writing but he did not adequately respond. We therefore conclude and find as a fact that the detriment is not made out as there was an opportunity twice for him to respond. So it is not correct to say that there was a lack of opportunity for him to respond.

304. We discussed in detail that we may have had some concerns if the respondent had switched to SOSR from misconduct in respect of the dismissal without any sort of opportunity to comment on it as it would have taken him by surprise. This is more of an issue on the unfair dismissal claim but it is clear to us that he had more than one opportunity to comment on the concerns Elaine Fisher raised. He had the benefit of union representation at that stage and his union set out to him the point Elaine Fisher was making. It was quite clear.

305. Even if we had found that there was a lack of opportunity to comment (which we do not) then we would have concluded that the protected disclosures were not a material influence in this decision as it was clear by that stage that the state of the relationship had broken down and that the protected

disclosures were not the material influence for that but the multiple grievances raised by the claimant against the majority of the SMT and his failure to accept the outcomes and internal processes to that point. The claimant has failed to establish that he has been subject to a detriment as pleaded on the ground that he made one or more protected disclosures and as such this allegation must fail.

306. **Detriment 25** This allegation concerning notice was withdrawn by the claimant so is not dealt with.

307. **Detriment 26** This allegation relates to the failure to follow an appeal process in line with the ACAS Code of Practice. It is correct that the claimant was not given the right of appeal against the decision. We find that there was no express obligation to follow the ACAS Code of Practice as this does not apply to SOSR dismissals automatically. The lack of an appeal can go to fairness of a decision to dismiss and part of the consideration on unfair dismissal.

308. The question is whether the failure to provide a right of appeal was done on the ground that the claimant made protected disclosures or as the respondent submits because it was futile at that stage so there was no point. The claimant had already had two opportunities to deal with the SOSR point but chose not to respond. We note as before that there had been some time since the last protected disclosure and a period of calm before the disciplinary allegations arose. The respondent did not use the allegations as the reason to dismiss and instead looked at the recommendations for SOSR.

309. We do not consider that the failure to offer a right of appeal was done on the ground that the claimant made protected disclosures but accept the respondent's evidence that it would have been futile as the relationship had gone past the point of no return. There was not in our view a failure to follow the ACAS Code of Practice as this does not automatically apply. The claimant has failed to establish that he has been subject to a detriment as

pleaded on the ground that he made one or more protected disclosures and as such this allegation must fail.

310. In summary, the claimant's case in respect of all the detriment claims is not well founded and is dismissed.

Protected disclosure claims – jurisdictional issues

311. Given our findings above we do not need to consider further the issue of time and whether the detriments were in time. We do however note that the allegations that formed detriment claims were against many different people and some were quite historic. The parties agree that there are no time issues with regards to the unfair dismissal claim under s103A.

Automatic unfair dismissal (section 103A Employment Rights Act 1996)

Issue 28.14 - What was the principal reason the Claimant was dismissed and was it that he had made a protected disclosure?

312. We remind ourselves of the correct test for automatic unfair dismissal in accordance with *London Borough of Harrow* and *Fecitt*. That it is not that the dismissal must be related to the protected disclosure but whether the fact of the protected disclosure caused or influenced the employer to dismiss. It requires an analysis of the mental thought processes of those who made the decision to dismiss.

313. Elaine Fisher first raised the prospect of a relationship breakdown as an outsider coming into the situation and spotting the problem with the relationship. This was apparent to her at the first point of her dealing with the process and the grievance against Janet Prince. Indeed looking back at the chronology there is an escalation of grievances on both sides both against the claimant and raised by him that make this a reasonable conclusion for her to reach. Further employees made comments as part of the process that they could not work with the claimant and the claimant had

not dealt with Elaine Fisher's concerns about how he could return to work to satisfy anyone that he was willing to do so.

314. We have in mind that the reason or principal reason must be the protected disclosure and we need to look at the mental processes both conscious and subconscious that caused the employer to act as it did. Essentially did Elaine Fisher raise this because the claimant made those protected disclosures or because she felt the relationship had broken down. Then further did Janet Prince follow the recommendation because the claimant had made those protected disclosures or because it was a recommendation that highlighted the issue to her. Both were involved in the process that led to the dismissal although the decision to dismiss was Janet Prince's it followed Elain Fisher's recommendation.

315. We had the benefit of having evidence from Elaine Fisher that was tested in Tribunal and the benefit of a long letter of recommendation. We particularly note her observations about the main contributing factor was both the claimant's failure to accept the outcomes of the two grievances and appeal. Further, that Elaine Fisher had concerns about his ability to effectively work and positively engage with Janet Prince as his line manager as well as the senior management colleagues. She comments that "*the volume of grievances you have had to investigate and hear appears to be unprecedented*". She felt that there was no acceptance by the claimant of the findings to date and even those involved in the process had been accused of "*colluding with the Trust against him*". The letter of recommendation sets out in detail the depth of the concerns. The claimant did not hold back in his disciplinary statement with his feeling towards his colleagues on the SMY and their integrity. We consider the rationale in the letter of recommendation to be thorough and are satisfied this documents thoroughly the thought process of Elaine Fisher at that time.

316. The letter of dismissal from Janet Prince clearly sets out the rationale for accepting the recommendation. We accept the reasoning given and that the witnesses (Prince and Fisher) stood by the contents of those letters

under cross examination by the claimant and questioning by this Tribunal. It is important to note that the number of grievances included not only the ones raised by the claimant but the ones raised against him for which there was no apparent link to whistleblowing on the whole but related to allegations of bullying by the claimant against others.

317. We considered in detail that the protected disclosures were in the background as part of the history but they are no more than that. We have in mind our findings of fact on the chronology and that as early as November 2020 the respondent had concluded that the claimant's working relationship with PM had broken down after the grievance raised against the claimant by PM. There were adverse findings from the complaint against the claimant by Brendan O'Mahoney back in August 2019 which was that his behaviour was having an adverse impact on his colleagues. In particular, it transpires that the conclusions Adrian Henson reached about the claimant in connection with this matter two years before the matter escalated are (as we have set out in detail in our findings of fact) insightful with what is to come over 2 years later. We take all of this into account as it is clear the dismissing officer considered all of the complaints raised against the claimant and he raised and that this was in her mind when she made the decision to dismiss.

318. It is noted that the last protected disclosure was made in October 2020 and they stopped in the chronology. After that one complaint against him by PM shortly after there was a significant break in events until June 2021 when he raised a complaint about benefits in June 2021 before the disciplinary matters occur and then the grievances start again this time from the claimant against Ronnie Neil, Brendan O'Mahoney and Adrian Henson in August 2024 as well as complaints about Jackie Park. After the disciplinary issue the claimant had made allegations against 4 of the SMT by end of August and then in September about his line manager and the CEO by September 2021. By September 2021 the only people on the SMT he had not raised grievances against were C Crook, himself and Andrew Seabrook.

319. However as outlined above, it is clear that the relationship with Andrew Seabrook is not at all good. It is very sour and remained so even at the

hearing before us. Andrew Seabrook made some damning comments about the claimant at paragraph 15 and 16 of his statement. The incident in Tesco's and his request for the claimant to apologise in the hearing are all indicative of his feelings towards the claimant and the claimant's feelings towards him.

320. Within a six week period the claimant had raised grievances against 5 members of the SMT. Elaine Fisher raised the concerns she had about the issue which the claimant dismissed or responded "no comment" to and the situation had clearly escalated to such a point that the relationship had broken down.

321. We discussed at length the background of the protected disclosures and whilst they form part of the history, we do not find that they directly or indirectly impacted on the decision to dismiss. They are no more than part of the factual matrix to set the history. They were not the reason for the dismissal or even close to the principal reason and we are satisfied having heard oral evidence on this point that the reason for dismissal was the breakdown in the relationships which relates to feelings on both sides, the many grievances and not the protected disclosures. It also related to the claimant's inability to accept the conclusions reached in internal processes which is a theme in this case. We do not consider that in the passing onto Janet Prince as recommendations by Elaine Fisher was in anyway influenced by the protected disclosures but by the clear evidence. Further that the decision to dismiss was not influenced by the protected disclosures.

322. In order to be an unfair dismissal, the claimant must have been dismissed either with the protected disclosures forming the reason or the principal reason for that dismissal and it is clear to us that this is not the case. The claimant's claim for automatic unfair dismissal therefore is not well founded and is dismissed.

Unfair dismissal – s98 ERA 1996 substantive issues

Issue 28.26 - What was the reason or principal reason for the claimant's dismissal? was it a potentially fair reason? (era 1996, s 98(1), (2)).

Issue 28.27 - The Respondent relies on the potentially fair reason of: Some Other Substantial Reason (SOSR), specifically that there had been an irreconcilable breakdown in the relationship between the Claimant and his senior colleagues.

SOSR

Issue 28.28 - Was SOSR the sole or principal reason for the dismissal?

Issue 28.29 - In particular can the Respondent establish an SOSR reason for the dismissal which could justify the dismissal of an employee holding the job in question

323. We turn now to the ordinary unfair dismissal claim. We are satisfied having tested the reason for dismissal that this was for some other substantial reason namely the breakdown in the relationship and this was the principal reason for dismissal. We do not rehearse here the points made under automatic unfair dismissal but they are relevant when looking at the reason for dismissal.

324. It is also correct to say that there were conduct issues and Elaine Fisher generously categorised these as misconduct for a first written warning and serious misconduct for a final written warning although these were never actually imposed as the matter was considered in the light of the relationship breakdown. We consider that the respondent could have also dismissed for gross misconduct as dismissal or a final written warning are both within the range of reasonable responses for proven allegations of gross misconduct.

Issue 28.30 - Was the decision to dismiss for SOSR reasonable in all the circumstances (including the size and administrative resources of the employer's undertaking?)

Issue 28.31.1 - In particular did the Respondent: follow a fair procedure?

Issue 28.31.2 - Did the respondent act reasonably in treating the reason as a sufficient reason for dismissal under s98(4) ERA 1996?

325. We remind ourselves of both parties submissions on the law and cases. Much of the claimant's legal submissions relate to case law on conduct dismissals. Whilst this started out as a conduct issue the decision to dismiss was for SOSR. We have in mind that there is a need what the employer did before taking the decision to dismiss and in accordance with *Turner* whether the employer had taken sensible practical and genuine steps to do so. We also note that as per *Matthews* the employer is not expected to take all steps but as always must act reasonably.

326. To a certain degree there is an overlap in these issues so we have dealt with them together as the issues are interrelated. We need to look at the decision to dismiss in the circumstances and this includes whether the reason was sufficient for dismissal and whether the respondent followed a fair procedure. We remind ourselves that we cannot substitute our view and that we are looking at the reasonableness of the respondent and whether this was in the range.

327. We have in mind the size and administrative resources of the respondent. They are a small charity. They had internal HR support but had to go external to deal with these issues. The evidence was this was due to the complexities but also due to concerns about the closeness of the claimant's relationship to HR. The fact that the claimant has raised grievances against the majority of the SMT is highly pertinent as is the organisation structure. It is not a large organisation where line managers can be changed or people moved to different offices or locations, there were no multiple sites for management it was one larger office and smaller houses for tenants that it managed.

328. The processes had clearly involved a large amount of resources of the charity in engaging external consultants and a large amount of management

time engaged in the various processes. There was a dispute as the claimant did not accept that they were independent external organisations as he considered them engaged by the Trust but this is standard when external bodies are appointed. In this case the Trust used three different external organisations to handle the matter and with one more than one person at the organisation. It is rare to see such extensive external processes but the nature of the complaints being against the SMT left the respondent as a smaller organisation with little other choice.

329. The respondent did consider alternatives but the sheer volume and the small nature of the respondent it was not clear what else could have been done. Both sides were entrenched in their position. Jackie Park gave evidence she would rather have left than mediate with him. She was long serving and highly regarded. We are told others had said they would leave if he came back and by the time the claimant had exhausted all the processes and given his time off sick, he had been out of the business for eight months and it is hard to come back into the business in those circumstances.

330. If this had been a conduct issue, then the ACAS Code of Practice would have applied and it does not automatically apply to SOSR dismissals. We did question Miranda Smythe about why she did not take the decision to dismiss rather than Janet Prince and she confirmed that the CEO ran the operational side of things and there was no one else. The Board could have made the decision but we have no doubt it would have been the same decision as Miranda Smythe confirmed Janet Prince had run it past her first. There were little alternatives to dismissal. It is hard to see a way back. The claimant had previously said that Janet Prince was the only one she could trust and then shortly after he raised a grievance indicating the very opposite.

331. We discussed at length the process that was followed and in particular the switch from conduct findings to SOSR. It was not the first time that SOSR and the breakdown of the relationships was mentioned in the dismissal letter. Had this been the case we may have taken a different view and we

would have had more concerns about the fairness of the dismissal. The terminology of irretrievable breakdown was used multiple times in the matter. It was first used when dealing with the grievance against the claimant by Paul Malcolm. The matter was properly put to the claimant in the disciplinary hearing so he could comment on it. He did and indicated that he could return if they apologised to him. The claimant is an intelligent and articulate man and would have understood what he was being asked. We note his comments about his mental health at that time but also note he was supported by his union throughout. The union representative also stepped in to repeat and clarify the point that he was being asked given his answer. He was then further asked to comment on this very issue after the meeting and given additional time to do so with his representative. His response to the questions was to say, "*no comment*". This really did not assist his case.

332. It is also clear that save for the right of appeal the respondent had followed the ACAS Code of Practice when dealing with the conduct issues. It waited to hear the grievances delaying the process for that. The right of appeal in conduct cases only applied where a sanction is awarded and the letter is clear that the sanctions were considered but then not applied given the bigger issues of the breakdown in relationships. As set out above he had at least two opportunities to address the breakdown in the relationships and did not take it. The claimant was suspended on full pay throughout this whole period.

333. For all these reasons we conclude that the dismissal was fair in all the circumstances taking into account s98(4), the circumstances of the case and that a fair procedure was adopted. The respondent acted within the range of reasonable responses in deciding to dismiss the claimant. We find that the dismissal was a fair dismissal.

334. Whilst we have not gone onto consider contribution due to our findings we find that if the claimant had been given the right of appeal the outcome would

have still been the same. It would have made no difference to the fact of dismissal and the relationship deterioration had gone too far.

335. Further in line with *Polkey* had the claimant not been dismissed at that point but given the sanctions from the disciplinary, it was more likely than not that the claimant would have been dismissed anyway within a matter of weeks or at best a few months as it was more likely that the final written warning would not have been a wake-up call and caused the claimant to modify his behaviour. It is more likely that he would have appealed the sanction and raised all the historic matters again and that the relationship would have deteriorated on his return in any event. It is unlikely the claimant would have accepted the outcome of the disciplinary and been able to work for Janet Prince as his line manager again as he felt particularly distressed that she had written to dismiss him, he would have felt that way if she had given him a final warning. He would not have let go and accepted the respondent's conclusions from process and the respondent would in all probability have to dismiss anyway if the SMT refused to work with the claimant on his return.

336. We have found that the claimant's claims for direct discrimination and victimisation were not well founded and are dismissed. We have found that the claimant's claim for detriments during employment for having made protected disclosures is not well founded and is dismissed. The claimant's claims for unfair dismissal and automatic unfair dismissal are also dismissed as not well founded.

337. The listing for the remedy hearing is no longer required so the parties are not to attend and the hearing will be vacated.

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Employment Judge King

Date: ……17.04.25……..

Sent to the parties on: 23 April 2025

For the Tribunal Office