



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr N Ninvalle

**Respondent:** Hammersmith Medicines Research Limited

**Heard at:** Reading **On:** 10, 11, 12, 13, 14 March 2025  
and 2 April 2025 (for Tribunal deliberations)

**Before:** Employment Judge Gumbiti-Zimuto  
Tribunal Members: Mr A Kapur and Mrs F Tankard

**Appearances**

**For the Claimant:** In person

**For the Respondent:** Mr A Johnston, counsel

## RESERVED JUDGMENT

The claimant's complaints of unfair dismissal, discriminating arising from disability and failure to make reasonable adjustments are not well founded and are dismissed.

### REASONS

1. The respondent is a company that specialises in clinical trials of drugs for pharmaceutical and biotechnology companies. The claimant was employed by the respondent, initially as an Accounts Payable Manager, and latterly as Account Payables Manager and Zahara Systems Administrator, from 29 April 2019 until 31 May 2022.
2. The claimant is making complaints of unfair dismissal, discrimination arising from disability and breach of the duty to make reasonable adjustments. The claimant's complaint of unfair dismissal was first made based on constructive dismissal, by an application made on 2 May 2023 the claimant applied to amend the claim to allege an express dismissal by the respondent, the application was granted at a hearing on 6 and 7 November 2023.
3. The issues that the Tribunal has had to decide were set out in a preliminary hearing before Employment Judge on 21 March 2023.

4. The claimant's witness statement for this hearing is very long and contains more material than is relevant to the issues raised in this case, while the Tribunal has all the statement and considered everything in the statement we not that the matters relevant to this case start at about page 39. In questioning the claimant, the respondent limited itself to the relevant matters we have to decide.

#### Procedural background

5. The claimant's claim was presented on the 18 August 2022. On 21 March 2023 a preliminary hearing took place at which the claimant's claims were set out by an Employment Judge in a case summary, the case was listed for hearing to take place over 6 days commencing on 6 November 2023, the Employment Judge gave directions in respect of preparation for the final hearing, including directions about the preparation of the trial bundle.
6. The claimant then made a number of applications to amend the claim form, including his application of 2 May 2023. The claimant's various applications to amend the claim form were considered on the first day of the listing of the final hearing 6 November 2023. Having considered the amendment application the Employment Judge on that occasion allowed one of the claimant's amendments (to allege an express dismissal) and refused others. The Employment Judge gave reasons for his decision, postponed the final hearing and relisted the case to take place over 6 days starting on 10 March 2025.
7. A further preliminary hearing was listed and took place on 15 October 2024. The matters discussed at that preliminary hearing were (i) the compilation of the bundle for the final hearing, (ii) the sending by the claimant of his witness statement for the final hearing to the respondent and to the tribunal, (iii) the claimant's application for specific disclosure of some documents. The Employment Judge at the preliminary hearing made an unless order in respect of the provision of a witness statement by the claimant, in his case summary he explained the reasons for doing so.
8. At the start of the proceedings before this Tribunal the claimant stated that he did not have a hard copy of the trial bundle of documents and he did not have a copy of his own supplementary bundle of documents. The Tribunal had been provided with PDF and hard copy documents by the respondent. An initial attempt had been made by the respondent to deliver hard copy version of the trial bundle to the claimant but this had been unsuccessful because at the time that the delivery driver arrived at the claimant's home he was at home. The claimant had been provided with a PDF version of the final version of the trial bundle and also had a PDF version of the claimant's supplementary bundle.
9. The first day of the trial was to be a reading day and so it was agreed that the respondent would send a copy of the trial bundle to the claimant for delivery

later that day. The claimant stated that he was unable to use the PDF bundle during the course of the hearing which was taking place by video hearing. A delivery of documents was made to the claimant on Monday 10 March 2025.

10. The claimant made an application to amend the claim dated 25 October 2024. We considered the application but made no order on the application because it was not necessary for us to deal with the matters contained in the application as they were either not amendments to the claim at all or unnecessary as they related to matters concerning remedy in the event that the claimant was successful.
11. On Tuesday 11 March 2025 the claimant confirmed that he had received copies of the documents, and the claimant began giving evidence. The claimant did not mention any problem with the trial bundle that had been delivered to him. The claimant's cross examination lasted for the remainder of the second day and went into the morning of the third day.
12. The claimant's questioning of the respondent witnesses started on the afternoon of the third day, Wednesday 12 March 2025. There was a brief discussion about the documents that the claimant would use for questioning the respondent's witnesses and he stated that he would only be referring to their statements as he had not been able to prepare questions using the trial bundle. The claimant did not mention any difficulties with the trial bundle of documents (two lever arch files) that had been delivered to him on Monday 10 March 2025.
13. At the start of proceedings on Thursday 13 March 2025, day four, the claimant mentioned for the first time that the bundle of documents that had been delivered to him were different to the trial bundle in that they ran to 1116 pages as opposed to 2079 pages of documents.<sup>1</sup> The claimant stated that he was therefore not in a position to question the respondent's witness Stephen Smith who was due to be the third of the respondent's witnesses.
14. The respondent and claimant disagreed about whether the claimant had been provided with the correct bundle of documents, the claimant insisted that he had not received all the documents while the respondent insisted that the claimant had been sent the same documents as the Tribunal and therefore should have had a complete and correct trial bundle.
15. The Tribunal continued to hear evidence from Dr D Wilkes and Dr S E Downen the claimant was given permission to rely on any document bundle he had in his possession. The claimant then proceeded to question the witnesses without any apparent difficulty arising from the issue about the Trial bundles. The Tribunal note that the claimant was giving evidence all day Tuesday 11

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<sup>1</sup> Documents from p1116 to p2079 we understand to be documents added to the Trial Bundle at the claimant's request.

March 2025 and for the morning of Wednesday 12 March 2025 and there appeared to be no difficulty for the claimant arising from documents which the claimant had in his possession while being questioned. When the claimant questioned Mr O'Brien, he referred to the statements only.

16. At the claimant's request the questioning of Mr Smith by the claimant was postponed to day five (14 March 2025). When the claimant questioned Mr Smith, he put to him a number of documents all of which were in the trial bundle as produced by the respondent and as delivered on 10 March 2025.

Further documents from the claimant

17. The claimant submitted to the Tribunal a number of further documents setting out submissions that he wished the Tribunal to take into account. These documents were provided to the Tribunal on the morning of the Tribunal's deliberations (2 April 2025). Although the claimant had stated that he had provided copies of the material sent to the Tribunal to the respondent, we note that the documents were sent to the Tribunal too late for the respondent to respond. The claimant submitted his "Final statement to the Tribunal – Post Hearing Submissions" document, dated 2 April 2025, at 6:00am on the 2 April 2025. The claimant sent three further documents at 1:07pm on 1 April 2025, these were "Statement Accompanying Pre-Hearing Checklist Submission", "Pre-Hearing Checklist Judge O'Dowd", and "Request for Panel to Consider Procedural Obstruction by the Respondent".
18. Faced with the late submission of these documents the Tribunal considered that we had two initial choices of action, to refuse to consider the documents at all or to consider the documents and then consider what action was appropriate in the light of their contents. We opted to consider the documents.
19. Having considered the documents we could have asked the respondent to respond to the contents of the documents, this would have meant a further delay in the proceedings; or we could have considered the documents and then proceeded with our deliberations bearing in mind that we did not have the respondent's comments on the documents and to be mindful that the respondent must not be prejudiced. The Tribunal opted to proceed with our deliberations even though the respondent had not had an opportunity to respond to the claimant's further documents, our approach was to keep in mind that the respondent should not be prejudiced by us making any determination against the respondent based on the further submissions without first giving the respondent the opportunity to respond to the claimant's submissions.
20. In the final event the Tribunal did not consider that it was necessary to seek further submissions from the respondent because the claimant's further documents did not raise any additional matter that we considered it was

necessary to hear from the respondent about. This is because (1) the “Final Statement to the Tribunal – Post-hearing Submission” document refers to *“institutional misconduct by the respondent who knowingly and repeatedly breached employment law ACAS guidelines, and ethical boundaries, and who treated whistleblowing, mental health, and protected characteristics not with support, but with retaliation”*. The document however does not set out any reference to facts arising from the evidence we heard that support the broad proposition made in a way that addresses the issues that we have had to determine. The document also makes reference to the Public Interest Disclosure Act which is not relevant to the issues that we have to decide; the document refers to the conduct of the respondent’s legal representative who is accused of breaching the Tribunals’ orders and directions and *“manipulated process and evidence”*. The claimant asks the Tribunal to have regard to the respondent’s behaviour in conducting the proceedings and asks that we draw appropriate inferences from the matters he sets out and take that into accounting when considering any award of compensation. However, these submissions from the claimant do not address the specific factual issues that the Tribunal has to consider. (2) The claimant also relies on the document letter of the 1<sup>st</sup> April 2025 and titled *“Request for Panel to Consider Procedural Obstruction by the Respondent”* and further the claimant refers to his completed Pre-hearing checklist, dated 3<sup>rd</sup> February 2025, in which he sets out a number of matters which illustrate the claimant’s view that the respondent’s legal representatives have breached the respondents obligations in respect of compliance with the Tribunal’s orders. Taking all these documents into account we do not consider that they assist us in reaching a conclusion in respect of the list of issues that we must decide in this case and for that reason we have not considered it necessary to ask the respondent to address those points.

### Credibility

21. The respondent says of the claimant that at best he is a poor or unreliable historian and at worst he is constructing a false narrative. They rely on a number of things: in his claim form the claimant gives the impression that he was involved in the respondent’s decision to purchase the Zahara upgrade (he was not) and the claimant must have known that to be the case; the claimant suggested his work involved software engineering (it did not) he was in fact a user of the software; the respondent referred to the claimant’ continuing to allege that he was assaulted by Mr O’Brien when, they say even on his own version of events, he could not have fairly considered that what happened amounted to an assault. We perceived the respondent’s submission to be that these highlights show that the claimant’s analysis and recollection of contentious events should be treated with caution.

### Factual background

22. The claimant commenced employment with the respondent as an Accounts Payable Manager, the respondent had been investigating electronic

purchasing systems and the employment of the claimant was with the express intention of helping the respondent implement a computerised purchasing and invoicing system.

23. There was no indication at that start of the claimant's employment that he had a disability, in his health questionnaire the claimant stated that he has no history of mental health issues.
24. The claimant's employment was subject to a probation period which was extended on the on 4 September 2019 because it was considered that there were some areas of improvement required in respect of his performance. It was confirmed that the claimant passed his probation period in about November 2019.
25. The Zahara purchasing and invoicing system was installed in June 2020, the claimant was responsible for training staff and updating standard operating procedures and documents in respect of the system.
26. The claimant was signed off work from July 2021 until 8 September 2021 with "mixed anxiety and depressive disorder". The respondent asked the claimant to provide a medical report from his GP, this was provided on 19 October 2021 and contained the following recommendation: *"In terms of return to work I am not a qualified occupation physician but my general recommendations would be to introduce him slowly to his routine work in a phased manner whilst maintaining a supportive environment. Regular occupation based reviews from a supportive manager would be helpful. Observing for subjective changes in mood and anxiety would be important."* This resulted in the claimant returning to work three days a week from November 2021 until February 2022; from March 2022 the claimant worked four days a week.
27. The claimant on 23 February 2022 met with Mr Smith and Mr O'Brien to review his phased return to work. At that meeting they discussed a job description and advert that the claimant had put together in a pitch for promotion. The claimant prepared a job description for a new post titled "Procurement CRM Platform Administrator" with a proposed salary range of £41,000 - £71,000. The respondent considered the claimant's proposal and then in about March 2022 the claimant was given a promotion, and his job role became that of Accounts Payable Manager and Zahara Systems Administrator the claimant's salary was also increased from £31,500 to £33,390.
28. The claimant was unhappy with the salary increase on offer and, on 11 March 2022, e-mailed Mr O'Brien to say that he no longer wanted to work on Zahara, and wished to return to his 'Accounts Payable Manager duties and tasks with immediate effect' The reply to the claimant from Mr O'Brien was that opting out was not an option.

29. On 22 March 2022 the claimant sent an email to Mr O'Brien the email stated:  
*"I guess we need to have a conversation – I plan to leave HMR at the end of June and hope that this provides enough time to have a full hand-over. Let me know when you have a spare moment to discuss further, sil vous plait."*  
The claimant discussed with Mr O'Brien his reasons for leaving explaining that he did not consider that his salary was high enough and disappointed with the salary offered for his promotion. The claimant was clear that his employment was going to end, he was not persuaded by Mr O'Brien to remain in employment with the respondent and notified his colleagues that he would be leaving the respondent at the end of June 2022.
30. The respondent had two one-year student placements who reported to Mr O'Brien. The claimant was concerned that they were making errors which resulted in extra work to correct. The claimant and Mr O'Brien spoke about issues arising from the work of the students on 6 April 2022. The claimant and Mr O'Brien disagreed about the way certain tasks were to be completed by the students.
31. On 6 April 2022 the claimant removed the students' permissions to access Zahara. The claimant did not discuss restricting the students access to the Zahara system with Mr O'Brien before taking that action.
32. The claimant booked 4 days of annual leave.
33. The claimant sent an email to Mr O'Brien on 6 April 2022 email in which he said: *"I know that I had given notice for the end of June, but I believe it's best to let you know that given your call to me this morning it's best for my state of mental health that I officially offer you my resignation for the end of May to be my last day."*
34. Mr O'Brien received complaints about the claimant's behaviour towards the students and spoke to the claimant about his behaviour in response to which the claimant responded angrily. The claimant sent an email to Mr O'Brien which stated: *"on my return I will submit a resignation letter detailing my reasons for this decision. We have previously discussed these by phone, but you should have it in writing for full transparency and for official records."*
35. On 7 April 2022, the students informed Mr O'Brien that their access to the Zahara system had been restricted and they were locked out, as a result Mr O'Brien had to reinstate their permissions.
36. Mr O'Brien wrote to the claimant: *"You have removed the permissions for the 2 student placements on Zahara against my explicit instructions to allow them work on Zahara (picture attached). I now must spend time re-instating those permissions, which is enormously distracting during a very busy time for the*

*company. Please do not ever remove all permissions for anybody without consultation.”*

37. At 13:24 on 7 April the claimant wrote to the Pensions and Payroll Manager asking to cancel his 4 days annual leave. The correct process would have been to notify Mr O'Brien and obtain his consent to do so.
38. The claimant sent an email to various people at 13:09 on the 7 April 2022, this included people from outside the respondent's organisation. As a result, Mr Smith and Mr O'Brien, believing that the claimant was going to be out of the office for a number of days agreed that it would be a sensible precaution to suspend his VPN and Zahara access because of his recent actions.
39. Responding to the claimant's email Mr Smith at 14:22 wrote: *“Your e-mail below raises some serious allegations, which we will discuss with you in a meeting when you return from leave. We have concerns about the tone of the language used, and your judgement in copying in people from outside HMR to air your differences with your manager, not least because your e-mail contains personal information about other named HMR employees. You have a duty to keep all information relating to HMR employees confidential. I suggest that you, Kevin and I meet at 1300 h on 14 April 2022. In the meantime, please do not escalate this situation further by contacting any of the HMR employees named in your e-mail below. Please try to use your time off to get rested, and avoid logging in to work. To that end, we have temporarily suspended your VPN and Zahara access. That does not constitute any form of disciplinary sanction, and it will be reinstated on you return to work.”*
40. The claimant met with Mr Smith and Mr O'Brien on 14 April to discuss the students' complaints. During the meeting the claimant was considered by Mr Smith and Mr O'Brien to be deliberately disruptive. During that meeting the claimant stated that he wished to withdraw his resignation. The claimant was told by Mr Smith that he was not motivated to accept that after what had been an exceptionally difficult meeting in which the claimant had *“behaved appallingly”*.
41. The respondent offered to place the claimant on garden leave during the remainder of his notice period, however the claimant refused this and asked to return to his duties. The claimant was told by Mr Smith that the respondent wanted to assess how the stress of working might impact on the claimant's health issues and that the respondent wanted an occupational health assessment.
42. On 5 May 2022 the claimant was told by Mr Smith that the respondent would not agree to the claimant withdrawing his resignation and listed a number of factors that led him to the conclusion that *“the relationship of mutual trust and*



*confidence has been damaged beyond repair*". It was confirmed that the claimant's last day of employment would be 31 May 2022.

#### Unfair dismissal

43. The claimant says that he was constructively dismissed.
44. Section 95 (1) of the Employment Rights Act 1996 provides that "For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2)..., only if)- (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employers conduct."
45. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: 2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: ... "the implied term of trust and confidence". 3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract... The very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship. 4. The test of whether there has been a breach of the implied term of trust and confidence is objective. The conduct relied on as constituting the breach must "impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer". 5. A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents.
46. The claimant alleges that the respondent did the things set out below as alleged breaches and that they amount to a breach of the implied term of trust and confidence. The claimant contends that he resigned in response to the breach.

#### The claimant submissions

47. In his closing submissions, at the second bullet point in paragraph 2, the claimant states: *"I allege that I was constructively dismissed due to HMR's fundamental breaches of mutual trust and confidence, including a biased grievance process, systematic underpayment, and lack of any occupational health intervention despite my documented anxiety and depression."* While this statement refers to the implied term of mutual trust and confidence, the factual basis of the breaches do not match the way that the issues to be decided in the case were set out by Employment Judge George on 21 March 2023.

48. Additionally, the major and contentious grievance process involving the claimant's complaints, was after the claimant resigned his employment and largely after the end of his employment. We have not set it out in this decision as it is unnecessary to do so.
49. The claimant states, in the third bullet point at paragraph 5, that he tendered his resignation on 6 April 2022. This is not the correct date of his resignation. In his evidence to the Tribunal the claimant accepted that his email of 22 March 2022 was a "*de facto resignation*" and the documentation before us supports the conclusion that was the date of the claimant's resignation. The 6 April was not the date of the claimant's resignation it was the date on which the claimant sought to bring forward by a month the last date of his employment from the end of June 2022 to the end of May 2022.
50. The claimant has included submissions alleging that the respondent has breached the Tribunal's orders in respect of the preparation of the Trial Bundle. The claimant complains about the timing of the provision of copies of the bundle, the content of the bundle and the manner in which the bundle has in fact been put together by the respondent's solicitor. The respondent disputes this and states that to the extent that there have arisen problems relating to the preparation of Trial Bundle these arose in part from the approach of the claimant which has involved the claimant seeking to have included many irrelevant documents in the Trial Bundle. The approach of the Tribunal has been to avoid enquiring into these alleged failings and to be flexible about the introduction of additional documents by the claimant so that to the extent that there has been a failure to include any document that the claimant wished to rely he was free to do so. In the event there was only one new document, an email chain, introduced by the claimant and in so far as it was relevant was already in the Trial Bundle, save that the final email in the claimant's version was not included. The omitted email was inconsequential in respect of the matters in dispute in this case.
51. The claimant complains about the evidence being selective and documents being withheld. The claimant's evidence did not make clear what any allegedly missing documents might have shown had they been produced. It was not at all clear to us that there were in fact any missing or withheld documents. The claimant states that the Tribunal should infer that the missing documents would have supported his case, however without any clear indication of what the missing documents were or what they might have contained the Tribunal was not in a position to draw any inference from this .
52. The claimant complains that the problems with the bundle have prevented his ability to prepare for the final hearing. We do not accept this. The claimant has had electronic copies of all the documents that were presented to the Tribunal in good time for him to prepare for the Tribunal hearing, what he has

not had is a paper copy of the documents.<sup>2</sup> The claimant should have been able to prepare for the hearing using electronic copies of the documents. In the course of the hearing before us, it was only in the course of the evidence given by Mr Smith that the claimant made reference to documents in the Trial bundle.

Conclusions on unfair dismissal

53. The alleged conduct amount to a breach of contract is set out in bold in the following paragraphs.

- (a) **Undermined the claimant's position as the employee with responsibility for Zahara by swapping the duties of the two students' without informing him;**
- (b) **Undermined the claimant by reinstating full access to the Zahara Program for two students without asking the claimant of discussing this action with him;**
- (c) **Line manager, Mr O'Brien, agree on 5 April 2022 to train the two students and then on 6 April 2022, contrary to the previous plan reinstating their full access;**

52.1 The claimant and the respondent do not agree as to who has responsibility for the management of the students. The claimant appeared to contend that the students were under his supervision as they worked using the Zahara System. In the course of questioning by the respondent the claimant stated that *"Any person who was licensed to use of Zahara, I was responsible for their training I was responsible for making sure their data was reliable."* However, the respondent's evidence from Mr O'Brien was that the claimant had one direct report, the purchase ledger clerk, Ryan, and that claimant and the students reported directly to M O'Brien. The respondent produced the Job description for the Accounts Assistant (Student Placements) which showed that they reported to the Financial Director and Company Secretary.

52.2 The claimant accepted that the person responsible for allocating the tasks to the student was Mr O'Brien and not himself. The claimant did not consult with Mr O'Brien before removing the students access to the Zahara System. The conclusion of the Tribunal is that Mr O'Brien was entitled to restore the relevant permissions to enable the students to use the Zahara System so that they could carry out such task as they were required to undertake at the direction of Mr O'Brien.

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<sup>2</sup> This is however contentious, the respondent does not accept the claimant's account of the chronology relating to the preparation of the Trial Bundle.

- 52.3 On 6 April 2022 the claimant and Mr O'Brien discussed the students and the work that they would do. There is a conflict between the claimant and Mr O'Brien about when the discussion took place and what the outcome of the discussion was. The claimant says that it was agreed that the students would be restricted in the scope of their work pending extra training. Mr O'Brien states that there was no such agreement and that it was expected that the students would be rotated around areas of the accounts department to diversify their experience and it was not agreed that there should be any restriction imposed on the students pending training. The Tribunal prefer the account of Mr O'Brien on this issue because the claimant's account was not always clear as to what was agreed and further at one point appeared to agree that there was no agreement as he alleged. However in any event we note that the near contemporaneous email from Mr O'Brien is clear that the claimant had *"removed the permissions of the 2 student placements on Zahara against my explicit instructions to allow them to work on Zahara"*.

**Expected the claimant to correct the errors made by students which would increase his workload in circumstances where his mental health was already impacted by the burden of work.**

- 52.4 The claimant and Mr O'Brien had a difference of opinion about how the students worked, and it was the view of Mr O'Brien that the level of correction that they required was to be expected at student level. Mr O'Brien also did not accept that the students had erroneously posted items, rather his view was that the student had been following a logical procedure that had been agreed for posting on Zahara. Additionally when the issue with the purchase order function was discussed by the claimant with Mr O'Brien the claimant was told that it was unnecessary to retrospectively rematch old documents and that would not be a good use of time. There was it appear to the Tribunal a difference of opinion between the claimant and Mr O'Brien about whether it was necessary to correct some of the work done by the students, there was no breach of contract.

**Withdraw the claimant's access from Zahara**

- 52.5 The claimant's access to Zahara was withdrawn at a time when the claimant was supposed to be on leave. The withdrawal of the claimant's access could not have been a detriment to the claimant in respect of the performance of his role. The reason for the withdrawal of the claimant's access to Zahara was explained to the claimant in the email of 7 April 2022 sent at 14:22. In the view of the Tribunal the reasons given are not a breach of contract.

**Accused the claimant of lying to Amrit Veerpal**

- 52.6 The claimant informed Amrit Veerpal that he wanted to cancel his leave on 6 April 2022. The claimant states that he is alleged to have lied to him by stating that he had permission from Mr O'Brien to do so. The claimant denies that he did this. The evidence presented to the Tribunal by the claimant did not address this issue in a way that allowed the Tribunal to conclude that there was anything done by the respondent which amounted to a breach of contract by the respondent. In his witness statement the claimant does not address this issue.
54. The conclusion of the Tribunal is that the claimant has not shown that the matter he relies on in the list of issues as breaches of contract occurred in a manner that constitutes any breach of contract. The claimant has therefore not shown that the respondent has been in breach of the implied term of trust and confidence.
55. Had any of the matters relied upon by the claimant amounted to a breach of the implied term of trust and confidence the claimant would have still had to show that they were part of the reason for his resignation of employment. The claimant resigned his employment on 22 March 2022, that date predates all the matters which the claimant alleges amounted to the breach of contract based on which the claimant resigned his employment.
56. There is a further problem for the claimant in that he gives a reason for the timing of his resignation as being related to his unhappiness at the terms of the promotion contract that was offered to him. That is not a breach of contract. The claimant was not dismissed the claimant resigned his employment with the respondent.
57. The list of issues states that in the alternative the claimant will say that he was expressly dismissed by the respondent when on 14 April 2022 the claimant sought to withdraw his resignation the claimant refused to accept the claimant's withdrawal of his resignation because of the claimant's mental health. The Tribunal rejects this contention because no factual basis for it has been set up by the claimant. In his evidence to the Tribunal the claimant has not said that the resignation was not intended or seriously meant, the claimant resigned and then reinforced his resignation by seeking to bring forward the date of termination of his employment. There was no express dismissal of the claimant.
58. As we have concluded that the claimant was not dismissed it has not been necessary to us to consider the respondent's contention that if the claimant was dismissed the claimant's conduct as set out in a letter of 5 May 2022 amounted to gross misconduct entitling it to act as it did and was a potentially fair reason.

Discrimination arising from disability

59. The respondent accepts that the claimant was a disabled person by reason of anxiety and depression at the relevant time and that it had knowledge of the claimant's disability.
60. The claimant makes a claim about discrimination arising from disability (pursuant to section 15 of the Equality Act 2010). The claimant relies on the alleged unfavourable treatment of "overruling the claimant and reinstating the students' access to Zahara".
61. The claimant says that his conduct in withdrawing students' access was something arising in consequence of his disability. The claimant alleges that the respondent overruled the claimant and reinstated the students' access to Zahara because they considered the claimant's conduct in withdrawing access to be not acceptable, but that conduct arose in consequence of disability.
62. The respondent says that its actions were a proportionate means of achieving a legitimate aim namely, safeguarding its business from the claimant's actions which were likely to expose the respondent to unacceptable risk.
63. The claimant says in his closing submissions that: *"Discrimination Arising from Disability (EqA s.15) • City of York Council v Grosset [2018] EWCA Civ 1105: An employer is liable if it treats a disabled employee unfavourably because of something arising from the disability, unless the treatment is a proportionate means of achieving a legitimate aim. • In my case, "pausing interns' advanced privileges" was an outgrowth of my heightened anxiety about errors. HMR seized upon this as grounds to isolate me further. They also refused to allow me to retract a resignation clearly given under mental distress. Under Bradley v The Royal Mint Ltd (2023), a refusal to let a psychologically distressed employee withdraw a hasty resignation can be "unfavourable treatment" under s.15."*
64. Around 4 April 2022 the claimant states that the student placements were making errors that posed a threat to the integrity of the respondent's financial management system. The claimant and Mr O'Brien had discussions which led to agreement that there was a need for immediate action to rectify this. The claimant states that he discovered that contrary to what was agreed Mr O'Brien took the operational decision, without consulting the claimant, to change the student's duties. The claimant says that he considered that decisive action was required to safeguard the financial processes from further risk and suspended specific Zahara system privileges for the student placements. When Mr O'Brien found out about the action taken by the claimant, he reinstated the students' access to the Zahara System.

65. The claimant explained in his evidence that the action of Mr O'Brien led him to sending his email of 6 April 2022 (sent at 12:34) in which he brought forward the date of his end of employment. The claimant says that Mr O'Brien's indecision, his failure to respond to the communication from the claimant, his retraction of trust in the claimant's judgment and the discussions with the claimant about the claimant's workplace conduct: *"My efforts to reach out and clarify these matters were met with evasion, leaving me in a position where I felt compelled to consider resignation as a viable response to the continued lack of clarity, respect, and due process in handling such serious allegations. These events led to my decision to draft a formal resignation letter, ensuring that my reasons were clearly articulated for transparency and for the official record."* The email that the claimant sent read as follows:

"Hello Kevin,  
I know that I had given notice for the end of June, but I believe it's best to let you know that given your call to me this morning it's best for my state of mental health that I officially offer you my resignation for the end of May to be my last day.  
Thank you"

The claimant refers to this email as being a resignation email. In fact, the claimant had already resigned this email was seeking to move forward his termination date.

66. The respondent submits that the claimant's case amounts to the proposition that: *"if a disabled employee does something which they have no authority to do, and all the employer does is to reverse the action which the disabled employee had no authority to do in the first place, that ought properly to be regarded as discrimination arising from disability. It cannot sensibly be said that simply restoring the status quo to what it was before that unauthorised act amounts to unfavourable treatment of the person who did the unauthorised act. ... The Claimant's case with regard to the "something" for the purposes of his section 15 claim is entirely circular. The "something" which is relied upon as being the cause of the unfavourable treatment is "The Claimant's conduct in withdrawing students' access". But that is simply the converse of what is alleged to amount to the unfavourable treatment – in effect, the Claimant's case as to the requisite "something" is "you restored the students access to Zahara because I withdrew it".* The Respondent also states that the alleged "something" cannot properly be regarded as arising in consequence of the claimant's disability and that there is no evidence to support the assertion that the claimant's act in withdrawing the students' access to Zahara was something which arose in consequence of his disability because the claimant's case is based upon a belief that it was his role to protect the integrity of the system and that was what he was doing. Finally, the respondent states that restoration of the students' access was a proportionate means of achieving a legitimate aim: for the students to be able to do their jobs they required access to Zahara.

67. The Tribunal finds that the evidence that has been presented by the claimant simply does not support a case of discrimination arising from disability. The positive reason he has given for the actions he took was to safeguard the

integrity of the respondent's financial management system and the actions taken by the respondent do not suggest that to the extent that there was unfavourable treatment of the claimant it was because of something arising from disability. The claimant's own evidence explained the withdrawing of the student access in a way which was not arising in consequence of his disability. In any event, the evidence presented was that the students reported to Mr O'Brien and it was proportionate and legitimate for the respondent to require them to carry out their duties as directed by Mr O'Brien.

Reasonable adjustments

68. The claimant also makes a complaint about reasonable adjustments (pursuant to sections 20 and 21 of the Equality Act 2010). The claimant says that the respondent has a provision, criterion or practice (PCP) of not permitting people to withdraw their resignation. The respondent denies any such PCP.
69. The respondent became aware of the claimant's disability 9 September 2021.
70. The claimant's case on failure to make reasonable adjustments is that the respondent had a provision, criterion or practice ('PCP') of "Not permitting people to withdraw their resignation".
71. On the claimant's own evidence there was no such PCP. The claimant gave evidence that another colleague had been allowed to withdraw their resignation. In his witness statement the claimant's evidence was *"Stephen Smith outlined prerequisites for my reinstatement, contingent on a satisfactory occupational health evaluation and necessary adjustments. This was later retracted in a letter dated 05/05/2022, suggesting a disregard for the agreed terms and signalling a de facto dismissal based on my health issues. The initial agreement included support for my return, which was undermined by the retraction, indicating disability discrimination and issues around my disclosures in grievances."* This is not evidence of the existence of the PCP but rather evidence that no such PCP was applied in his case
72. The claimant's case on disability discrimination is not well founded and is dismissed.

Approved by:  
Employment Judge Gumbiti-Zimuto

Date: 16 May 2025

Sent to the parties on: 23/05/2025

For the Tribunals Office



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