EMPLOYMENT TRIBUNALS

Claimant:	Mr Wayne Cummings
Respondent:	Fresh Property Group Limited
Heard at:	**Exeter Employment Tribunal**
On:	**30 April, 1 and 2 May 2025**
Before:	**Employment Judge Volkmer**

Representation

Claimant:	in person
Respondent:	Miss Amartey, counsel

RESERVED JUDGMENT

The Claimant's complaint of unfair dismissal is not well-founded and is dismissed.

REASONS

Background

1. The Claimant presented a claim to the Tribunal making complaints of disability discrimination, sex discrimination and unfair dismissal against eight Respondents on 2 May 2023. This followed notification to ACAS on 28 April 2023. The ACAS certificate was issued on 18 April 2023.

Case Management

2. There was a preliminary hearing for case management on 23 April 2024 before Employment Judge Roper. The Case Management Orders determined at that hearing, along with the List of Issues was sent to the parties on 23 April 2024 (the "April 2024 CMO"). The April 2024 CMO set out a List of Issues to be decided in the claim.

3. Following a strike out warning, complaints against seven Respondents were struck out by Employment Judge Roper on 9 May 2024.

4. A further public preliminary hearing took place on 12 and 13 June 2024 before Employment Judge Smail, who determined that the Claimant was not disabled at the relevant time (as set out in a judgment sent to the parties on 26 July 2024).

5. A further public preliminary hearing was listed to decide the Claimant's amendment application, strike out, a deposit order and consider further case management. This took place on 29 August 2024 before Employment Judge Smail. The Claimant's amendment applications were dismissed and the Claimant's claims of sex discrimination relating to August 2020 were found to be out of time. The judgment was sent to the parties on 11 September 2024. In a case management order sent to the parties on the same date (the "September 2024 CMO"), Employment Judge Smail stated that the unfair dismissal issues to be determined were set out in the April 2024 CMO of Employment Judge Roper.

6. The September 2024 CMO made case management orders that the hearing bundle be agreed between the parties by 8 November 2024, produced by the Respondent and sent to the Claimant by 29 November 2024. A page limit of 300 pages was set. The witness statements were then ordered be exchanged by 31 January 2025.

7. The parties struggled to agree the contents of the bundle in order to meet the required page limit. The Respondent's application to extend the page limit to 950 pages was refused on 24 January 2025. The Claimant applied to postpone the final hearing. This was also refused. Although the order had been for simultaneous exchange of witness statements, the Respondent sent the Claimant its witness statements on 23 April 2024.

8. The Respondent applied on 23 April 2025 for an unless order in respect of the Claimant's witness statement. On 24 April 2025, an unless order was made requiring the Claimant to exchange his witness statement by 28 April 2025. He did so. The Respondent pointed out that the Claimant had had the benefit of having sight of the Respondent's statements when preparing his witness statement but made no further point on the matter.

9. On 24 April 2025, to deal with the Claimant's concerns regarding the documentation, the Claimant was ordered to produce a separate bundle which could be dealt with at the beginning of the hearing.

10. The Claimant provided a zip file of documents with his witness statement and brought a hard copy of documents to the hearing. The agreed hearing bundle was 518 pages and the Claimant's documents consisted of a very full lever arch file (it is unclear what the page count was). In relation to the documents and with only one hour of allocated reading time (which was in any event reduced to 30 minutes once preliminary matters had been dealt with) and a three day hearing, I pointed out I would not have time to read the two full lever arch files of documents (over 1,000 pages) and would only read those I was referred to by the parties in the hearing.

11. The Respondent sensibly took the position that although it had not agreed the Claimant's documents and considered many of them irrelevant to the issues, it would object to documents on an as and when basis, as it would have put the hearing at risk to go through the entirety of the Claimant's documentation. No such issues were raised during the course of the hearing. The Claimant included without prejudice material in his documentation and references were also made to it in his statement, oral evidence and submissions (despite discussions regarding the need for these to be off the record). The Respondent simply asked that I disregard without prejudice matters and I did so.

12. I informed the parties that, given the volume of documents, I would deal with liability only at this hearing.

The Hearing

13. The Tribunal heard oral evidence from the Claimant and Mrs Corina Lewis and Mr Mark Cordin on behalf of the Respondent. An agreed hearing bundle of 518 pages was provided to the Tribunal. References to page numbers in this bundle are referred to as "Main Bundle". References to the Claimant's documents will be by way of document numbers followed by "Claimant's documents"). The Tribunal was also provided with a chronology prepared by the Respondent, and which had not been agreed between the parties.

14. The Claimant raised with Tribunal staff that he had struggled with the cold temperature in a previous hearing in the same building. On the first day, the outside temperature was unusually hot for the time of year with a high of 24 degrees. I asked for the air conditioning to be turned off, which meant that the hearing room was very warm. At the beginning of the hearing, I discussed with the Claimant what he preferred, and he said he would prefer to leave it off. I gave leave for jackets to be removed for others who might find the temperatures too warm. With Mr Cummings agreement, the aircon was turned on again at lunchtime and he commented on this at the end saying that discussing the temperatures with him was very helpful as being too cold in previous hearings had affected his ability to function in the hearings. The air conditioning was left off on the second day and I continued to discuss with Mr Cummings to ensure that he was comfortable during the hearing. Miss Amartey also agreed with these arrangements.

15. The Claimant raised concerns that he had not had enough time to prepare because of hearing bundle page limits and that he felt that previous case management orders had been unfair in that regard. No new formal request was made to postpone the hearing (previous applications in that regard having been refused). Mr Cummings felt that the witnesses called by the Respondent were not all of the witnesses that were relevant. He had wished to cross examine individuals involved in previous processes during his employment, such as in relation to performance improvement plan at the end of 2021 and in early 2022. I explained that it was up to the Respondent who they called as a witness to defend the claim, but that I could only consider the evidence in front of me.

16. At the beginning of the hearing, the Claimant requested that Mr Cronin leave the hearing room during Mrs Lewis' evidence. He stated that if this was not done, it would not be a fair hearing as Mr Cronin would hear the answers previously given and could therefore change his evidence. The Respondent did

not agree. It is the normal course of proceedings in the Employment Tribunal that witnesses remain in the hearing room during evidence. The Claimant had not raised any matter that was different about this case. I considered that Mr Cronin's presence during Ms Lewis' witness evidence would not give rise to unfairness. A such, I refused this request.

17. I explained the timetable to the parties at the beginning of the hearing (page 81, Main Bundle). I explained that we would have a break every hour and that I would guillotine in order to ensure that the timetable was complied with. I explained that this would need to include time for re-examination and for any questions I had. The Claimant would also be given time at the end of his cross examination to clarify any matters which arose in cross examination. I explained that the Claimant would have the time as discussed in the timetable to ask the questions and that it was up to him to cover what he wished, bearing in mind that what was relevant and that he needed to cover the matters set out in the List of Issues. At various intervals I reminded the Claimant of the time he had remaining to cross examine.

18. The Claimant complained that the Respondent's witnesses were pausing for too long and/or not addressing his questions which used up the time he had allocated to him. The following is not intended as a criticism, as I acknowledge that the Claimant is not a trained advocate and was doing his best to represent himself. I include the following comments solely to address his complaint. My observation was that the majority of the time was taken up with the Claimant speaking during his cross examination. His tendency was to give very long background explanations, without a clear question to the witness. Where there was a question, he frequently did not leave sufficient time for the witness to answer. If the Claimant did pause for the witness to answer, particularly in relation to Mrs Lewis, he would often begin speaking again before she had had the chance to start answering the previous question. The majority of his cross-examination questions related to the historical disciplinary and performance process rather than the capability process leading to dismissal and the dismissal itself. Despite frequent warnings, he wished to continue questioning Mrs Lewis, which led to having very little time for questions for Mr Cordin.

19. The Claimant was unhappy that he could not take his laptop to the witness stand. He struggled to adapt to being asked questions by Miss Amartey and to the fact that it was now for her to decide the direction that the cross examination would take in terms of subject matter. I did have to frequently bring the Claimant back to the fact that this part of the hearing was a question-and-answer session, that his role was to answer Miss Amartey's questions and that he was not permitted to lead new evidence or to try to re-direct the topic to something he wanted to focus on. I felt that he did do his best to work with the process when re-directed.

The Issues

20. The issues as set out in the CMO are as follows.

1. *Unfair dismissal*

    1.1 The Respondent accepts that the Claimant was dismissed, and it asserts that it was a reason related to capability (ill health), or

alternatively some other substantial reason such as to justify dismissal (the Claimant's refusal to return to work) which are potentially fair reasons for dismissal under ss. 98(1)(b) and 98(2)(a) of the Employment Rights Act 1996.

1.2 Did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant? The Tribunal will usually decide, in particular, whether:

1.2.1 the Respondent genuinely believed the Claimant was no longer capable of performing their duties;

1.2.2 the Respondent adequately consulted the Claimant;

1.2.3 the Respondent carried out a reasonable investigation, including finding out about the up-to-date medical position;

1.2.4 whether the Respondent could reasonably be expected to wait longer before dismissing the Claimant; and

1.2.5 dismissal was within the range of reasonable responses.

1.3 Was the decision to dismiss a fair sanction, that is, was it within the range of reasonable responses open to a reasonable employer when faced with these facts?

1.4 Did the Respondent adopt a fair procedure?

1.5 The burden of proof is neutral, but it helps to know the Claimant's challenges to the fairness of the dismissal in advance and they are identified as follows:

1.5.1 earlier disciplinary charges from October 2021 against the Claimant were concocted in an attempt to force him out of a job;

1.5.2 the Respondent failed to put in place the following reasonable adjustments:

1.5.2.1 recording meetings truthfully and accurately, and/or providing the Claimant with an accurate transcript;

1.5.2.2 providing the Claimant with the relevant information so that he was fully appraised of the situation against him;

1.5.2.3 providing the Claimant with full information and background witness statements to justify the conclusions of the disciplinary report against him;

1.5.2.4 allowing the Claimant to correspond and engage with the Respondent's processes by email;

1.5.2.5 responding to the questions raised by the Claimant and answering them appropriately in good time; and

1.5.2.6 processing the Claimant's appeal in good time. [WITHDRAWN]

1.5.3 the capability meeting on 13 January 2023 was originally to be chaired by Katie Lewis, against whom the Claimant had previously complained, which caused additional stress to the Claimant;

1.5.4 the replacement manager at the capability meeting on 13 January 2023 was at the same level of management despite the fact that the Claimant had made it clear that he did not have any trust in that level of management;

1.5.5 the Respondent failed to provide sufficient information to the Claimant despite repeated requests such that he had no trust in the process, and was therefore unable to engage with that process;

1.5.6 the Respondent's Occupational Health advisers Medigold were given incorrect information by the Respondent such that when the Claimant challenged this, Medigold refused to prepare a report, and therefore the Respondent did not have sufficient information before it when it took the decision to dismiss the Claimant;

1.5.7 at the capability meeting on 13 January 2023 the Claimant was wrongly accused of having obtained alternative work as a delivery driver and despite the Claimant's protestations and request for an investigation, the Respondent refused, and appeared to have made its decision partly or wholly on that basis; and

1.5.8 the Claimant submitted an appeal on or about 3 February 2022, but the Respondent failed to process his appeal. [WITHDRAWN]

1.6 If it did not use a fair procedure, would the Claimant have been fairly dismissed in any event and/or to what extent and when?

1.7 If the dismissal was unfair, did the Claimant contribute to the dismissal by culpable conduct? This requires the Respondent to prove, on the balance of probabilities, that the Claimant actually committed the misconduct alleged.

2. *Remedy*

2.1 The Claimant does not wish to be reinstated and/or re-engaged.

2.2 What basic award is payable to the Claimant, if any?

2.3 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

2.4 If there is a compensatory award, how much should it be? The Tribunal will decide the following.

2.4.1 What financial losses has the dismissal caused the Claimant?

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

2.4.3 If not, for what period of loss should the Claimant be compensated?

2.4.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

2.4.5 If so, should the Claimant's compensation be reduced? By how much?

2.4.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did the Respondent or the Claimant unreasonably fail to comply with it by [specify alleged breach]? If so is it just and equitable to increase or decrease any award payable to the Claimant and, if so, by what proportion up to 25%?

2.4.7 If the Claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct? If so, would it be just and equitable to reduce his/her compensatory award? By what proportion?

2.4.8 Does the statutory cap of fifty-two weeks' pay? (This is subject to a maximum of between April 2022 to April 2023 of £93,878.)

The Facts

21. The Claimant is very focussed on events which took place in 2021 and 2022, I do not make findings on all the events which the Claimant focusses on. I only make factual findings in relation to those matters which I consider are relevant to the Claimant's dismissal.

22. The Respondent is a property management company, which manages student and residential properties. The Claimant was employed by the Respondent from 15 September 2018 until 2 February 2023, initially as a "Resident Advisor". The Claimant worked a 21 hour week.

23. The Claimant was placed on a performance improvement plan by the Respondent on 12 August 2021. As a result, the Claimant raised a grievance. The finding of the grievance was that there had been a relationship breakdown between the Claimant and his line manager at the time, but no blame was attributed to either party. This differed from the Claimant's view of events, which was that that he had been bullied and victimised by his line manager, and that this had subsequently been covered up by the manager hearing the grievance, who held the title of "Head of Customer Experience". Following this, around the end of October 2022, the Claimant was relocated to new premises "CFC" and Ms Emily Tiné became his line manager. The previous performance process was put to an end in order to give the Claimant a fresh start at the time of moving. The Claimant's position was that he accepted this as he wanted to keep his job. He did not appeal the grievance outcome.

24. The role at the new building, CFC, was a 30 hour role, based on the business need. The Claimant was therefore offered an increase in hours, which was positioned as entirely voluntary, on the basis that alternative arrangements could be made for the other 9 hours. The Respondent could, for example, hire someone to undertake the additional hours, adjust duties (e.g. security could undertake certain roles) as well as other steps being possible and frequently put in place across the Respondent's business (this finding is based on Mr Cronin's evidence). The Claimant opted to keep his existing 21 hours of work.

25. A short time after the move, the Claimant's new manager, Ms Tiné, decided that more formal performance meetings should take place with the Claimant, which were stated to be objective setting meetings. The notes which resulted from these meetings, which took place on 8 December 2021, 27 January 2022 (documents 17 and 18, Claimant's documents). Following these, at document 21 of the Claimant's documents, Ms Tiné decided to put the Claimant on a performance improvement plan ("PIP" on 3 March 2022 because she felt he was not meeting the objectives which had been set in the previous meetings. A further meeting took place on 17 March 2022 (document 28, Claimant's documents) The Claimant conceded in that meeting that he had not met some of the objectives (such as emails in relation to a charity week). He now takes the view that this was because this was really a role that needed 30 hours and so he did not have enough time to complete the relevant objectives. The Claimant did not raise a grievance or appeal in relation to the implementation of the PIP.

Disciplinary Process

26. The Respondent considered that the Claimant was failing to follow reasonable management instructions in relation to the PIP, whereas the Claimant felt that he was behaving reasonably and trying to defend himself in the face of an unjustified performance process.

27. This led to the Respondent starting a disciplinary process on 11 April 2022 which alleged that the Claimant had committed a serious breach of confidence, gross incompetence and behaviour which may bring the company into disrepute. These allegations arose out of the PIP process. Due to bundle page limit constraints, I do not have all of the documentation before me which relates to the disciplinary.

28. A disciplinary investigation took place, including the conducting of witness interviews. The product of the investigation was an investigation report, which was sent to the Claimant on 28 April 2022 along with an invitation to a disciplinary hearing which was to take place on 5 May 2022, but he was not provided with all of the documents considered during the investigation, such as the minutes of witness interviews.

29. The Claimant began at this point to ask for documentation. In an email on 28 April 2022 at 13.25 (document 41 of the Claimant's documents) the Claimant responded to the disciplinary meeting invitation saying he wanted everything which had been sent within the company about him from the start of the investigation, but added that it was possible that there would be "*further inquiries and requests for more information – possibly going back to the start of my employment with Fresh"*. He added that he would also "*need*" to ask

questions of the disciplinary manager, Eddie Kane (Head of Customer Experience) for the Respondent, and the HR consultant.

30. On 29 April 2022, the Claimant began a period of absence stated to be on the basis that he had anxiety.

31. The Claimant began to request numerous documents and items of information from the Respondent. There is significant correspondence between the parties which I do not quote or refer to. It is not necessary or proportionate for the purposes of this judgment to set out all of it.

32. In an email dated 2 May 2022 (page 130, Main Bundle), the Claimant made numerous specific information requests, as well as saying he wanted "*transcripts, email chains and other information, I requested on or before the 29th April 2022*". He referred to the previous grievance process. Later in the email, the Claimant stated (in relation to the disciplinary meeting): *"have you sent them my conditions i.e. that they are involved as Man [sic] and Woman [sic] and nothing is confidential i.e. I have the power to use any and all information and comments unfettered within an [sic] outside Fresh and/or Watkin Jones any time I choose? They need to confirm they agree before I talk to them. I will be conducting this entire process via email as I feel that speaking to you or and Man [sic] or Woman [sic] working for or with you always places, what I feel, to be their own subjective-spin on the process and opinion/conclusion"* (page 130, Main Bundle). He went on to say: "*Until I have all the information I require, and establish trust (if possible, you will need to cancel the 5th of May meeting as a formal meeting as I will refuse to participate until I have all the information I require/request*" (page 130, Main Bundle).

33. Jackie Kelly (Group Human Resources Director for the Respondent) sent a brief response on 3 May 2022 (page 129, Main Bundle) in which she responded to some of the Claimant's queries which related to the current disciplinary process and stated that "*The investigation… did not involve any earlier matters of your employment and was solely focused as set out in the investigation letter based on your performance improvement plan (PIP). Any previous employment matters… will not be taken into consideration and information you wish to present in relation to these matters will not be included*". The Claimant replied on 3 May 2022 with a further lengthy email requesting more information and documents. In this email he stated among other things "*I made it clear after The Barn Grievance investigation that I did not agree that investigation was closed.*" (page 127, Main Bundle).

34. The disciplinary meeting did not take place on 5 May 2022. The Claimant's lengthy emails requesting information and documents continued. He continued to bring the matters which had taken place in relation to his previous grievance into his communications and insist that they were relevant to the process. The Claimant continued to be on sickness absence from work.

Occupational Health and Health Meeting Process

35. On 23 May 2022, Ms Kelly requested the Claimant's permission to arrange an occupational health appointment to assess the Claimant's fitness for work and attend the planned disciplinary meeting (page 141, Main Bundle). The Claimant responded in a lengthy email, asking for information about the involvement of

Occupational Health and saying: "*It is impossible to agree to allowing an OHP in on the issue if I have no idea why they are invited.*" (page 140, Main Bundle). Ms Kelly responded (page 138, Main Bundle) saying that Occupational Health was a standard support mechanism to understand whether colleagues were fit for work and to attend a formal meeting. She went on to say that a disciplinary meeting could not be held by email and could be held in the Claimant's absence.

36. The Claimant's response on 24 May 2022 (page 134, Main Bundle) asked for the basis on which the disciplinary meeting could not be done by email saying that he was not refusing to attend but only stipulating that he would do so by email. In this email the Claimant also asked who the Occupational Health provider would be, how often the Respondent had used their services and whether he could choose an Occupational Health provider.

37. The Respondent wrote to the Claimant on 17 June 2022 (page 154, Main Bundle) saying that the Occupational Health provider was Medigold Health, with whom the Respondent had worked for a number of years and confirming that the Claimant would not be able to choose the provider.

38. Around this time the Respondent also sent the Claimant the recordings of interviews between the disciplinary investigation manager and those she had interviewed as part of her investigation.

39. The parties continued to interact in relation to an Occupational Health appointment, with the Claimant stating on 22 June 2022 "*I may give consent when I am satisfied they are honest, impartial and open. You introduced Medigold, I need time to assess them.*" (page 156, Main Bundle). In relation to the Disciplinary meeting the Claimant continued to insist he would not attend a meeting held face-to-face or via MS Teams but would only participate in the meeting via email (page 157, Main Bundle).

40. The Claimant continued to send the Respondent lengthy emails with numerous requests regarding documents and information. The Claimant took the position that he was also investigating the Respondent and considering a potential "Company Improvement Plan" (page 166, Main Bundle).

41. On 11 July 2022 the Claimant sent an email to Medigold, with a heading which stated he could use all information and communication as he saw fit. He queried whether there was bias and conflict of interest as it seemed that the Respondent was paying for Medigold's services (page 171, Main Bundle). Medigold responded saying that "*regardless of a paid service our main priority when assessing any individual from any organisation is to support the person themselves and provide the best possible advice on how a business is able to do so. Although we do support a business through our service and aim to support them as best we can, the person at the forefront of our concern would be the individual we're assessing and would have a duty of care to ensure we remain impartial and provide the best possible professional advice. All advice provided by ourselves can only be distributed to an employer if consent has been provided by the patient*". In relation to certain enquiries, the Claimant was referred back to the Respondent (pages 169 and 170, Main Bundle).

42. On 27 July 2022 the Claimant was invited (page 178, Main Bundle) to attend a Health Meeting with Katy Lewis (Head of Customer Experience) on 9 August 2022. This was stated to be a meeting to understand the reasons for the Claimant's absence and what support was required to help him to return to work. The Claimant responded on 2 August 2022 implying that he considered there to be a conflict of interest in relation to Ms Lewis and asking for a copy of the Attendance Management policy (page 176). In the same email the Claimant declined to attend a face to face meeting saying that he would be willing to it by email (page 176, Main Bundle). The Respondent sent the Claimant the policy on 3 August 2022, offered to change the manager to Lindsey Cullen (Head of Customer Experience) and offered to hold the meeting via MS Teams (page 176, Main Bundle).

43. The Claimant did not attend the Health Meeting on 9 August 2022, the Respondent therefore sent an invitation for a new meeting to take place on 18 August 2022 with Ms Cullen (page 181, Main Bundle). The Claimant continued to refuse to attend the meeting by MS Teams and wanted to engage in the meeting via email, which the Respondent refused. The Respondent agreed to record the meeting and send a copy of the recording in order to deal with the Claimant's concerns regarding inaccurate recording of what was being said at the meeting and explaining that email exchange so far had not been effective in moving the situation forward (page 201, Main Bundle).

44. On 17 August 2022, the Claimant told the Respondent that he would send the consent for to Medigold but that "*I am sending the form to see the questions"* (page 195, Main Bundle). The Claimant confirmed that he would not attend the Health Meeting (page 206, Main Bundle).

45. On 9 September 2022, the Respondent completed the management referral form for Medigold (page 208, Main Bundle), which was provided to the Claimant (page 190, Main Bundle). The Claimant provided comments and queries in an 11 page document, which the Respondent agreed to include with its referral (rather than amending the management referral) (page 188, Main Bundle).

46. On 9 September 2022 the Claimant provided a consent form to Medigold (page 213, Main Bundle). However he accompanied the consent form with an email saying that the consent was subject to his own terms and conditions which he set out in his email (page 225, Main Bundle).

47. The Claimant was sent an email from Medigold on 7 October 2022 (page 233, Main Bundle) with details of a video appointment which had been booked for him on 18 October 2022. The Claimant responded by email saying that he was not accepting at this point referring to concerns he had raised (page 233, Main Bundle). The Claimant continued to copy Medigold to emails with the Respondent, as well as sending them lengthy emails with queries in relation to which Medigold referred the Claimant back to the Respondent. The appointment on 18 October 2022 was cancelled. Medigold wrote to the Claimant saying that the majority of his questions needed to be addressed by the Claimant's employer and that no appointment would be booked until he was happy for it to be booked (page 238).

48. On 9 November 2022 the Respondent emailed the Claimant saying "*As we have not been able to hold a Health Review Meeting with yourself (sic) to obtain an update on your absence from work and as you have chosen not to consent to occupational health having been given further information from them, we will now be managing your absence from work and outstanding disciplinary based on the information we have to hand.*". The Claimant was invited to a disciplinary hearing (page 254, Main Bundle). The Claimant's response was that he would have to decline for now the invitation to attend any meeting in person.

49. On 10 November 2022, Medigold withdrew its involvement in relation to the Claimant saying "*we cannot continue with the consultation given the constraints given by Mr Cummings, the considerable amendments he has made to the consent and the 3 pages of questions he has asked which we at Medigold are unable to answer on the half of the client. He has also stated that he has no trust in Medigold, has asked what specific questions will be asked before the consultation takes place, states our clinician will have a conflict of interest and will therefore not be impartial - although under GMC regulations we are expected to be. His restrictions and comments in my view mean that it is not reasonable for us to continue with offering a consultation as there is a breakdown in doctor patient relationship*." (page 252, Main Bundle).

Disciplinary Meeting and Correspondence

50. The disciplinary hearing took place on 21 and 22 November 2022 in the Claimant's absence. Mr Kane issued the outcome letter on 2 December 2022 (page 257, Main Bundle). He found that the Claimant had refused to carry out reasonable and lawful management instructions and failed to carry out his normal duties in relation to matters which had been discussed in his PIP. Mr Kane's finding was that "*I believe it was more that you did not want to complete the tasks than having a lack of support and resource as you claim*" (page 258, Main Bundle). Mr Kane issued a final written warning which was to stay on the Claimant's file for a period of 12 months. The outcome letter informed the Claimant that he had five days to appeal the outcome of the disciplinary process.

51. The Claimant sent a series of long narrative emails from which it was not clear to the Respondent that he was submitting an appeal. The Respondent emailed the Claimant on 22 December 2022 (page 263, Main Bundle) saying it was unclear whether or not he was appealing and asking the Claimant to confirm the position. The Claimant again responded with a narrative email (pages 261 and 262, Main Bundle) and the Respondent replied on 11 January 2023 (page 261, Main Bundle) saying that since he had not provided confirmation the appeal timeframe had closed. In oral evidence the Claimant said that Mr Kane had not replied to his question as to whether the Claimant's defence document had been considered in the disciplinary process, and the Claimant was therefore not able to formulate his grounds of appeal. The Tribunal notes an email from Mr Kane to the Claimant dated 9 December 2022 in which he stated,

"*I did read your response in entirety [sic] and did not miss your statement"* (page 267, Main Bundle).

Capability Process

52. On 13 January 2023 the Claimant was invited to attend a Capability Meeting (page 276, Main Bundle) which was stated to be in order to consider: (i) whether there were any reasonable adjustments which could be made to enable the Claimant to return to work; and (ii) whether the Respondent may have to give consideration to terminating the Claimant's employment on the basis that he was unlikely to return to work in the foreseeable future. The meeting was to take place with Mr Cordin chairing the meeting. The Claimant was notified of his right to be accompanied to the meeting. At the Claimant's request the meeting was adjusted so that it took place in the afternoon and by telephone (page 287, Main Bundle). As requested, Mr Cordin also sent the Claimant his questions in advance (page 290, Main Bundle).

53. On 21 January 2023 the Claimant disclosed to the Respondent a report dated 8 November 2022 from the Centre for Health and Disability Assessments (document 57, Claimant's documents). The report set out that the Claimant had no regular GP input other than fit notes, was not having therapy or counselling and was not taking medication. It concluded that the Claimant was likely to be at substantial risk to his mental health if found capable for work.

54. The Claimant attended the Capability Meeting on 23 January 2023 by telephone. It was agreed that each side would record the call and the transcript is at page 291 of the Main Bundle. It lasted around two hours. The Claimant confirmed that he was not taking any medication. He did not indicate that there was any return date which had been anticipated by his GP. The Claimant referred to his historic concerns regarding his treatment going back to January 2021 as being the barrier to him returning to work (page 306, Main Bundle). The Claimant raised that he was conducting his own investigation into the Respondent and those involved, saying "*I consider that if they can investigate me in my job role, then I have an absolute right, a reciprocal right to ask about them and their job role. Anybody that gets voluntarily involved in this situation*" (page 310, Main Bundle). He said that he did not accept the disciplinary warning and felt that it meant that because of the warning any small mistake would be used as an excuse to get him (page 311, Main Bundle).

55. The Claimant was asked about whether any reasonable adjustments could be made, and his response was that he was investigating those at the Respondent and should have his questions answered (pages 311 and 312, Main Bundle). The Claimant went on to say, "*No way I'm returning to that environment"* (page 312, Main Bundle) and "*Of course I can't return to work. I'd be returning back to the Hornets nest*" (page 340, Main Bundle).

56. In relation to the question of why the Claimant had not consented to the Occupational Health referral, the Claimant explained that he felt that there was a conflict of interest and that they were being paid by the Respondent so would not "*bite the hand that feeds them"* (page 321, Main Bundle). He felt he had asked reasonable questions and made reasonable amendments to the consent form (page 321, Main Bundle).

57. Shortly after the meeting it was reported that the Claimant had been seen working as a Deliveroo driver, and CCTV images were obtained of a Deliveroo driver, which were said to depict the Claimant. These images are included in the bundle (pages 381 to 385 of the Main Bundle). Although these were sent to Mr Cordin, and he referred to them in the reconvened capability meeting, based on Mr Cordin's evidence (which was unchallenged), I find that he had already made the decision to dismiss the Claimant at the time of being sent this information and did not take it into account in his decision. I therefore do not deal with it further. The Claimant also sent Mr Cordin a number of emails (pages 375 to 379) following the meeting, primarily discussing whether ACAS should be involved.

58. Mr Cordin decided to dismiss the Claimant. Based on Mr Cordin's evidence which was not challenged by the Claimant, he took the following matters into account when making the decision. The Claimant had been absent for eight months and had stated during the hearing that he could not return to work for the Company. There was no medical evidence showing any likely return date. There had been a relationship breakdown between the Claimant and the Respondent. There was an impact on other employees as a result of the Claimant's absence, those employees were also having to manage the Claimant's duties in addition to their own which created a pressure on them, and Mr Cordin was also mindful of their welfare. Mr Cordin did not think it was likely that the Claimant would consent to another Occupational Health referral, based on his past refusal. He did not think that the Claimant's concerns would be assisted by moving him to a different location, as his mistrust related to the company more widely. He did not consider that it was feasible to re-open previous grievance and disciplinary processes which had already been concluded, and this would undermine the finality of those processes. The Claimant would only be satisfied if the around 10 to 15 individuals involved were disciplined, and would want to know these outcomes, which would have been confidential in any case. There did not appear to be any realistic means of resolving the Claimant's concerns given his refusal to engage with the Respondent.

59. The meeting was reconvened by telephone on 2 February 2023. Mr Cordin informed the Claimant that he was being dismissed due to ill health. Mr Cordin explained that there was no timeframe for the Claimant's return, and it did not appear that his concerns could be resolved by a site move. This was followed up by the dismissal letter dated 3 February 2023 (page 414, Main Bundle). The letter set out the reasons for the dismissal: there was no timeframe within which his anxiety would improve to the point he could return to work; the Claimant's position was that returning to work was not an option; and that the Claimant's anxiety related to the Respondent's central team so moving him to a different site would not resolve it. Later in the letter there was a reference to Mr Cordin's belief that the Claimant had worked as a delivery driver, but this was not set out in the section that related to the reasons for the dismissal decision.

60. The Claimant was dismissed with effect from 2 February 2023, and he was paid in lieu of notice. The dismissal letter informed the Claimant of his right to an appeal.

Appeal

61. The Claimant submitted an appeal on 3 February 2023 (page 416, Main Bundle). This related primarily to the allegation of working for Deliveroo, which the Claimant said he needed to see the evidence for before he could respond/appeal to the decision to dismiss him on the ground of ill-health.

62. Tracy Stanton (Director of Customer Experience for the Respondent) was appointed to hear the appeal, and invited the Claimant to an appeal meeting which was to take place on 13 February 2023 by Teams (page 417, Main Bundle). The Claimant was notified of his right to be accompanied to the meeting.

63. Ms Stanton had left the Respondent's business at the time of the hearing and was therefore not present to give evidence. Ms Lewis was involved from an HR perspective in the process relating to the Claimant, including the appeal. These findings are based on the documents in the hearing bundle.

64. The appeal hearing took place on 13 February 2023. A transcription of the meeting is at pages 418 to 456 of the Main Bundle. During the meeting, the Claimant said "*It's become untenable. So in one way, I've pretty much said that I've made it clear that seems as these issues have been going back so long to January 2021, if not before. To be honest with you*" (page 420, Main Bundle). He went on to say "*I can see that the termination of the contract on ill health. Is something like that. I think is well founded*" (pages 420 and 421, Main Bundle). He went on to say that the reason for the appeal was because it did not address the reason for the anxiety and stress being compounded since January 2021 and he wanted that to be looked at properly (page 421, Main Bundle).

65. Ms Stanton asked the Claimant *"…the question asked around whether you see yourself returning to fresh (sic), I believe you said no. Has that decision in your mind changed in anyway (sic) or is that still your feeling?*" (page 427, Main Bundle). The Claimant responded: "*There is absolutely no way*" (page 428, Main Bundle). The Claimant referred to a desire to have ACAS involved in a type of oversight capacity and to wanting all of his questions answered going back to January 2021, and those involved to be investigated (page 433, Main Bundle). The Claimant was concerned that he had no opportunity to review the evidence for, or respond to, the allegation that he had worked for Deliveroo and that he was concerned that this had formed part of the decision (page 435, Main Bundle).

66. Following the meeting, the Claimant sent Ms Stanton an email which set out questions and comments related primarily to the previous disciplinary process which had been chaired by Mr Kane (pages 457 and 458, Main Bundle).

67. I find, based on Ms Lewis' oral evidence, that she met with Ms Stanton following this, and discussed Ms Stanton's decision. Ms Stanton told Ms Cordin that she had decided to uphold the dismissal because the Claimant had been very clear that he could not return to work. There did not appear to be any reasonable adjustments which could be made to enable him to attend work. Ms Stanton felt that the only option available was to uphold the dismissal decision.

68. On 20 February 2023, Ms Stanton sent the Claimant a letter stating that she upheld Mr Cordin's decision, which had been based on the fact that there was no timeframe for the Claimant to return, that the Claimant had said returning to work was not an option, and because this would not be resolved by a move to another site (page 461, Main Bundle).

The Law

Unfair dismissal

69. The reason for the dismissal is pleaded to be capability which is a potentially fair reason for dismissal under section 98 (2) (b) of the Employment Rights Act 1996 ("ERA 1996"). Section 98 of ERA 1996 sets out the following:

"(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,
…
(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".

70. The Tribunal must then determine whether the dismissal was fair or unfair pursuant to section 98 (4) of ERA 1996 which provides that:

"…. *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".

71. The Tribunal must apply the range of reasonable responses which was summarised by Mr Justice Browne-Wilkinson test in *Iceland Frozen Foods Ltd v Jones 1983 ICR 17, EAT*,:
"*We consider that the authorities establish that in law the correct approach for the… tribunal to adopt in answering the question posed by [S.98(4)] is as follows:*
(1) the starting point should always be the words of [S.98(4)] themselves;
(2) in applying the section [a] tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the… tribunal) consider the dismissal to be fair;
(3) in judging the reasonableness of the employer's conduct [a] tribunal must not substitute its decision as to what was the right course to adopt for that of the employer;
(4) in many (though not all) cases there is a band of reasonable responses to

the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another;

(5) *the function of the… tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.*"

72. The correct approach is to consider together all the circumstances of the case, both substantive and procedural, and reach a conclusion in all the circumstances.

73. The guidance given in *BS v Dundee City Council [2014] IRLR 131 CSIH* (approving cases of *Spencer v Paragon Wallpapers Ltd [1976] IRLR 373* , and *East Lindsey District Council v GE Daubney [1977] IRLR 181),* was as follows:

"*First, … it is essential to consider the question of whether the employer can be expected to wait longer. Secondly, there is a need to consult the employee and take his views into account. … this is a factor that can operate both for and against dismissal. If the employee states that he is anxious to return as soon as he can and hopes that he will be able to do so in the near future, that operates in his favour; if, on the other hand he states that he is no better and does not know when he can return to work, that is a significant factor operating against him. Thirdly, there is a need to take steps to discover the employee's medical condition and his likely prognosis, but this merely requires the obtaining of proper medical advice; it does not require the employer to pursue detailed medical examination; all that the employer requires to do is to ensure that the correct question is asked and answered*." [27]

74. Where the claimant's incapacity was caused or exacerbated by the employer's conduct, this does not mean that the dismissal of the employee by reason of that incapacity is thereby rendered unfair, see *McAdie v Royal Bank of Scotland [2008] ICR 1087 CA*. The Court of Appeal confirmed the EAT position that "*there must be cases where the fact that the employer is in one sense or another responsible for an employee's incapacity is, as a matter of common sense and common fairness, relevant to whether, and if so when, it is reasonable to dismiss him for that incapacity. It may, for example, be necessary in such a case to 'go the extra mile' in finding alternative employment for such an employee, or to put up with a longer period of sickness absence than would otherwise be reasonable*." However, the EAT went on to *"[sound] a note of caution about how often it will be necessary or appropriate for a tribunal to undertake an inquiry into the employer's responsibility for the original illness or accident, at least where that is genuinely in issue: its concern will be with the reasonableness of the employer's conduct on the basis of what he reasonably knew or believed at the time of dismissal, and for that purpose a definitive decision on culpability or causation may be unnecessary*".

75. As set out in *East Lindsey District Council v Daubney 1977 ICR 566, EAT: "Unless there are wholly exceptional circumstances, before an employee is dismissed on the ground of ill health it is necessary that he should be consulted and the matter discussed with him, and that in one way or another steps be*

taken by the employer to discover the true medical position. We do not propose to lay down detailed principles to be applied in such cases, for what will be necessary in one case may not be appropriate in another. But if in every case employers take such steps as are sensible according to the circumstances to consult the employee and to discuss the matter with him, and to inform themselves upon the true medical position, it will be found in practice that all that is necessary has been done."

76. If an employee continually does not cooperate with an employer's attempts to obtain medical information, the employer will be left with no alternative but to make a decision on capability based on the limited information before it (*O'Donoghue v Elmbridge Housing Trust 2004 EWCA Civ 939, CA*).

77. Although it was a case relating to a conduct dismissal, *British Home Stores Limited v Burchell 1980 ICR 303, EAT*, sets out a general approach to reasonableness which is also applicable to a capability dismissal (*DB Schenker Rail (UK) Ltd v Doolan EATS 0053/09*). Three elements must be established in relation to a capability dismissal (as to the first of which the burden of proof is on the employer; as to the second and third, the burden is neutral): (i) that the employer genuinely believed the employee not to be capable; (ii) that the employer had in mind reasonable grounds on which to sustain that belief; and (iii) that the employer, at the stage (or any rate the final stage) at which it formed that belief on those grounds, had carried out as much investigation as was reasonable in the circumstances of the case.

Discussion and conclusions

The Claimant's specific challenges to fairness (paragraph 1.5 of the List of Issues)

78. The Claimant agreed in oral evidence that there were no disciplinary charges in October 2021. He stated that had been incorrectly drafted by Employment Judge Roper. Therefore paragraph 1.5.1 is not factually upheld. Even if this had been taken to relate to the later disciplinary process starting in April 2022 in relation to the Claimant's PIP, it is clear based on the documents before the Tribunal and the Claimant's own evidence that he was not fulfilling the relevant objectives and became defensive in his approach towards the Respondent. There was nothing from which I could conclude that the allegations were concocted. The Claimant did not appeal the disciplinary outcome in circumstances where it was open to him to do so. Its relevance to the later capability process is only that it affected the Claimant's feelings about returning to work. This did not influence the Respondent's decision.

79. The Claimant alleged at 1.5.2.1 of the List of Issues that the Respondent had not recorded meetings truthfully and accurately, and/or providing the Claimant with an accurate transcript. The Claimant conceded that this did not relate to the capability dismissal process: there are transcripts of each meeting which both parties recorded and are agreed. To the extent that this related to previous processes, I was not pointed to evidence of untruthful or inaccurate meetings. Further, I cannot see that it is relevant to the fairness of the capability process.

80. At paragraphs 1.5.2.2 and 1.5.2.3 of the List of Issues the Claimant raises an allegation that the Respondent had not provided the Claimant with the relevant

information so that he was fully appraised of the situation against him; and not provided the Claimant with full information and background witness statements to justify the conclusions of the disciplinary report against him (respectively). It is clear that these points relate to the disciplinary process commenced in April 2022 rather than the capability process. I note that the Claimant was in any case, before the disciplinary hearing took place, provided with transcripts of interviews taken into account in the disciplinary investigation (which I understand that this point relates to). However, in any case, I consider that the process in relation to the disciplinary process is not relevant to the fairness of the process relating to the capability process.

81. At paragraphs 1.5.2.4 of the List of Issues the Claimant alleges that the Respondent should have allowed the Claimant to correspond and engage with the Respondent's processes by email. The Claimant's reasons for wishing to interact by email was that he felt that his interactions would otherwise be spun against him (paragraph 32). However, during the capability process, it was agreed that both parties would record the meetings. This was an attempt by the Respondent to address the Claimant's concerns. The Respondent's submission is that other correspondence was done by email, but that for the capability process a meeting was necessary in order to have two way dialogue. In the absence of any medical input which deemed the Claimant was too unwell to correspond in any other way than email, I consider that this did not affect the fairness of the meetings with Mr Cordin and Mr Stanton. There is no evidence that this format in relation to the meetings, both of which the Claimant did attend, in fact affected their fairness.

82. At paragraphs 1.5.2.5 of the List of Issues the Claimant alleges that the Respondent should have responded to the questions raised by the Claimant and answering them appropriately in good time. Based on the voluminous correspondence, I consider that the Respondent did so to the extent which could be reasonably expected.

83. Allegation 1.5.2.6 regarding processing the Claimant's appeal in good time was withdrawn by the Claimant in the hearing.

84. At paragraphs 1.5.3 of the List of Issues the Claimant alleges that the capability meeting on 13 January 2023 was originally to be chaired by Katy Lewis, against whom the Claimant had previously complained, which caused additional stress to the Claimant. The date of the meeting was 9 August 2022. Otherwise it is correct that Ms Lewis was to chair a health meeting. It appears to me to have been done inadvertently and was immediately rectified when the Claimant indicated he would like an alternate manager. Ms Cullen was substituted as the chair. Given the Respondent's approach in rectifying the Claimant's concern, I find that this did not affect the fairness of the capability meeting or the capability process as a whole.

85. At paragraphs 1.5.4 of the List of Issues the Claimant alleges that the replacement manager at the capability meeting on 13 January 2023 was at the same level of management despite the fact that the Claimant had made it clear that he did not have any trust in that level of management. The date of the meeting is again incorrect. However, it is correct that Ms Cullen was a Head of Customer Experience. This was the same level as Ms Katy Lewis, and indeed

the manager who heard the Claimant's grievance in 2021 with which he took issue. The Claimant took a reasonable approach in replacing Ms Lewis with Ms Cullen when the Claimant raised a concern about Ms Lewis's previous involvement. It was an appropriate level of management to conduct a capability meeting. The Claimant's concern about an entire level of management within the company was not based on any objectively justified concern. It was reasonable for the Respondent to refuse to escalate this matter. It did not affect the fairness of the later dismissal process.

86. At paragraphs 1.5.5 of the List of Issues the Claimant alleges that the Respondent failed to provide sufficient information to the Claimant despite repeated requests such that he had no trust in the process and was therefore unable to engage with that process. This allegation relates to the historic grievance and disciplinary processes rather than the capability process which led to his dismissal. I adopt the findings set out above at paragraph 80 in relation to the disciplinary process. Further, I consider that provision of information related to the 2021 grievance process is not relevant to the fairness of the capability process which this complaint relates to.

87. At paragraphs 1.5.6 of the List of Issues the Claimant alleges that the Respondent's Occupational Health advisers, Medigold, were given incorrect information by the Respondent such that when the Claimant challenged this, Medigold refused to prepare a report, and therefore the Respondent did not have sufficient information before it when it took the decision to dismiss the Claimant. I do not factually uphold this allegation. In my finding the reason for Medigold withdrawing from acting were the unreasonable actions of the Claimant by making considerable amendments to the consent, asking questions of Medigold which should have been directed to the Respondent, stating he had no trust in Medigold, and accusing it of a conflict of interest despite reassurances that its primary duty was to the patient (see paragraph 49 above).

88. At paragraphs 1.5.6 of the List of Issues the Claimant alleges that, at the capability meeting on 13 January 2023 the Claimant was wrongly accused of having obtained alternative work as a delivery driver and despite the Claimant's protestations and request for an investigation, the Respondent refused, and appeared to have made its decision partly or wholly on that basis. Again, the date of the meeting is incorrect. This was raised with the Claimant at the reconvened capability meeting on 2 February 2023. I have found that (whether or not the allegation was true, in relation to which I consider I do not have sufficient evidence), this matter did not affect Mr Cordin's dismissal decision (see above at paragraph 57). As such, in my finding it did not affect the fairness of the dismissal. However, it was likely ill-judged for the Respondent to have raised it with the Claimant in the dismissal meeting and dismissal letter, given it was not relevant to the decision and the Claimant had not had the opportunity to address it.

89. The Claimant withdrew paragraph 1.5.7 in relation to the appeal.

Unfair Dismissal

Consultation

90. The Respondent conducted the type of contact and consultation during the Claimant's sickness absence and leading to his dismissal which a reasonable employer could be expected to undertake. Attempts were made to keep abreast of the Claimant's progress and maintain contact with him during his absence. The Respondent attempted to obtain Occupational Health input to understand what the prognosis was, and what could be done to support the Claimant to return to work. The Claimant's distrust of the chosen Occupational Health provider led him to challenge the Occupational Health provider to the point that they felt they could no longer provide a consultation. The Claimant was asked for his own views as to his likely return to work and the barriers which were preventing him from doing so.

Medical position

91. The Respondent took steps to obtain medical evidence through Occupational Health advice, but the Claimant's interactions with the provider meant that this was not possible. The medical evidence before them therefore consisted of the Claimant's fit notes.

Conclusions

92. I find that Mr Cordin had a genuine belief that the Claimant was absent and not able to work because of anxiety. This is based on his witness evidence.

93. Therefore, in my finding, the reason for the dismissal was capability, which is a potentially fair reason within section 98(2)(b) of ERA.

94. Mr Cordin's belief was based on the Claimant's own statements that he could not return to work due to his anxiety, the length of his absence and the Claimant's fit notes stating that he was not fit for work because of anxiety. This belief was based on reasonable grounds.

95. In relation to the reasonableness of the investigation or in effect, the procedure was also within the range of reasonableness. The Claimant was able to put forward his position and provide evidence he wanted to be considered. Mr Cordin considered whether the barriers to the Claimant's return could be resolved. It was within the reasonable range of responses for an employer to be unwilling to re-open historic grievance and disciplinary processes which have previously run their course. Mr Cordin considered alternative positions, and reasonably concluded that the Claimant's concerns would not be resolved by being put into a role at a different site.

96. The Claimant inferred a number of times that the Respondent's conduct had caused his ill health. There is no medical evidence before me on this point. Indeed I note that at paragraph 29 of the Judgment sent to the parties on 26 July 2023, Employment Judge Smail (who did have the medical evidence before him) found as follows: "*The Respondent's fundamental position is that the nine-month absence from work from 28 April 2022 was not because the*

Claimant was suffering symptoms of anxiety to the extent of them being disabling on normal day-to-day activities but rather, he needed the time freed up to engage in defending himself from the Respondent's managerial challenges to him. I accept that as the factual position." (page 77, Main Bundle). Nevertheless, the Claimant had told Mr Cordin of his perception as to the reasons for his anxiety (namely the work-related matters going back to January 2021), and in my finding Mr Cordin took that into account to the extent a reasonable employer would.

In all the circumstances, could the Respondent be expected to wait any longer and, if so, how much longer

97. The circumstances in this case were that:
    a. the Claimant had been off sick for nearly nine months;
    b. the Claimant was unwilling to engage on reasonable terms with Occupational Health, which meant the Respondent was unable to receive advice from Occupational Health;
    c. the Claimant wished to re-open historic processes and allegations going back to January 2021 in order to resolve his concerns;
    d. the Claimant did not himself envisage he would be well enough to return within any stated timescale;
    e. a move to another site would not seem to resolve the Claimant's concerns.

98. In these circumstances, the Respondent could not be expected to wait any longer as this would not appear to be likely to resolve matters or enable the Claimant to return. The Claimant himself did not see a return to work to be on the horizon. The Respondent had taken reasonable steps to obtain medical advice from Occupational Health regarding timescale for return and adjustments, but none was available. Mr Cordin reasonably considered steps to remove any barriers to return and there are no alternatives to dismissal which appeared likely to be effective available.

99. The Claimant's position regarding his return and the medical information remained the same at appeal stage.

100. In all of these circumstances I consider that it was within the range of reasonable responses to dismiss the Claimant.

101. The complaint of unfair dismissal is not well founded and is dismissed.

Approved by Employment Judge Volkmer
Dated: 16 May 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON
31 May 2025

Jade Lobb
FOR THE TRIBUNAL OFFICE