EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Nos: 8001208/2024 and 8001768/2024

Held in Aberdeen on 14, 15, 16 July 2025

Employment Judge I McFatridge

Mr S McIntosh	**Claimant** **In person**
Aberdeen City Council	**Respondent** **Represented by:** **Mr Milne,** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that

1. The claimant was not unfairly constructively dismissed by the respondent.

2. The claimant was not unlawfully discriminated against by the respondent on grounds of disability.

3. The claimant did not suffer detriment as a result of making protected disclosures.

4. All claims are dismissed.

5. The respondent's application for a costs order is refused.

REASONS

1. The claimant submitted a claim to the Tribunal on 9 August 2024 in which he claimed that he had been unlawfully discriminated against by the respondent on grounds of disability. At that time the claimant remained in the respondent's employment. The claim was registered under reference 8001208/2024. The respondent submitted a response in which they denied the claim. The claim was subject to a degree of case management including a preliminary hearing which took place on 22 October 2024. In the course of this the claimant confirmed that he had resigned and would be claiming unfair constructive dismissal. It was noted that the claimant did not have sufficient qualifying service to make a claim of ordinary unfair dismissal but that he may wish to consider whether his dismissal was automatically unfair in terms of section 103A of the Employment Rights Act. On 28 November 2024 the claimant lodged a further claim (registered under Reference 8001768/2024 in which he claimed that he had been unfairly constructively dismissed as well as suffering disability discrimination and he confirmed that he was making a whistleblowing claim. Once again the respondent lodged a response in which they denied the claims. Both claims were conjoined and subject to further case management. The claimant lodged further and better particulars of his claim and the final version of his further and better particulars were lodged on or about 3 February. These confirmed that he was making claims relating to public interest disclosure, discrimination and constructive dismissal. The respondent provided a detailed response to these further particulars on 17 February 2025. A final case management preliminary hearing took place on 24 February 2025 at which the respondent confirmed that they now accepted that the claim was disabled in terms of the equality act in respect of his autism. The Employment Judge felt that the claimant should provide further particulars of his claim in a more succinct form and the claimant duly did this on or about 9 March 2025. These were received by the respondent on 28 March 2025 and they provided a response on 7 April 2025. I took the issues in the claim to be those set out in the claimant's final particulars and the respondent's response. The final hearing took place on 14-16 July 2025. It was originally due to last five days however the evidence concluded on the afternoon of the 15 July and submissions were heard on 16 July. At the hearing the claimant gave evidence on his own behalf. Evidence was then led on behalf of the respondent from Barry Skinner an Emergency Planning and Resilience Officer with the respondent who had carried out the second disciplinary investigation against the claimant, Angela Kazmierczak a Financial Inclusion Team Leader with the respondent who had carried out the first disciplinary investigation, Vicky Cuthbert an Assurance Manager with the respondent who carried out the disciplinary hearing which followed the first investigation, Mark Wilson Community Safety Manager with the respondent who had been involved in managing the claimant, Daniel Wood a Senior

Compliance Officer with the respondent who had managed the claimant and against whom various allegations of discrimination were made and Jason Bruce who had been the claimant's Line Manager. The parties lodged a substantial joint bundle of productions which I have referred to by page number below. At the suggestion of one of the Judges who conducted the case management hearing the claimant had also produced an aide memoire to assist him in giving his evidence which was lodged. The claimant referred to this aide memoire whilst giving his evidence and it helpfully allowed the claimant to focus on the timeline and refer to the relevant documents whilst giving his evidence in chief.

2. The claimant had advised the Tribunal of his disabilities and suggested adjustments primarily in terms of allowing him breaks when required and if required, additional time to read and comprehend documents. In the event although I offered the claimant various breaks no additional breaks were taken. Additionally, I offered the claimant more time to consider the respondent's written submissions immediately after they had been lodged but the claimant declined this. I should say that the claimant gave a very good account of himself and in my view was fully able to participate in the hearing. On the basis of the evidence and the productions I found the following factual matters relevant to the claim to be proved or agreed.

Findings in fact

3. The claimant commenced employment with the respondent as a city warden in or about June 2023. Prior to that the claimant had worked as an Early Years Practitioner for around 11 years and he had sought a change of career. The claimant is neurodiverse and it was a matter of agreement between the parties that he qualifies as a disabled person under the Equality Act by reason of his autism. The claimant has never had any formal diagnosis of autism. The claimant also advises that he suffers from learning difficulties and communication and processing delay and as well as dyslexia and dyscalculia. The respondent did not accept that the claimant was disabled as a result of these other conditions.

4. In the period prior to commencing employment with the respondent the claimant had attended a Primary Care Psychological Therapy Service run by a Clinical Neuropsychologist over 12 appointments. A report was lodged from Dr Natalie Keen, Principal Clinical Psychologist dated 13 June 2023. This does not refer to the claimant's autism but refers to the claimant suffering from PTSD following an assault outside his house. It notes that *"at the time of our first meeting Mr McIntosh was struggling at work. He subsequently decided to resign from his role as an Early Years Practitioner. He has since secured work as a city warden and his mood is improved."* Whilst the

claimant's report notes that the claimant had initially reported some suicidal ideation the report noted that this was now no longer the case.

5. The claimant was interviewed for his post with the respondent by Mr Daniel Wood. He freely discussed his neurodiversity with Mr Wood. Mr Wood had considerable experience of dealing with people with neurodiversity. He had previously worked as a foster carer and had attended a considerable amount of training on the subject. Mr Wood's position was that he was impressed by the claimant. He felt that the claimant had clearly encountered some difficulties in his life due to his neurodiversity but that he had worked successfully to overcome these.

6. The claimant started work on or about 8 June 2023. **[**The claimant's statement of contractual terms and conditions was lodged (pages 12-27). The job of a city warden involves patrolling the streets in uniform and dealing with matters such as parking, environmental issues and general anti-social behaviour. City wardens are authorised by the local authority to issue fixed penalty notices for parking offices (PCNs) but do not have any powers beyond this. They do not have any police powers. The emphasis in training is to avoid confrontation and seek to de-escalate whenever there is a difficult interaction with a member of the public. City wardens are generally trained on the job. On commencing employment the claimant was given access to various online training tools which are contained on the ACC training system. The claimant was expected to carry out these online tasks by himself. More importantly the claimant was initially paired with another experienced city warden who was expected to show them how to carry out the job.

7. The claimant was issued with a uniform although it was his position certain items of this were missing. He was issued with an airwave radio but it was his position that in many parts of Aberdeen this did not work. Fixed penalty notices were issued using a handheld device known as an S10 handset. This is a telephone with various environmental and parking apps on it. When on patrol there was one device which was used by both the claimant and the person he was on patrol with. This would be used for issuing fixed penalty parking notices. There were various processes around the issue of parking notices which the claimant was expected to learn from his on the job training.

8. The claimant worked a shift system. There were early shifts which were generally 7am to 4.30pm and late shifts which were 12pm to 10.30pm. The claimant worked a rota where he would work three days and then four days. The claimant would alternate between both types of shift. The respondent had six senior city wardens who managed each shift. Generally speaking there was expected to be one senior who was in charge of each shift, there were a total of six seniors.

9. Each city warden was allocated a line manager who was one of the seniors. The claimant's line manager allocated was Jason Bruce. Mr Bruce like all of the other seniors himself worked shifts. Because the system meant that often many days would go by without a warden being on duty at the same time as his own personal line manager the expectation was that all of the seniors would assist with managing all of the wardens. In practice, this meant that if an issue arose with a warden which one of the seniors on duty felt required management intervention then the senior could either try to deal with it himself or pass it on to that warden's own individual line manager to deal with if he felt that the matter could wait. Sometimes a manager would feel it appropriate to do both.

10. Jason Bruce, the claimant's line manager had considerable experience of neurodiversity. He had a close relative who was diagnosed as autistic and other members of his family who were neurodiverse. He also had considerable knowledge on the subject. He and the claimant discussed the claimant's neurodiversity and he shared his experience of dealing with his relative with the claimant from the outset. The claimant and Mr Bruce formed a rapport and the claimant's position at the hearing was that he had received considerable support from Mr Bruce in relation to this autism.

11. Generally speaking the expectation of the respondent is that after recruitment a city warden will spend around 12 weeks going on patrol with another experienced warden before they are felt to be trained sufficiently well in order to go on patrol on their own. Another warden who started around the same time as the claimant was considered fit to go on patrol on her own during the day within 12 week weeks of starting. She was also considered sufficiently experienced and competent to mentor the claimant when she went out on double patrols with him. The respondent's management would rely on feedback from the second warden as to how a new recruit was getting on and how close they were to coming sufficiently competent to go out on their own.

12. Very quickly the respondent's managers became concerned that the claimant was having issues. There was continual feedback about the claimant "overstepping the mark". As noted above the wardens do not have specific powers. The emphasis is very much on de-escalating situations which might arise. They are specifically not meant to engage in confrontational behaviour. The respondent received continual feedback about the claimant that he ignored this stricture and in many cases sought to confront members of the public.

13. Mr Wood experienced this behaviour himself shortly after the claimant commenced work when he was on patrol with the claimant. He and the claimant had a good conversation and Mr Wood felt they were communicating well. They came across some youths who were drinking and appeared to be

underage. Mr Wood was concerned when he saw the claimant approach them quickly and it appeared to him that the claimant was about to ask them to hand over their drinks so that he could pour them away. Mr Wood intervened and told the youths and the claimant that they only had the powers given to them and that the claimant had no power to demand they hand over their alcoholic drinks. Subsequently on the trip Mr Wood discussed this with the claimant. He explained that the only power that they had was to issue PCNs and it was important not to step outside the role. Mr Wood was concerned that the claimant appeared to express some surprise at this. Mr Wood mentioned the incident to the claimant's line manager Mr Bruce who discussed it with him.

14. T There was an incident on or about 21 July where the claimant and another warden encountered a situation where some youths appeared to be lighting fires. They stamped the fires out. The claimant then confronted the youths and told them to empty their pockets so he could find out which one had a lighter or matches. Mr Wood spoke to the claimant about this issue at the time pointing out that wardens have no power to detain. They have no power to step and search and his behaviour was inappropriate.

15. There were various other incidents which were raised by wardens going on patrol with the claimant. Mr Bruce would discuss these with the claimant and sometimes make a record in something described as "warden's records" which was available to all of the seniors who might be managing the clamant when Mr Bruce was not available.

16. On or about 21 July the claimant had a lengthy meeting with Mr Bruce which lasted around four hours which dealt with various matters including certain of the incidents already referred to. At the end of this meeting he felt matters had been dealt with. As he was leaving Mr Wood called him into a meeting and reinforced the points made by Mr Bruce. The claimant did not like this as he felt the matter had already been raised with Mr Bruce. Mr Wood did this because the warden who had been on duty with the claimant at the time of one of these incidents had complained about the claimant putting him in danger and Mr Wood wished to emphasise to the claimant that he required to change his attitude.

17. Mr Bruce had other meetings with the claimant and would also sometimes follow these up in writing. An example of this is at page 448 which is an email from Mr Bruce to the claimant dated 14 September where he goes over what was discussed at what was described as a "wee sit down chat" which had taken place. He referred to an incident on 14 August when it was noted that the claimant and another warden had been patrolling near the vicinity of the Mastrick shopping mall and had encountered males on e-bikes. He stated

> "It was explained that the best method of this situation was not to react to the youths and be at their level even though they were swearing etc. Driving bikes close to you, the best approach is to step away from any potential dangers and not to attempt to remove them from their e-bikes. Also, due to being a new start and learning the job that it would be best to allow Phil to take charge and decide what best course of action to take."

The email also referred to the incident with Mr Wood where it was noted that the claimant appeared to have wanted to take the alcohol and pour it down the drain. It was noted that Mr Wood had explained that this should not be done nor should the matter be referred to Police Scotland. Mr Bruce went on to state

> "It's great to see the enthusiasm in you and we want to keep seeing this but when working on the streets and dealing with the public we must at times take a step back and assess the situation before we then commit ourselves being aware that our actions are always being observed."

18. An excerpt from the claimant's warden records was also lodged (page 257-259) referring to other incidents such as the claimant wishing to wear his own stab vest with his uniform. He was told to refrain from doing this.

19. After a time matters reached the stage where many other wardens were unwilling to go out on patrol with the claimant because they felt that the claimant continually "overstepped the mark" and that his attitude might place them in danger. Mr Wood and Mr Bruce spoke to the claimant about this as did other seniors.

20. The claimant's behaviour on patrol was such that although it had been anticipated that he would be allowed to go on patrol on his own after 12 weeks he never actually reached the stage where management felt that he could be trusted patrolling on his own. During the whole course of his employment he continued to be required to go out with another warden.

21. The claimant was on patrol with another warden on 29 December in the evening when an incident took place which later formed the subject of a disciplinary process.

22. The claimant and the other warden encountered three vehicles which were parked in a loading bay and began the process of issuing a PCN. The PCNs were issued on the other warden's device but before one could be affixed to the vehicle someone who stated they were the owner of the vehicle came out

and an altercation occurred between that individual and the claimant. During the course of that altercation the individual swore at the claimant. The claimant was aggressive and swore at the member of the public. During the course of the interaction the claimant also drew from his belt a device which he described as a farbgel. This is a spray which is used to spray a type of dye. The idea is that individuals involved in wrongdoing can be sprayed with this at the time and when they are later encountered by the police they will be easier to identify. The farbgel was not a device issued by the respondent and the claimant had taken it on himself to obtain this device and carry it with him on patrol.

23. The claimant did not deploy the farb gel spray and eventually he and the other warden walked away.

24. After the incident the claimant discussed the matter with Mr Bruce.

25. The warden who accompanied the claimant reported the matter to management. After the New Year break on or about 8 January Mr Wood spoke to the claimant about this incident and also raised the matter of the farb gel device. The claimant explained his position that this was completely legal and it was appropriate for him to have this. Mr Wood told him that it was not official equipment and that he should not carry it. He also discussed the claimant's attitude and indicated that other wardens were becoming unwilling to work with the claimant because of the way he responded to difficult or aggressive individuals whilst on duty.

26. The claimant indicated during the course of this meeting that he considered he had behaved properly. This attitude concerned Mr Wood. After the discussion the claimant was upset and left work early. He did not attend work on 9 and 10 January.

27. At some point subsequent to this the respondent decided that the incident on 29 December should be further investigated under the respondent's disciplinary policy. Mr Wilson who was the manager with overall responsibility for the Warden Service decided in conjunction with the respondent's HR department that whilst in terms of the policy it may have been appropriate to suspend the claimant while the investigation was ongoing that they would not do so in this instance. The main reason for doing this was that they felt that it would appear somewhat heavy-handed so far as the claimant was concerned. He felt that it was important that he be removed from interactions with the general public whilst the investigation was going on but were able to find a role for him as a direct alternative to suspension.

28. At this point in time the claimant had attended an appointment with the Consultant Neurologist at Woodend Hospital (Dr Ramsay) on 19 December 2023. This was as part of a Neuro-rehabilitation outpatient's clinic and the main purpose of the appointment was to deal with long-standing headaches that the claimant had been suffering from. Following this, Mr Ramsay wrote to the claimant's GP. The letter was copied to the claimant and was lodged (pages 496-498). After dealing with the headaches the note goes on to state

> "PS Mr McIntosh's referral to learning disabilities was declined on the basis that he does not have a learning disability diagnosed from childhood. It is likely Mr McIntosh's has learning difficulties however these are distinct from learning disabilities who require severe global impairments in intellectual activity from early childhood. If it is felt that Mr McIntosh has autism this would require referral to psychiatry to ascertain if this is the case. I will therefore copy this letter to Psychiatry Services at Gordonhill Hospital instead."

29. Matters progressed and on 25 January a nurse practitioner with the Community Mental Health Team wrote to the claimant sharing the referral and noting that there was a request for an autism assessment via psychiatry. The claimant was advised how to access the service. He could either do this on paper or online (page 491) and eventually on 24 May 2024 the claimant was invited by the adult autism assessment team to a pre-assessment video appointment which took place on 5 June 2024 (the letter of invitation is at page 453). The claimant was still awaiting a full assessment as at the date of the hearing.

30. On or about 20 February the claimant attended work and was told to remain in the office rather than go out. Mr Bruce and Mark Wilson thereafter spoke to the claimant and advised him that he was to be subject to a disciplinary investigation. They advised that he would not be suspended but would require to work in an alternate role as a direct alternative to suspension.

31. The claimant was handed a letter confirming the alternative to suspension. This was lodged (page 169). It noted that the claimant was to attend at Marischal College reception at 9am on Thursday 22 February in order to start his new role. The claimant did not attend at Marischal College but that evening he sent an email to Mark Wilson which was lodged (page 172). The email stated

> "I hope this message finds you well. I am writing to provide some context regarding my recent behaviour and to request your assistance in facilitating my temporary relocation to Marischal College. I must admit that I have struggled to handle bad news and it tends to trigger

> my autism leaving me in a distressed state as you observed briefly during our conversation on Tuesday.
>
> The events of that day both professionally and personally were particularly challenging for me as my mother was diagnosed with a life-changing condition only just before our meeting. I want to assure you that while I may not agree with the current situation I am fully committed to co-operating with the ongoing investigation.
>
> Given the recent shock of the investigation I believe it would be best for me to begin working at the temporary location at Marischal College. Unfortunately I don't have the contact information for the manager of the business department at that location. Could you please inform her of my expected attendance on Monday. Your assistance with the matter will be greatly appreciated. I look forward to your response. As I have not received any communication from your end. Thank you for your understanding and support during this challenging time."

32. Mr Wilson responded the following day stating

> "I'm sorry to read about your mother and the challenges you have been facing in your own health.
>
> I have been in touch with Business Services today and let them know to expect you on Monday. If you can please attend Marischal College on Monday for 9am and ask for Sheila Barclay.
>
> I hope you have been able to make use of the Employee Assist Programme. Jason may have already been in touch to highlight our mental health and wellbeing pages available here. It may be worth considering making use of our mental health first aiders, all contact details can be found via the link or Jason can assist with access when you are out with work. If he hasn't already Jason will also be in touch with you separately to progress with the OH referral you have requested."

33. The claimant responded (page 171). He acknowledged the letter and said that he wanted to thank Mr Wilson for reaching out. He then went on to say that he had had an appointment with his GP who had advised him to continue his sick leave due to his mental health. The claimant was then absent from work on sick leave until mid-April. He lodged a number of fit notes (pages 517-521).

34. During the claimant's sickness absence, Mr Bruce completed a management referral form referring the claimant to Occupational Health. This was lodged

(pages 527-529). In the box on page 528 the nature of the issue which initiated referral is described by Mr Bruce as

> "Sam (as he likes to be known as) started within the City Warden Service just over one year now and since with us there has been concerns with his behaviour with the public that have resulted in sit downs from various seniors as to have an understanding and then rectify by moving forwards. Many times after these sit-down discussions, Sam has then had (as he would call them) burnouts whereby a process of what information has been spoken about resulting in him either being off sick from one day to maybe a block of shifts. During which Sam has then requested due to the work causing these burnouts that his sickness can be changed to special leave or at least annual leave (so as to avoid any stage 1 sickness absences). As to aid Sam this has been done on a few occasions but has been occurring too often to accommodate now.
>
> Sam had informed management that he is 'on the spectrum' but I am led to believe that he's not yet been fully diagnosed with autism.
>
> Without going into too much detail Sam was as from tomorrow being temporarily moved to another department within Aberdeen City Council until an investigation officer has been appointed and concluded their findings. This position is office based whereby no interaction with the public."

35. The referral then goes on to note the claimant's request for the referral and to provide a job risk assessment for city wardens and noted the requirement for lone working during daylight hours. Mr Bruce had discussed the content of the referral with a Mr McIntosh. Mr McIntosh duly attended an appointment with an Occupational Health physician on 4 March 2024. Following this the physician Dr Nwankwo produced a report which was lodged at page 531. In the report Dr Nwankwo refers to the claimant's perception that he is being bullied by a certain individual in a senior position and that this has aggravated his mental health situation. He noted that the claimant also complained about receiving a scant corporate induction and adequate engagement training. The medical problem was not likely to have been made worse by work activity. He noted that whether or not the Equality Act would apply would depend on the claimant's ultimate diagnosis. He asked that the claimant be booked in for another appointment once he had been evaluated by his specialist.

36. In the meantime the respondent had asked Angela Kazmierczak Financial Inclusion Team Leader with the respondent to carry out an investigation in terms of the respondent's disciplinary policy. The respondent's disciplinary

policy termed the Managing Discipline Policy was lodged (pages 1-11). Ms Kazmierczak managed a financial inclusion team and had previous experience as a debt counsellor. She had over the years had a lot of experience in dealing with people who were neurodiverse. She was aware of the difficulties that people with autism often have when dealing with high pressure situations. She had had no previous contact with the claimant prior to being asked to conduct the disciplinary investigation.

37. Ms Kazmierczak held an investigation meeting with the claimant and also took statements from Roisin Murray who was the warden who had been on duty with the claimant on 29 December. Ms Kazmierczak met with Mr McIntosh to take his statement on 19 and 25 March 2024. She met with Jason Bruce on 20 March 2024. She met with Roisin Murray the claimant's colleague to take a statement on 26 March 2024 and met with Daniel Wood on 1 April 2024.

38. At the investigation meeting with the claimant the claimant started by reading out a lengthy statement. A copy of this was lodged and incorporated in Ms Kazmierczak's report. Ms Kazmierczak produced her final report following the investigation on 17 April. A copy of this was lodged (pages 174-289). In producing the report Ms Kazmierczak followed the terms of the respondent's disciplinary policy. The report is a thorough piece of work which clearly sets out the position of the claimant in relation to the four allegations he faced. Whilst producing the report Ms Kazmierczak and the HR adviser who was assisting her viewed the bodycam footage several times as well as listening to it. Both the claimant and his colleague were wearing bodycams. These bodycams can be switched to record mode by a warden when they consider it appropriate. When switched on the bodycam device records the 60 seconds immediately prior to the bodycam being switched on as well as what happens after the bodycam is switched on. Ms Kazmierczak and her HR colleague both came to the clear view that the member of the public was swearing at the claimant and that the claimant was himself swearing at the member of the public.

39. The claimant faced four allegations. They all related to the incident on 29 December. These were that the claimant had

    1. Conducted himself in an unprofessional manner while in a public space and identifiable as a council employee.
    2. Swore repeatedly at a member of the public whilst in a public space and identifiable as a council employee.
    3. Failed to follow management instruction by continuing to carry defence spray and producing it during the altercation.
    4. Your actions risk the safety of a colleague.

40. Having completed her investigation Ms Kazmierczak decided that allegations 1, 2, and 4 should proceed to a disciplinary hearing. She considered that there was insufficient evidence to proceed to a disciplinary hearing in respect of allegation 3. The claimant had produced the spray however there was no evidence that the claimant had previously been specifically told not to carry this.

41. In the meantime on 18 March 2024 the claimant wrote a letter to his line manager Mr Bruce entitled Formal Letter of Complaint. This made various allegations against Daniel Wood. It was stated to be an "official formal complaint". He referred to various one to one meetings which had taken place in 2023 culminating with the meeting on 8 January 2024. He made more allegations, these were

    1. Gaslighting behaviour towards a new council employee.
    2. Psychological and emotional abuse against a new council employee.
    3. Submitting false reports to a senior manager leading to an investigation of a new council employee.
    4. Discriminating comments about an employee's disability.

    Mr Bruce the claimant's line manager arranged a meeting with him to discuss this. He discussed this with a view to resolving it however the claimant wished it to continueas a formal grievance and therefore he completed a formal complaint under the respondent's dignity and respect at work process. This was dated 6 April 2024 and was lodged (page 440-441).

42. The complaint was passed on to HR and it was determined that Ms Kazmierczak would deal with this under the respondent's grievance procedure once the disciplinary process currently ongoing against the claimant had been concluded.

43. Following the completion of the investigation report the respondent formed the view that it was safe for the claimant to return to work in his role as a city warden pending the disciplinary outcome. They advised the claimant of this and that they were removing the alternative to suspension. The claimant started work again as a city warden on 22 April.

44. The respondent appointed Vicky Cuthbert an Assurance Manager with them to chair the disciplinary hearing. She had considerable experience of disciplinaries and had had no prior involvement with the claimant. The claimant was initially invited to a hearing which took place on 15 July. The claimant was accompanied to this meeting by his trade union officer Mr Phillips. Ms Kazmierczak also attended the hearing as did Kath Grant from the respondent's HR department. During this hearing the claimant raised the issue of the bodycam footage. He considered that Ms Kazmierczak's report

incorrectly stated that he had viewed the bodycam footage when he had not. It would appear the claimant was referring to the record of the interview which took place on 25 March where at the bottom of page 286 is recorded his response to the allegation he was swearing. It is clear from the interview note that what is being said is that the claimant's position was that he could not recall whether he had sworn or not. It was then put to him by Ms Kazmierczak that she had viewed the footage and that he had been using the words "fuck off" when responding to a member of the public seven different times. The claimant then confirms that he had not seen the footage. The claimant had misinterpreted what the interview notes said however his position was that Ms Kazmierczak was lying. The claimant and his union representative both said that they would like to see the footage and the disciplinary meeting was adjourned so as to allow them to do this.

45. Subsequently the claimant viewed the footage. He maintained his position that what he was heard saying in the video was "back off". However on the basis that all of the other witnesses before the tribunal who had heard and watched the CCTV stated they could clearly hear him using the words "fuck off" I decided on the balance of probabilities it was more likely than not that they were correct and the words "fuck off" had been used by the claimant.

46. The meeting was reconvened on 23 July after the claimant and his union rep had had the opportunity to watch and listen to the video which they did several times. The claimant maintained his position that he had not done anything wrong. Following the meeting Ms Cuthbert wrote to the claimant confirming her decision which was to uphold the allegations and to issue a first stage disciplinary sanction in the form of a formal verbal warning. She sets out her reasoning for this decision in the letter which was lodged at page 289-291. She considered the matter a serious one which could potentially have amounted to gross misconduct however she accepted mitigation in relation to the claimant's disability. She believed that the claimant had been frightened at the aggression shown by the member of the public and that whilst this did not excuse his behaviour it reduced his culpability so that a first stage sanction was appropriate.

47. In the meantime shortly before this incident an unfortunate further incident had occurred on 18 July. On this date the claimant was at work and was approached by Calum Kerr and Gail Johnson who were other senior managers to advise that it had come to light that the claimant appeared to have breached the confidentiality of his investigation by communicating with his colleagues including the sharing of a number of snapchat messages. They advised that there was to be a further disciplinary investigation in relation to this. The claimant did not respond well to this and collapsed. An

ambulance was called. The ambulance report was lodged (pages 451-452). The report notes

> "Patient has ongoing issues with his medical conditions and issues at work. Today he was informed of news which has increasingly stressed him out. Began hyperventilating, became dizzy, tingling and collapsed. Anxiety attack with vasovagal. No seizure activity noted. No injuries assisted to ground by colleague, patient feels a bit tingly, observations ok, patient condition improved, ECG NSR has had similar episodes in the past but not as severe. Advised to take a few days off …. stress and try to relax. Advised to call own GP or NHS 24 for any worsening symptoms, concerns or further advice. Advised to call 999 for any severe collapse, chest pain or other emergency conditions."

The claimant was not removed in the ambulance. The claimant considered that his collapse was what he described as a "autistic meltdown".

48. In or about July 2024 there was an exchange between the claimant and Gail Johnston, another one of the senior managers regarding the claimant's desire that he be referred to Occupational Health. He first wrote to Ms Johnston requesting this on 21 July. His email was lodged (page 425). He had previously spoken to Ms Johnston who had said that the respondent was in the process of changing their Occupational Health provider and that this would be actioned once this happened. Ms Johnston wrote to the claiming confirming this by email dated 23 July (page 426). It said

> "Thanks for the comprehensive update.
>
> I am currently working on your referral to OH.
>
> I have been advised there may be a slight delay due to a change in provider (I think this was mentioned last Thursday) but nonetheless I will press on and hopefully secure an appointment soon.

I hope you are feeling better, take care and remember as both Calum and I said we are here to support you."

49. At the disciplinary hearing on 23 July the claimant had handed over three letters to Miss Cuthbert. These letters contained what he described as grievances. There was a further grievance against Mr Wood and also a grievance complaint against Ms Kazmierczak. The letter containing the additional grievance about Mr Wood was lodged (page 443).

50. Following receipt of the second grievance against Ms Kazmierczak the respondent formed the view that it would no longer be appropriate for Ms Kazmierczak to deal with the claimant's grievance. Another member of staff

was appointed to deal with the grievance. Before this could happen however the claimant met with his union. He met with Mr Phillips who had been advising him together with a more senior union official. They advised the claimant that it would not be in his interests to appeal the disciplinary outcome. He also agreed to drop the grievances that he had just submitted. On 1 August the claimant's union representative wrote to Kath Grant of the respondent's HR department, copied to Vicky Cuthbert stating

> "I write regarding Samuel we do not wish to appeal the recent case against Sam and we also to withdraw the three grievances raised by Sam raised. Kath I know you said they were logged."

This email was lodged (pages 446-447). There then followed an exchange of emails between Ms Grant and Mr Phillips in which Mr Phillips confirmed that whilst the three already new grievances were being withdrawn the original grievance against Mr Wood was to remain.

51. Although an individual was appointed to carry out this grievance process this individual did not meet with the claimant prior to the last day the claimant attended work which was at the end of August.

52. At some point in August the claimant turned up for work at around 4 am to when he wa due to start early shift. The offices were in darkness apart from the office in which Mr Wood was working. Where Mr Wood was working early shift it was his usuial practice to arrive thirty minutes early so as to carry out preparatory work before the start of his shift. It was his normal practice to not turn on all of the lights in the building as this would be wasteful. He would only switch on the lights of the office he was working in. There was absolutely nothing sinister in Mr Wood's action and he was in no way attempting to intimidate the claimant.

53. The respondent appointed Barry Skinner an Emergency Planning and Resilience Officer with the respondent to investigate the second disciplinary allegation against the claimant. Mr Skinner is a former police officer who had experience of dealing with people who are neurodiverse. He had had no previous contact with the claimant. The claimant was advised of this allegation which was that

> "It is alleged that on or about 9 July 2024 you shared confidential information with colleagues on a WhatsApp group. This information formed part of an ongoing formal process which some members of the group had been involved in and others not thus breaching your own confidentiality and that of others. If found to be the case this would contravene the council's policies and procedures namely managing

discipline investigations procedure, employee code of conduct and also your contract of employment with Aberdeen City Council."

54. For some months the claimant had planned to take an extended trip to Canada in the autumn of 2024 in order to meet with relatives. This trip had been planned for some time. It was clear that the claimant would not have sufficient annual leave available to him to be absent for the whole time he would be away and it had been agreed with his line manager that he would be given additional special unpaid leave for this purpose.

55. Mr Skinner contacted the claimant during August and asked him to attend for interview. The claimant refused. By this time the claimant had in fact raised his first ET claim against the respondent. The claimant's email refusing to attend was lodged (page 312). As a result Mr Skinner decided that although it was not ideal he would proceed by sending a list of questions to the claimant and asking him to respond. Mr Skinner sent the list of questions to the claimant. In his covering email he stated that the claimant's name was typed in the signature box and that if the claimant completed the form and returned it then this signature would be treated as his electronic signature. Mr Skinner did this on the basis that the claimant was away and not in a position to sign a hard copy of the statement. The claimant took umbrage at this in that he felt that Mr Skinner had falsified his signature. In the event, the claimant did not respond to the written questions either. Mr Skinner completed his investigations whilst the claimant was still abroad in Canada and produced a comprehensive and thorough investigation report which was lodged (page 209-402). His conclusion was that the allegation should proceed to a disciplinary hearing.

56. In the meantime the claimant had successfully applied to enrol on a full time college course leading to an HNC in healthcare practice at Robert Gordon's College. The course was due to start at the end of August 2024. The course was full time and also involved a full time placement lasting 12 weeks. The claimant had applied in June 2024. He was aware at the time that the requirements of the course would conflict with his full time contract with the respondent. His position was that if this happened he would prioritise the course.

57. On or about 12 August the claimant met with Mr Bruce and they jointly completed an internal Aberdeen City Council document called a Disability Passport. Mr Bruce completed this with the claimant. The claimant was asked various questions regarding the supports he required. The completed passport was lodged. The various adjustments mentioned in the passport were in fact already in place for the claimant. (passport is page 471-487).

58. On or about 13 August 2024 the claimant met with Mr Bruce and discussed his request to reduce to part time hours. The respondent has a policy to cover situations such as this called the Smarter Working Policy. This was lodged (pages 119-168). The procedure is for the employee who wishes to apply for an adjustment such as a reduction to part time hours to first approach their line manager. Their line manager should thereafter meet with them within 28 days. There is a specific provision that if the line manager is absent then they may wish to contact another manager and if not then the 28 days runs from their line manager's return to business. The decision on whether or not to grant the adjustment is made by the line manager after having met with the individual employee and discussed the matters with HR and taken into account business need. The claimant and Mr Bruce completed a formal request under the policy which was lodged (pages 538-543). The claimant also gave Mr Bruce a document entitled Business Case for Reduction to Part Time Hours. This was a document composed entirely by the claimant. It was not the type of business case envisaged in the policy. The application is 538-540. The claimant indicated that he wished part-time working and then produced a note of the arrangement he would like to request. He withdrew this application shortly thereafter with Mr Bruce explaining that he would come back once he knew exactly what his hours would be on the course.

59. The last day the claimant attended work was around 31 August. He was then on annual leave and special unpaid leave in Canada until returning around the end of September. Whilst in Canada he had an email exchange with his line manager regarding his request for reduced hours. An email dated 16 September was lodged, he stated

> "I hope I find you well. Can you put my part-time hours in as I now have everything in place. I won't be returning to full-time duties on my return due to college."

Mr Bruce was absent from work at the time due to sickness. He responded to the claimant on 18 September stating

> "Good to hear from you. Unfortunately family and I have been stuck with some form of sickness bug after our holidays therefore I am not at work. If you want things moving forward then I would suggest messaging another senior that's on duty with your current PT shift proposal. Also the reasons behind this request."

The claimant responded asking Mr Bruce to send him "Calum or Stuart's email." Mr Bruce responded on 18 September giving the claimant the email address of Stuart Hardy and Calum Kerr, two other senior managers.

60. The claimant did contact these managers by email on 18 September. Mr Hardy responded on 21 September to say

> "Many thanks for advising us of the changing of personal arrangements regarding your studies. It is much appreciated. I know I had a very brief discussion with you about the summer return to work I performed with you recently.
>
> I'm going to ask if Jason can action this when he is due back on shift next week as I know he has been involved in it much more closely as your line manager and will go from there."

61. Mr Kerr also responded to the claimant sending him a copy of the policy on 23 September. He also said

> "As you have been in discussion with your manager (Jason for this) we'll have to wait until he returns from his absence which is covered under Extensions to Timescales
>
> - Where the manager is absent when the request is submitted if this is the case then the initial meeting to discuss the request should take place within 28 days of the manager's return to work."

The claimant emailed Mr Bruce on 28 September shortly prior to his return stating

> "I hope I find you well and recovered. Following our last conversation I contacted both Calum and Stuart who say they won't do anything to action the part time hours as they want you to do this. That being said on my return I will have to attend the days I have placed down on my rota submitted as I can't do the normal rota on my return. Look forward to hearing from you soon. Also to note I have the preliminary court hearing on 22 October."

62. The claimant emailed Mr Bruce again on 2 October. He stated

> "Hope this email finds you well. I am writing to follow up on my previous communications regarding the approval of my part time hours as I am due to return to work week beginning 7 October. As discussed I will not be returning to my full time role but will instead be transitioning to my proposed part time hours and rota. My weekly rota aligns with the shift pattern of my previous full time hours and on the week of 7 October (week 2) I am scheduled to report for duty on the late shift on Friday 11 October.

> I understand that Jason was initially tasked with handling this approval process and had instructed me to reach out to Stuart and Calum however based on the latest communication it appears that Jason is the designated authority to action this request. Given the timing and the commencement my first year of paramedic practice it's essential for me to formalise the notice of commencing my part time hours. I kindly ask for your prompt review and approval of this change to avoid any delay in the transition. I have attached my working pattern for your reference and convenience. Thank you in advance for your attention to this matter and I look forward to receiving a response at your earliest convenience."

63. Mr Bruce responded on 3 October at 10:40am. The email was lodged (page 410). He stated

> "Regarding the request below I believe that Calum may have updated you with the following:
>
> Calum had spoken to Mark regarding your request on my behalf. They went through the following procedure. … Then Mark advised that due to myself being off and already had conversations with yourself prior to your leave we'll go down the route of using this found under Extensions to Timescales.
>
> Where the manager is absent when a request is submitted if this is the case then the initial meeting to discuss the request should take place within 28 days of the manager's return to work.
>
> I have just returned to work yesterday so 28 days would have started on then. I know that it's not the news you want to hear but it was unfortunate that I have been off for a period of time whilst you were away on holiday.
>
> If it's ok with you can we have a proper catchup next week when we are both on shift together as I'll be finished shortly and I'm not due back until Monday."

The claimant responded at 11:04 stating

> "Thanks for getting back to me yes we can touch base next week."

Subsequently an hour later he contacted Mr Bruce stating

> "Are you able to put me on unpaid leave for Monday, Tuesday and Wednesday next week please as I have exams next week and I will be in on Friday, Saturday, Sunday late shift please many thanks."

Mr Bruce then responded stating

> "Hi Sam, your early shifts are Monday to Thursday next week, if you are to do Friday to Sunday that means Thursday is missed and then on week commencing 14 October you are in Monday and Wednesday early shift. This would be too much for you being on six days straight. I'll have to seek advice from Mark on this one."

He then sent another email stating

> "Just realised it would be seven days straight if you were working next Thursday onwards."

64. The claimant then wrote

> "This is why I need these hours approved as I can't commit to my normal hours and I will let you know what Mark says so hopefully by next week something will be in place."

Mr Bruce then responded at 4:40 on 3 October saying

> "Hi Sam, I ran this past Mark and his decision was not to approve your request at this time as you currently are obligated to work your full time contract and due to the extended period of 28 days starting from yesterday this means that this is the status quo from now. Unpaid leave cannot be authorised for this as there's now a strict criteria and this and all other special leave requests must go through Mark first. I know this is not the news you wanted to hear but we can discuss further by way of a catch up next week." (page 412-413).

65. The claimant resigned on 3 October 2024 by letter which was emailed to Mr Bruce. A copy of the letter was lodged page 559. It is headed "Resignation with immediate effect". The claimant stated

> "It is with great regret that I have taken the decision to tender my resignation based on recent circumstances involving the actions of certain individuals within the organisation at Aberdeen City Council. The harassment and discrimination I have experienced at the hands of Daniel Wood, Mark Wilson, Vicky Cuthbert, Angela Kazmierczak and Bary Skinner have made my time at work at Aberdeen City Council untenable with the implications directly affecting my health, feelings and those around me. Their actions had been a significant factor in my decision to reduce my hours to part time and pursue further education only to find unequal treatment in comparison to my colleagues where being granted this avenue so that they may attend university however denied by myself by Mark Wilson …."

66. As at the time of the claimant's resignation no decision had been made on his application for part time hours. Another city warden had previously been granted reduced hours to attend university. This had been granted in accordance with policy and had been an arrangement in place for some time.

67. In early 2025 in contemplation of these proceedings which were already underway the claimant sought information from the respondent when making a subject access request. There was an exchange of correspondence between the claimant and members of the Access to Information team which was lodged (pages 415-421). The claimant wrote on 12 February 2025 stating

> "Thank you for the response I can confirm that I am the independent litigator in the court proceedings. The information that I require specifically from the footage of the body camera footage from CW160 being myself can you confirm that within the audio that back off can be heard multiple times being said to the aggressive member of the public. If you could confirm this information for me that would be very much appreciated and would conclude the requirement of the SAR. I look forward to hearing from you in due course."
>
> On 28 February there was a substantive response from Rebecca Finlayson of the Access to Information team stating
>
> 'Good afternoon Samuel,
>
> A further review of the footage has been conducted as requested. We can confirm that 'back off' is audible on at least one occasion. However due to raised voices during certain parts of the footage it was difficult to discern all conversations clearly and we cannot rule out the possibility that it may have been said on additional occasions. …'"

68. Following his resignation the claimant successfully completed his course and is due to attend university for a degree course commencing in September 2025. The claimant was unable to look for work during his course but following completion of his placement he was able to obtain a part time contract for relief work from which he has earned around £700 up to the date of the tribunal. He has remained on disability benefits during the whole period since his resignation. He applied for the relief post which he obtained and one other post during this period.

Matters arising from the evidence

69. I found all of the respondent's witnesses to be careful witnesses who were self-evidently attempting to assist the tribunal by giving truthful evidence. Each was careful to only give evidence within the extent of their own

knowledge and their evidence accorded entirely with the written documentary records which were lodged. I had no hesitation in accepting their evidence as credible and reliable. Unfortunately, whilst I considered that the claimant was doing his best to give truthful evidence to the tribunal I did not find his evidence to be reliable. There were a number of matters where evidence given in evidence in chief was flatly contradicted by him in cross examination. For example, in his evidence in chief he stated that he had been suspended in February and in cross examination accepted that he had never in fact been suspended. Given the clear documentary evidence he had little option. It was also clear that the claimant was prone to misunderstanding certain actions including written documents which were sent to him. I do not blame the claimant for this and am readily prepared to accept that this may be a side effect of his disability. What was clear however was that the claimant was prepared to assign blame to individuals and accuse them of serious wrongdoing on evidence which he had simply misunderstood. For example, the claimant's position was that Mr Skinner had forged his signature on a document. This was clearly not the case. The documentation is quite clear to the effect that the claimant having refused to meet with Mr Skinner for interview, Mr Skinner had sent him a list of questions and said that given that the claimant would not be in a position to sign his response, Mr Skinner would be happy to take the signature he had put in the box as an electronic signature. With regard to the subject access request the claimant's position was that this proved that he was correct in saying that he had not sworn. This is simply not the case. All it shows is that the words "back off" were said at least once. It does not in any way show that the words "fuck off" were not said by the claimant and the claimant did not ask this.

70. The claimant referred in evidence to an incident which took place at a retirement party where he alleged that Mr Wood had referred inappropriately to his disability and said that he was only appointed in order to meet disability quotas. I did not accept the claimant's evidence on this. Mr Wood gave evidence on the subject to the effect that he had attended the party. He was not intoxicated as alleged by the claimant. He had spoken to the claimant but had not said any of the things alleged. It appeared to me intrinsically unlikely that Mr Wood would say something like this at a party particularly where it is clear that the respondent does not operate disability quotas and there would be absolutely no good reason for the claimant having been appointed in order to meet some non-existent targets. I considered Mr Wood to be giving truthful evidence when he said that he had experience himself of dealing with neurodiverse people. He said that at interview he had been impressed by the way the claimant was open about his neurodiversity and appeared to be taking active steps to minimise its effects on his life.

71. In general terms whilst the claimant did exhibit some medical evidence there was nothing in the medical evidence provided which linked any of the claimant's behaviours to autism which is the only disability which was accepted by the respondent and at the end of the day the only disability averred by the claimant as constituting a disability under the Equality Act. The claimant in his evidence spoke extensively of having had suicidal ideation. He provided character references from individuals who reported what the claimant had told them about this. He referred to suffering what he termed autistic meltdowns. I was prepared to accept on the basis of the claimant's evidence that the claimant had a tendency to have a serious reaction to any adverse events which occurred in his working life. I was prepared to ascribe at least part of this adverse reaction to his autism. Other than that, in the absence of any specific medical evidence or indeed any specific diagnosis of autism I felt unable to go further. What I found striking was that the claimant has had no lack of psychological input but it would appear that until comparatively recently there was no suggestion that the claimant be assessed as to whether or not he suffered from autism and other diagnoses appeared to have been made such as PTSD. In any event, at the end of the day whilst I accepted that the claimant was genuinely trying to tell the truth as he saw it, my view was that his evidence was unreliable and I would only accept it where it coincided with the documentary record or with other evidence.

Discussion and decision

Issues

72. In these two conjoined cases the claimant claimed that he had suffered detriment as a result of making protected disclosures in terms of section 47B of the Employment Rights Act 1996. He also claimed that he had been unfairly constructively dismissed. The claimant did not have sufficient qualifying service to make a claim of ordinary unfair dismissal but he claimed that his constructive dismissal was due to his having made protected disclosures. I understand his claim to be that the alleged breach of contract which entitled him to consider himself dismissed in terms of section 95(1)(c) of the Employment Rights Act was occasioned by protected disclosures he allegedly made and that the constructive dismissal was therefore automatically unfair in terms of section 103A of the said Act. The claimant also claimed that he had been unlawfully discriminated against on grounds of disability. He claimed that he had suffered direct discrimination, discrimination arising from disability, victimisation and harassment. He also claimed that the respondent had failed to comply with the duty to make reasonable adjustments.

73. Finally, at the end of their legal submission the respondent indicated that they were making a claim for expenses on the basis that the claimant had raised two vexatious claims without merit or evidence. The respondent sought expenses as taxed. The claimant's position was that an award of expenses was inappropriate. With regard to the discrimination claim the respondent had indicated during correspondence before the tribunal that despite the absence of a definitive diagnosis they were prepared to accept for the purposes of this claim that the claimant was disabled on account of suffering from autism. The claimant did not insist on any claim that he was disabled on any other ground.

Discussion and decision

74. Both parties made full submissions. The respondent provided theirs in writing to the tribunal and expanded upon it orally. The claimant made his submission orally and then submitted a written summary. Rather than seek to repeat all of these submissions in this judgment I will refer to my ruling on each point and where appropriate refer to the competing submissions in the judgment below.

75. It is appropriate to deal with the various claims separately since different legal provisions apply. Helpfully the claimant set out his claims in the final particulars which were lodged following the case management process outlined above.

Claims based on public interest disclosure

76. In the claimant's latest further particulars dated 3 March he indicated that disclosures had been made on 18 March and 22 July 2024 in the form of the grievances referred to in our findings in fact above. It was his position that those grievances demonstrated a failure to comply with legal obligations in terms of section 43B(1) of the Employment Rights Act 1996.

77. In their submissions the respondent referred to the legal definition contained in section 43B which, as is well known, points out that a qualifying disclosure means any disclosure of information which in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more of the following points …. (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.

78. The respondent also referred to the well-known discussion of the various elements of the test contained in the case of ***Williams v Brown*** UKEAT0044/19. This states

> "First there must be a disclosure of information, secondly the worker must believe that the disclosure is made in the public interest, thirdly if

> the worker does hold such a belief it must be reasonably held. Fourthly the worker must believe that the disclosure tends to show one or more of the matters listed in the sub-paragraphs a-f, fifthly if the worker does hold such a belief it must be reasonably held."

79. It is clear that unless all five conditions are satisfied there will not be a qualifying disclosure. In this case I note that at the case management stage when the issue of making a claim based on public interest disclosure was first raised by the claimant the claimant was clearly advised that he should consider whether the alleged disclosures were in the public interest.

80. I have to say that considering the test in ***Williams v Brown*** I have to agree with the respondent's representative's submission that the claimant's case simply does not bear scrutiny. The two alleged disclosures are quite clearly grievances. He spoke to his line manager about a grievance which was then submitted in writing. One of the grievances was on a form specifically relating to a grievance. The claimant was advised by a trade union at the time and they considered the matter was a grievance. The matters raised are entirely about the claimant's perception that he dislikes the management style of Mr Wood and considers that he as an individual has been badly treated by Mr Wood. The grievances submitted in July were subsequently withdrawn by him but are also clearly only about the way he feels he has been treated. There is nothing whatever in any of the grievances about the public interest. The claimant did not in fact give any evidence to the effect that he believed the grievances to be in the public interest and even if he had I would not have found that he could have reasonably believed that these grievances disclosed matters which were in the public interest. They quite clearly do not. I should say that even if the claimant had established that the matters referred to were public interest disclosures the claimant has entirely failed to demonstrate any linkage between the grievances and any of the detriments which he alleges he suffered nor indeed to any putative breach of contract which led him to resign.

81. The claim based on public interest disclosure must therefore fail.

82. Given that I have made a finding that the claimant did not make protected disclosures his claim that his constructive dismissal was automatically unfair under section 103A must also fail. In any event, it was clear to me that the claim of constructive dismissal was completely untenable in any event. In terms of section 95(1)(c) of the Employment Rights Act and the lengthy list of authorities on the interpretation of this it is clear that for an employee to be constructively dismissed the respondent must be guilty of a breach of contract which goes to the heart of the contract of employment. The employee must then resign in response to that breach. On the basis of the evidence I could not find any breach of contract by the respondent. The respondent was

clearly entitled to investigate allegations against the claimant using their disciplinary process. This was particularly the case as it was clear that there had been previous complaints about the claimant's style in carrying out his duties. The respondent had sought to deal with this through guidance and management however this did not appear to succeed. They were perfectly entitled to investigate the incident on 29 December and they were perfectly entitled to investigate the issue of the claimant allegedly breaching confidentiality in July. The respondent were entitled under contract to investigate these matters in terms of their disciplinary policy and that is what they did. In any event it appeared to me on the basis of the evidence including the claimant's own statement that the principal reason for his resignation was that he had decided to go to college and that if he attended his college course he would simply not be able to attend work at the times he was contracted to. The claimant therefore applied for flexible working. His own evidence was that if it came to a choice between his course and his job he would prefer to give up the job and continue with the course. It was clear from the evidence that the claimant has misinterpreted the email from his manager. No final decision had been made on the claimant's request for flexible working at the time he resigned. What happened was that the claimant put in his request at the last minute although he had flagged it up previously with his line manager that he might be doing this. The policy quite clearly states that the 28-day period will not run until the manager returns to business in the event that the manager is absent when the application goes in. This is precisely what happened there. At the time the claimant resigned his manager had already arranged a meeting with him for the following week (7 October) to discuss this. It may well have been granted. The email which appears to have prompted the claimant's resignation was when his manager stated that the claimant would not be given special leave of absence to effectively give him the same flexible working arrangement as he was asking for prior to it being officially granted. This was in no way a breach of contract by the respondent. It is clear they had previously been generous to the claimant in affording him special leave to cover various absences which he claimed were due to his autism. This decision was in no way a breach of contract nor in my view could it be a last straw. In my view there were no previous breaches of contract by the respondent which this could relate to as a last straw and in any event, my view is that even had there been any previous breaches the refusal to allow special leave was an entirely trivial matter which could not amount to a last straw justifying resignation. It is therefore my view that even if the claimant had had sufficient qualifying service his claim of constructive unfair dismissal would also fail.

Discrimination

Direct discrimination

83. In his further particulars the claimant indicates that he is relying on two events. The first is said to have occurred on 25 November 2023 where Daniel Wood is alleged to have stated that the claimant was only hired to meet diversity targets due to his neurodivergence. As noted above, I find on the balance of probabilities that this incident simply did not occur. Mr Wood did not make the statement alleged by the claimant.

84. The claimant also refers to Mr Wood's decision to invoke the disciplinary process and suspend him in relation to the incidents which took place on 29 December. I find that as a matter of fact the claimant was not suspended. It was absolutely crystal clear from the evidence that he was found another post as a direct alternative to suspension whilst the investigation was proceeding. The claimant's absence was because he elected to go off sick rather than carry out the alternative role which had been found for him as an alternative to suspension.

85. In approaching the claim of direct discrimination and indeed all aspects of the discrimination claim I am required to bear in mind the reverse burden of proof. The first stage in this requires me to find on the balance of probabilities that there are facts from which an inference of discrimination can be drawn. In my view absolutely no such inference can be drawn from the evidence in this case in relation to the way Mr Wood dealt with the claimant. The case falls at the first hurdle and the burden of proof did not shift. This is the case in respect of all aspects of the discrimination claim. The claimant refers to Mr Wood making unsubstantiated allegations however the fact of the matter is that the allegation was substantiated. It was substantiated by the other city warden who was present and by the bodycam footage which was viewed by numerous individuals who all indicated that the claimant can clearly be heard swearing at a member of the public. The claimant did not give any evidence in relation to a comparator or indeed how his treatment was linked to his disability. In an early version of his particulars he had referred to a comparator as being Ms Karen McLeese who was said to have regularly shouted and sworn in the workplace without reprimand or disciplinary action. Absolutely no evidence was led in relation to this however even on the basis of the averments it is clear that Ms McLeese would not be a valid comparator. It was not alleged that she had sworn at a member of the public.

86. It was absolutely clear to me from the evidence that the respondent had dealt in a completely non-discriminatory way in relation to the incident on 29 December. They had followed their disciplinary policy in instigating an investigation followed by a disciplinary process. At the end of the day the evidence was clear that the respondent's disability had been taken into account in terms of mitigation and the claimant had received the very lowest level of disciplinary sanction. If anything this demonstrates that the claimant

was treated more favourably than a non-disabled comparator would have been treated. There is certainly nothing to suggest a claim of direct discrimination being justified.

87. In his particulars the claimant also indicated that the incident on 29 December 2023 and Mr Wood's response together with the response of Roisin Murray his colleague, Jason Bruce his line manager and Mark Wilson amounted to discrimination arising from disability. The claimant states that he was unfavourably treated because of disability related behaviour (which he described as 'assertiveness in a high stress situation due to autism'). The claimant did not lead any medical evidence ascribing the way he behaved to autism. He did give evidence himself to the effect that he has the standard autistic traits of finding personal interaction sometimes difficult and having difficulty reading situations and understanding nuance. He also refers to having what he terms "autistic meltdowns". Apart from that however his take on what actually happened on 29 December was that he had acted perfectly properly. He stated that he did not swear at the member of the public and that all of those who viewed and heard the video reported to the contrary were incorrect (albeit he did not put this in cross examination to any of the witnesses present at the tribunal who had viewed the video and gave evidence on the subject). My view was that the claimant had failed to establish on the basis of evidence that there was a link between the way he behaved on 29 December and his autism. Even if I am wrong in that however I note that section 15 specifically provides that if an employer treats an employee unfavourably because of something done in consequence of their disability this does not amount to discrimination if the employer can show that the treatment is a proportionate means of achieving a legitimate aim. In this case the treatment was subjecting the claimant to their disciplinary process where he had sworn at a member of the public. In my view there is clearly a legitimate aim here in maintaining the confidence of the public. Subjecting the claimant to a disciplinary process which would involve hearing his side of the story is an entirely proportionate and non-discriminatory way of dealing with such a situation. As noted above, it is clear that the respondent took the claimant's autism into account when deciding on penalties. This was entirely appropriate. It would not have been in any way proportionate or reasonable for the respondent to decide that because the claimant suffered from autism they would not investigate any allegation against them where he had behaved improperly to a member of the public. It would be entirely untenable for the respondent to adopt this policy. For these reasons I consider that the claimant's claim that he suffered discrimination arising from his disability also falls to be dismissed.

Harassment

88. The claimant states that he was harassed on multiple occasions between July 2023 and February 2024 by Mr Wood. It was clear from the evidence that the claimant found being managed by Mr Wood not to his taste. The first question I had to answer was whether this conduct of Mr Wood amounted to harassment in terms of the Act. The Act states

> "(1) A person A harasses another B if
> (a) A engages in unwanted conduct related to a relevant protected characteristic and
> (b) the conduct has the purpose or effect of
> (i) violating B's dignity or
> (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
>
> …..
>
> (4) In deciding whether the conduct has the effect referred to in subsection 1(b) each of the following must be taken into account
> (a) the perception of B
> (b) the other circumstances of the case
> (c) whether it is reasonable for the conduct to have that effect."

89. The claimant provides four instances to support his claim for harassment namely

- "Undermining the claimant's ability to work independently
- Isolating the claimant by instructing colleagues to monitor his movements
- Calling the claimant into meetings to falsely accuse him of misconduct without evidence
- Waiting alone in a dark office for the claimant's arrival causing distress."

90. Having heard Mr Wood's evidence I agreed with the respondent's submission that he was in any way seeking to undermine the claimant's ability to work independently. What he was trying to do was counsel the claimant so as to allow the claimant to move on to the next stage of his development and go out on patrol on his own. The point of paring the claimant with other wardens was to assist his ability to work independently. I also agreed with the respondent that given that Mr Wood was trying to get the claimant to improve his performance to the extent that he could be allowed to go out on his own then it was entirely reasonable that he asked those colleagues who the claimant was patrolling with to advise him how the claimant was getting on. It was also clear from his evidence that many of these reports were entirely unsolicited and that a problem arose whereby the claimant's colleagues were

not keen on going out on patrol with him. The issue of the claim of misconduct has already been dealt with above. Contrary to what the claimant asserts this claim was not in any way unjustified. It was perfectly proper of Mr Wood to progress the matter and indeed Mr Wood was simply doing his job when he did this.

91. With regard to the final incident I did not find that this had in fact taken place. The claimant's position was somewhat vague but he did indicate in evidence that on one occasion he had gone in to the premises in the early morning and found him in darkness with Mr Wood being the only person there. Mr Wood said that when he was in the office early (which he would be in order to make arrangements for the patrols going out half an hour later) then he would seldom switch on all of the lights in the building but would sit with only the light in his office on. Drilling down into the claimant's evidence it was clear that this was what had happened. This does not amount to harassment.

92. On the basis of what the claimant said I was prepared to accept that he did not like Mr Wood and resisted being managed by Mr Wood. I did not find that Mr Wood's conduct was in any way linked to the claimant's protected characteristic nor did it have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. If the claimant genuinely found the conduct to be so then in my view the claimant was entirely unreasonable in coming to this view and the conduct alleged did not have the effect of the prescribed effects.

Victimisation

93. With regard to the claim of victimisation the claimant entirely failed to properly aver or lead evidence that he had been victimised. He appears to refer to the further investigation in relation to breach of confidentiality which was initiated by Mr Wilson. The results of that investigation were lodged. It was very clear that there was a case to be answered by the claimant for breaching confidentiality. The claimant objected to Mr Skinner's report on the basis that Mr Skinner allegedly falsified his signature to a document, a claim which was entirely unfounded and which I have dealt with above. It was also his position that there was nothing to link the WhatsApp messages quoted in Mr Skinner's report with him. The claimant at no point goes so far as to say that he was not the author of these WhatsApp messages. If that were the case then he would have had the opportunity of putting that position to Mr Skinner. Instead he decided not to co-operate at all with Mr Skinner's investigation. Mr Skinner had recommended disciplinary proceedings which were not concluded by the time the claimant left. It was not entirely clear what the protected acts were said to be although I would assume that the claimant was relying on his grievances. There was no evidence that Mr Skinner was aware of the grievances and he was not asked about this by the claimant. The claimant

also referred to a meeting with Mr Wood where it was said no union representation was allowed. This appears to have been a standard management meeting, in any event the claimant gave no evidence about it and did not give any evidence saying how this was linked to any alleged protected act. Finally, the claimant refers to the incident where there required to be an ambulance called. What appears to have happened is that two of the claimant's managers advised him that there was a further investigation being commenced which related to his failure to observe confidentiality. The claimant's reaction to this was described as a anxiety attack by the ambulance service and by the claimant as an "autistic meltdown". Once again there was no attempt by the claimant in evidence to link what his managers did to any protected act however even if there was, my view was that there could be no victimisation since it was entirely reasonable in the circumstances for his managers to pass on this information to him. We also accept the respondent's position that it was clear that the claimant was represented throughout the disciplinary processes by his union and that no complaint was made by them that the claimant was being singled out in any way. We agree that Mr Wilson was obliged to raise the second disciplinary process and that on the basis of the evidence this had nothing whatsoever to do with any previous protected act which the claimant had carried out.

Reasonable adjustments

94. In his pleadings the claimant sought reasonable adjustments in respect of three matters namely proper training to help with role expectations, clear and structured communications and avoidance of unsubstantiated accusations that cause stress related autistic burnout. He did not specify the particular provision criterion or practice of the respondent which he claimed put him at a specific disadvantage because of his disability. I inferred that he was tacitly stating that the respondents operated a pcp of not providing proper training or clear and structured communications and that he was saying that they also had a pcp of making unsubstantiated allegations. My finding, in summary, was that none of these pcp's were applied. Even if I was to expand the last pcp to say that the claimant was alleging that the application of the disciplinary policy to the claimant (an admitted pcp) somehow placed the claimant at a disadvantage, I did not find the claimant's claim to be made out.

95. With regard to the first of these my finding on the basis of the evidence was that the claimant had received proper training. He was paired with senior wardens in order for him to gain on-the-job training. He was left in this position for much longer than other new recruits who did not suffer from the claimant's disability. This was an adjustment to assist him. He also had access to ACC Learn being the respondent's online course system. The problem was not that the respondent failed to make adjustments to the

training process so as to cater for his training, the problem was that the claimant was not prepared to accept what the other city wardens told him about the approach to be adopted to the public and the need for him to exercise restraint. With regard to the second point it was clear from the evidence of the claimant's own line manager Mr Bruce and Mr Wood that regular debriefs were held. The claimant objected to the debriefs from Mr Wood but he accepted that there were many long conversations with Mr Bruce where Mr Bruce tried to get him to have a full realisation of the limitations of the powers associated with the job. In my view it is clear that both Mr Wood and Mr Bruce had considerable empathy with the claimant and were aware of adjustments which might be required for his autism. If any adjustments to the usual way they did these things were required, these adjustments were made. It is noteworthy that when matters reached the stage where in August 2024 the claimant and Mr Bruce prepared a disability passport the claimant agreed that all of the adjustments mentioned had in fact already been made. With regard to the third adjustment I would agree with the respondent that what the claimant suggested -exempting him from the disciplinary process or any disciplinary interventions -would be entirely inappropriate as a reasonable adjustment. I agree with them that the claimant was seeking the wholesale disapplication of the respondent's Managing Discipline policy. I agree with them that the respondent is obliged to follow its policy and procedures equally and fairly to ensure that all staff are treated the same and any alleged misconduct is investigated with action taken where appropriate.

96. The requirement to make reasonable adjustments is set out in sections 20 and 21 of the Equality Act. The claimant did not give any specifics as to which parts of the discipline policy amounted to a PCP which placed him as a disabled person at a particular disadvantage. I agreed with the respondent that this was something which the claimant ought to have done. The Tribunal was therefore not in a position to identify either the exact PCP alleged nor the identity of the non-disabled comparators nor indeed the nature and extent of the substantial disadvantage suffered by the claimant in relation to non-disabled comparators. His position in evidence seemed to be little more than that he was upset by the disciplinary process which he personally considered to be unjustified and that this caused his mental health to significantly deteriorate even to the extent that he had developed a suicidal ideation at one point. The Tribunal therefore had very little to go on in terms of assessing this claim.

97. At the end of the day however even if I had accepted that in some way the respondent by applying their disciplinary policy to the claimant had done so in a way which put him as a disabled person at a substantial disadvantage then I am in no way convinced that it could be realistically argued that it would

be a reasonable adjustment to disapply the policy from the claimant. The policy applies to everyone and is there so as to ensure that allegations of misconduct against employees are dealt with fairly and properly. It would not be reasonable to say that employees who are disabled in some way should be exempt from this process. A reasonable adjustment may well be to do what was done in this case and ensure that although the disciplinary process is applied to disabled employees in the same way as to others that the fact of their disability is taken into account at the time of deciding the outcome and that, as in this case, disability may be treated as significant mitigation in respect of that outcome. The claim based on a failure to make reasonable adjustments is therefore dismissed.

98. Having dealt with all of the claimant's claims in turn it is clear that none of them succeed and all of them fall to be dismissed.

Expenses

99. At the end of the hearing the respondent's representative indicated that they wished to make a claim for expenses. They referred to section 74(1) of the Employment Tribunal Procedure Rules 2024 which provides

> "(1) The Tribunal may make a costs order or a preparation time order (as appropriate) on its own initiative or on the application of a party or, in respect of a costs order under rule 73(1)(b), a witness who has attended or has been ordered to attend to give oral evidence at a hearing."

They noted that the tribunal should consider making a costs order where a party has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings or part of it or the way that the proceedings or part of it have been conducted.

100. It was the respondent's position that I should make an award for expenses to be taxed by the Auditor of the Sheriff Court. They made the point that the respondent had been put to considerable expense as a result of the claim which they considered to be vexatious. This cost had been incurred for both legal representation and witness attendance of senior officers. As the respondent was a local authority it was not appropriate that the public purse should be made to bear the cost of the claimant's vexatious claims.

101. In my view there is some merit in the respondent's position. I agree with them in their summary that the claimant had failed to establish any of his heads of claim and that his position was riddled with errors, inconsistencies and misapplied logic and facts. I would agree that it is clear from the evidence

that far from discriminating against the claimant as he suggests the respondent had in fact made a number of allowances for him. Several witnesses had extensive personal or professional experience in assisting those with autism and it was clear that the disciplinary outcome had been considerably reduced from what it could have been so as to take account of the claimant's difficulties.

102. In his evidence, as noted above, the claimant made various statements which were simply mistaken. His response to the disciplinary process showed that despite being continually mentored and taught by his managers of the need for restraint he appeared to ignore this. Like the respondent's representative I also noted the aggression which the claimant showed in cross examining some of the respondent's witnesses, most particularly Ms Kazmierczak. Essentially his position in respect of the disciplinary process was that he was right and the respondent were wrong. The combative position he appears to have adopted was particularly concerning. He believed he was right to behave in a way which was completely contrary to his training. The respondent were left with little choice but to subject him to a disciplinary process and this was carried out with a high degree of understanding of his difficulties despite the fact that the claimant did not have any formal diagnosis of autism. His view throughout appeared to be that because of his autism he should in some way be exempt from disciplinary process. This is a profound misunderstanding of the legal position.

103. Given all this I had little doubt that the threshold for making an award had been met. It was therefore a matter of my discretion as to whether to make an award of expenses or not and if I did decide to make an award of expenses how much. The claimant indicated that he was in receipt of disability benefits and was a full time student. He was intending to go to university on 8 September. His only income was occasional relief shifts. He had earned approximately £700 from this source in the past two months. It was clear to me that any award of expenses which I made would require to be severely limited in view of the claimant's lack of financial means. Although it is to be hoped that once the claimant completes his university course he will be able to obtain work at a reasonable salary this will be several years down the line. I am also required to take into account that it was clear to me on a number of occasions that the claimant's pursuit of this case is in many ways linked with his disability. I agree with the respondent that the claimant was at all times able to present his case properly. He has produced written documents throughout which are of a high standard. That having been said it is clear from his evidence that he does misunderstand things. He gets bees in his bonnet which no amount of evidence will remove. Taking all these matters into account, I considered that bearing in mind that I am bound by the requirements of the Equalities Act to make reasonable adjustments when

applying the Tribunal Rules it would not be appropriate in this case to make an award of expenses. I would stress to the claimant however that this was a very finely balanced decision and should not be taken by him as carte blanche to behave unreasonably in this or subsequent proceedings in the future.

Date Issued to Parties: 30 July 2025