



EMPLOYMENT TRIBUNALS

Claimant: Mr T Chowdry

Respondent: Royal Borough of Greenwich

Heard at: London South **On:** 7/7/2025 - 11/7/2025
(Croydon via CVP)

Before: Employment Judge Wright
Ms N Beeston
Ms J Forecast

Representation:

Claimant: In person

Respondent: Mr N Porter – counsel

REQUEST FOR WRITTEN REASONS

Oral judgment having been given on the 11/7/2025 and further to the claimant's request for written reasons on the 25/7/2025, these written reasons are provided.

WRITTEN REASONS

It was the unanimous Judgment of the Tribunal that the claimant's claims of unlawful discrimination contrary to the Equality Act 2010 ('EQA'), for unfair dismissal and for breach of contract are not well-founded, they fail and are therefore dismissed.

1. The claimant presented his claim form on the 27/12/2022 following a period of early conciliation which started on 22/10/2022 and ended on 29/11/2022. The claimant was employed as Team Manager, Environmental Health Residential Services between 17/8/2017 (the respondent says the start date was 19/9/2017 however nothing appears to turn on this) and 10/8/2022 when his employment was mutually terminated in order that the claimant could claim his pension under a ill health retirement scheme (IHR).
2. There was a preliminary hearing on the 9/11/2023 at which the relevant issues were recorded (page 63). The dates were clarified at the start of the hearing and are inserted in square brackets thus [date]. :

The Complaints

33. The claimant is making the following complaints:

33.0 Unfair dismissal;

33.1 Disability discrimination, specifically:

33.1.0 Failure to make reasonable adjustments;

33.1.1 Discrimination arising from disability (s15)

33.2 Breach of contract

34. The claimant wrote to the Tribunal on 30th December 2022, part of this email suggested that he might wish to make an application amend to include a claim for age discrimination. The claimant has clarified at this hearing, however, that he is not pursuing such an application and does not wish to present an age discrimination claim.

The Issues

35. The issues the Tribunal will decide are set out below.

1. Time limits

1.1 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.1.2 If not, was there conduct extending over a period?

1.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.1.4.1 Why were the complaints not made to the Tribunal in time?

1.1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Unfair dismissal

2.1 Was the claimant dismissed?

The respondent argues that the claimant retired on grounds of ill health and that this did not amount to a dismissal.

The claimant argues that that either a) his ill health retirement was a form of dismissal or b) that he was constructively dismissed, in that his acceptance of ill health retirement was a resignation in response to the breaches of contract alleged below.

2.2 If the claimant was dismissed, what was the reason or principal reason for dismissal?

2.3 Was it a potentially fair reason?

2.4 Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the claimant?

3. Remedy for unfair dismissal

3.1 Does the claimant wish to be reinstated to their previous employment?

3.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?

3.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant

caused or contributed to dismissal, whether it would be just.

3.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

3.5 What should the terms of the re-engagement order be?

3.6 If there is a compensatory award, how much should it be? The Tribunal will decide:

3.6.1 What financial losses has the dismissal caused the claimant?

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

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

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

3.6.5 If so, should the claimant's compensation be reduced? By how much?

3.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

3.6.7 Did the respondent or the claimant unreasonably fail to comply with it by [specify alleged breach]?

3.6.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

3.6.9 If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?

3.6.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

3.6.11 Does the statutory cap of fifty-two weeks' pay or [£105,707] apply?

3.7 What basic award is payable to the claimant, if any?

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

4. Disability

4.1 Both parties agree that, at the relevant time, the claimant had a disability as defined in section 6 of the Equality Act 2010.

4.2 The claimant describes this disability as Generalised Osteoarthritis. It affects his lower back, vertebrae, left ankle, left shoulder and right thumb. It adversely affected his mobility, in particular causing problems with his ability to travel (including to and from work) and to sit for longer periods of time.

5. Discrimination arising from disability (Equality Act 2010 section 15)

5.1 Did the respondent treat the claimant unfavourably by:

5.1.1 Issuing him a written warning in February 2020 [26/2/2020]

5.1.2 Threatening him with disciplinary action in 2024 [2019/2020].
The claimant relies on two incidents:

5.1.2.1 Ms Smallcome suggested that the claimant had taken time off without agreement. They had a verbal discussion in which the claimant said that he had emailed her and explained that he had to leave because of an emergency. He says that she told him that she would look into it and that it might be a disciplinary matter. No disciplinary action was taken. [time off 3/9/2019-5/9/2019, discussed in October 2019]

5.1.2.2 Also in 2021 the claimant describes a similar incident in which he did not attend a meeting and Ms Smallcome suggested that there might be disciplinary action as a result. Again, no disciplinary action was taken. [24/1/2020]

5.2 Did the following things arise in consequence of the claimant's disability:

5.2.1 The claimant's mobility difficulties,

5.2.2 His consequential desire to work from home

5.3 Was the unfavourable treatment because of any of those things?

5.4 Was the treatment a proportionate means of achieving a legitimate aim?

5.5 The Tribunal will decide in particular:

5.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

5.5.2 could something less discriminatory have been done instead;

5.5.3 how should the needs of the claimant and the respondent be balanced?

5.6 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

6. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

6.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

6.2 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:

6.2.1 Requiring employees to attend the office at least four times a week

6.2.2 Requiring employees to attend the office between 8am and 4pm

[the claimant was off work from 8/7/2021 and did not return to work]

6.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that the claimant's mobility difficulties meant that it was difficult for him to commute to the office and that he preferred either to work from home or to start / finish work earlier to ease his journey?

6.4 What steps could have been taken to avoid the disadvantage? The claimant suggests:

6.4.1 He should have been permitted to work from home more often, attending the office only when strictly necessary (the claimant accepts that he was permitted to work from home one day per week, but says this applied to everyone and was not an adjustment to his circumstances).

6.4.2 He should have been permitted to work between 7am and 3pm for the whole work (the claimant accepts that this was permitted for two days in the week).

6.5 Was it reasonable for the respondent to have to take those steps and when?

6.6 Did the respondent fail to take those steps?

7. Remedy for discrimination

7.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

7.2 What financial losses has the discrimination caused the claimant?

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

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

7.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

7.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

7.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

7.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

7.9 Did the respondent or the claimant unreasonably fail to comply with it by [specify breach]?

7.10 If so is it just and equitable to increase or decrease any award payable to the claimant?

7.11 By what proportion, up to 25%?

7.12 Should interest be awarded? How much?

8. Breach of Contract

8.1 Did this claim arise or was it outstanding when the claimant's employment ended?

8.2 Did the respondent do the following:

8.2.1 In December 2020 advising him to present his concerns as a grievance, rather than through the respondent's whistleblowing procedure. [15/12/2020]

8.2.2 Fail to respond within a reasonable time to the claimant's grievance lodged on 3rd December 3? [3/12/2020]

8.2.3 Fail to respond within a reasonable time to the claimant's grievance lodged in February 2021? [3/2/2021]

8.3 8.2.1 and 8.2.2 relate to events in 2020. In early 2019 the respondent's Head of Service was seconded to an external position leaving a temporary vacancy. In April 2019 both the claimant and Ms Smallcome applied to act up in that role. Ms Smallcome was successful. The claimant raises no complaint in respect of this outcome.

In March 2020 the Head Of Service returned. The claimant complains that Ms Smallcombe was then moved into the role of Covid Co-ordinator, at the same grade as the Head of Service. Subsequently she was appointed to the Head of Service role.

A copy of the grievance was not produced for this hearing, but the claimant says that he was concerned that the respondent had failed to follow proper employment practices in respect of Ms Smallcombe's appoints after she left the temporary role in March 2020. The respondent denies this, saying that Ms Smallcombe's role in relation to Covid was a temporary arrangement, required by the exigencies of a national crisis. They say that the Head of Service role was the subject of ringfenced selection process and that the claimant was invited to reply.

The claimant says that he raised his concerns with Brendan Costello, Assistant Director, who told him that the matter was not a whistleblowing issue and that he should raise it as a grievance. The claimant says this was wrong and was a deliberate attempt to avoid independent review.

8.4 8.2.3 relates to a grievance raised by the claimant about Ms Smallcombe's treatment of him and, in particular, the written warning he had received.

8.5 Was that a breach of contract?

8.6 How much should the claimant be awarded as damages?

3. The respondent had provided a chronology of key events. The numbers in square brackets are references to the page number in the bundle (the file of documents).

The following abbreviations are used:

C for the Claimant Taiq Cowdry
 ES for Ella Smallcombe
 DF for David Fanawopo

19.09.17	C commences permanent employment with R. Job Description at [150]. Contract of Employment at [139-149]
20.06.19	C attends Occupational Health Meeting. Report at [688-690]
3-5.09.19	C on unauthorised absence from work (transporting family members to Newcastle) [201-202]
24.01.20	C fails to attend fire safety meeting. [227-229] refers
12.02.2020	Occupational health Report issued [691-692]
25.02.20	ES meets with C
25-26.02.20	ES seeks advice from HR (DF)
26.02.20	ES issues informal warning to C [227-229]
28.02.20	C emails ES re informal warning [236]
23.03-21.04.20	C on sick leave
15.10.20	C emails ES requesting follow up on email of 28 February 2020 [306]. ES responds on same date [306] offering a meeting
29.10.20	C emails DF in relation to the informal warning issued by ES in February 2020 [322-323]
03.12.20	C sends email to Brendan Costello headed "Discriminatory practices .." [326-327] (Grievance 1)

04.12.20	Brendan Costello replies to C's email of 03.12.2020 [335-336]
09.12.20	C meets with Brendan Costello. Nigel Brown (Internal Audit and Anti-Fraud Manager) also in attendance
16.12.20	ES meets with C. ES notes of the meeting at [356]
03.02.21	C submits further grievance re ES in relation to the issuing of the informal warning in February 2020 (Grievance 2) [380-383]
25.02.21	C interviewed by Sarah Thompson in relation to C's grievance re ES acting up (Grievance 1). Interview notes at [537-540]
17.03.21	Sean McDermid interviewed by Sarah Thompson in relation to C's grievance re ES acting up (Grievance 1). Interview notes at [541-544]
26.03.21	C interviewed by Dewbien Plummer re C's grievance against ES on informal warning (Grievance 2) [487-501]. This interview was originally fixed for 25.02.21 [419-421] [423-424]
13.05.21	ES interviewed by Dewbien Plummer re C's grievance against ES on informal warning (Grievance 2) [520-526] June 2021 Sarah Thompson produces completed Grievance Investigation Report (Re Grievance 1) with appendices [527-544]
23.06.21	Occupational Health Report issued [695-697]. It is recorded that due to the chronic nature of his medical conditions C was starting to consider early retirement [696]
07.07.21	Dewbien Plummer produces investigation report on C's grievance against ES on informal warning (Grievance 2) [561-574]
08.07.21	C commences period of sickness absence. C does not return to work at any time prior to the termination of his employment on 8 August 2022
13.07.21	Dewbien Plummer sends outcome letter on C's grievance against ES on informal warning (Grievance 2). C informed of right of appeal [584-586]

24.07.21	C submits appeal in relation to Dewbien Plummer's decision on C's grievance against ES on informal warning (Grievance 2) [590-591]
03.08.21	Sean McDermid sends email in relation to the advice in the Occupational Health report of 23 June 2021 [605]
04.08.21	ES sends email to C in relation to the recommendations in the Occupational Health Report of 23.06.21 [607]
06.08.21	C emails ES in relation to his health condition [607]
10.09.21	C provided with voluntary redundancy figures and calculations as requested by C [631]
04.10.21	C emails DF re preferences for exit from R [617]. Further email on this issue at [602-619]
06.12.21	ES commences period of maternity leave until late January 2023
06.05.22	Independent Medical Assessor determines C is unfit to work in any capacity until the normal retiring age [712] and [789-791]
09.05.22	C emails DF on issue of ill health retirement and medical evidence [637]
01.07.22	C records his intention to take ill health retirement and expresses thanks for assistance [638]
13.07.22	C emails DF on the issue of ill health retirement [640]
09.08.22	C signs ill health retirement form [646]
10.08.22	Letter to C confirming ill health retirement and termination of the employment by mutual agreement [647-648]
10.08.22	Effective date of termination of C's employment
07.10.22	Further Independent Medical Assessor finds C unfit to work in any capacity to the normal retirement age for the purposes of early provision of pension benefits [721-723]
22.10.22	C commences Early Conciliation [4]
29.11.22	EC certificate issued [4]

27.12.22	C submits ET1 to the Employment Tribunal [1-34]
6.03.23	ET3 [42-49]. Amended Grounds of Resistance at [73-83]
29.03.23	Sarah Thompson sends formal grievance outcome letter to C consistent with the findings in her report of June 2021 on Grievance 1 [661-664]
17.04.23	Grievance appeal hearing re Grievance 2
05.05.23	Grievance appeal outcome letter re Grievance 2 [665-668]
29.01.24	Case Management Order identifying the Issues in the claim [59-69]

4. The Tribunal has not disturbed the numbering of the allegations. They are however addressed chronologically.
5. The Tribunal had before it a hard copy and an electronic bundle of 941-pages. The bundle was not satisfactory in that: the page numbers in the hard copy were not legible and there were duplicate numbers on the page; it contained marked up (not clean) copies; the formatting varied so that pages were different sizes electronically; emails were in a very small font and the format was such that the hole punch removed some of the text; and the electronic bundle pagination was a mystery, such that the Tribunal was left to guess at how many pages to add to attempt to arrive at the relevant page as per the paper bundle. It was not just a case of allowing for the 12-page index and so adding 12 to a page number. Part of the issue it seems, was that mini-indexes were inserted before each section of the hard copy bundle.
6. The electronic bundle was so poor that the hard copy bundle was preferred. Those preparing the bundle should anticipate the fact the hearing may be converted to a video hearing and indeed, due to an issue with the Tribunal building on the first day, an instruction was given to convert the hearing to video for day two. Due to the issue with the building being resolved, that instruction was rescinded before it was communicated to the parties. A bundle should be prepared in accordance with the Presidential Guidance on remote and in-person hearings dated 14/9/2020. It is not good enough to scan a hard copy bundle and to hope for the best.
7. The vast majority of the documents in the bundle were irrelevant. For example, various policies were included which did not relate to the list of issues. The parties should bear in mind the observations in paragraph 108 in Guardian News and Media Ltd v Rozanov [2022] EAT12.

8. The page references in this Judgment are to the hard-copy bundle.
9. The claimant's witness statement was 68-pages long. It was repetitive and dense and as such was impenetrable. It was not clear that the claimant had addressed all of his allegations in his evidence-in-chief (his witness statement). The claimant gave evidence on his own behalf. There were also multiple references to pages in the bundle.
10. For the respondent, the Tribunal heard from Ms Smallcombe (the claimant's line manager at the relevant time) and Mr Fanawopo (HR Manager at the relevant time). The claimant did not have any questions for Mr McDermid or Mr Costello and therefore although they attended the hearing, they were not called to give evidence.
11. The Tribunal assessed the witnesses' credibility. The respondent's witnesses gave measured and the Tribunal finds straight-forward evidence and attempted to assist the Tribunal. Both witnesses agreed with matters (albeit minor) which did not assist them.
12. By contrast, the claimant's evidence was self-serving. The claimant appears to have become entrenched in his own narrative. One example the Tribunal observed was that the claimant repeatedly said in his evidence-in-chief that the respondent removed his 'access to work emails'. In an email on 4/8/2021, after the claimant had been signed off as unfit for work, Ms Smallcombe said (page 605):

'As requested, I will also cancel the A/L that was showing on iTrent. With regard to contact whilst you are signed off sick. You should not be accessing you work emails and should instead take this time to focus on your health.'

However, I do not have a personal email address on record for you. Can you please supply an personal email address as this will be the last correspondence sent to your work email whilst you are signed off.'

13. On no reading can these comments be interpreted as the claimant being removed from access to his work emails. It was put to him and he agreed that he was still using his work email address in October 2021 (page 617). Indeed, the claimant was still using his work email address as late as 21/4/2022 (page 661).
14. Linked to this is the claimant's insistence, observed in his evidence-in-chief, that he was signed off by his GP as 'suffering from 'work-related stress and anxiety as per the sicknote on p630'. Examples are found at paragraph 12 and 158. In fact the Med3 statement of fitness for work stated: 'anxiety and depression (page 598). There was no mention of it being work-related.

15. Another example was asking Mr Fanawopo in cross-examination whether or not the post of Covid Co-Ordinator (to which Mr McDermid appointed Ms Smallcombe as a continuation of her secondment, after the substantive post-holder had returned in March 2020) was a new post or an existing post. Self-evidently, the post of Covid Co-ordinator in March 2020 was a newly created post.
16. Unfortunately, these were examples of the claimant's inability to appreciate the contemporaneous documents which demonstrated the facts or position at the relevant time. The Tribunal has therefore relied upon the documents which reflect the events at the time they were taking place. Rather, than the claimant's witness statement dated 14/4/2025.
17. Oral submissions were made by both parties and the respondent had provided a skeleton argument at the outset of the hearing. All submissions made were considered.
18. The following findings of fact were reached by the Tribunal, on the balance of probabilities, having considered all of the evidence given by the witnesses during the hearing. It included the documents referred to by the witnesses and took into account the Tribunal's assessment of the evidence.
19. Only relevant findings of fact pertaining to the issues and those necessary for the Tribunal to determine, have been referred to in this judgment. It has not been necessary and neither would it be proportionate, to determine each and every fact in dispute. The Tribunal has not referred to every document it read and/or was taken to in the findings below but that does not mean it was not considered if it was referenced in the witness statements/evidence.

Findings of fact

Equality Act 2010 (EQA)

Discrimination arising from disability

5.1.2 Threatening the claimant with disciplinary action in 2019¹ and the two events set out at 5.1.2.1 and 5.1.2.2

20. Firstly, the claimant agrees he took time off between the 3/9/2019 and 5/9/2019. He claims that he followed procedures. Ms Smallcombe took a different view (5.1.2.1). Secondly, the claimant agreed that he was due to attend a meeting on the 24/1/2020 and he did not attend. He cannot now

¹ This was the date provided when the allegations were dated at the outset of the hearing. The first absence was in September 2019 and it was discussed in October 2019. The meeting the claimant did not attend was on the 24/1/2020 and so any discussion in respect of that must have post-dated the meeting.

recall why he did not attend and his response at the time was he was not able to explain why he did not attend (5.1.2.2).

21. Ms Smallcombe accepted she said this could result in disciplinary action and that the conduct fell within the scope of the Respondent's disciplinary policy.
22. The Tribunal finds that Ms Smallcombe did not threaten disciplinary action and that she referred to there being a possibility of disciplinary action as the claimant's conduct fell within the respondent's policy. It prefers Ms Smallcombe's version of events due to its findings on credibility.
23. In any event, Ms Smallcombe then decided to issue an informal written warning.

5.1.1 Issuing a written warning on 26/2/2020

24. Ms Smallcombe issued an informal written warning on the 26/2/2020 (page 227).
25. It can be accepted that the matters at issue 5.2 arose as a result of the claimant's disability, namely: 5.2.1 his mobility difficulties and 5.2.2 his consequential desire to work from home.
26. As an aside, the claimant had a particular desire to work from home on a Friday and this caused some disputes. Ms Smallcombe stated that although the occupational health (OH) advice was for some home working, there was nothing definitive about the claimant working from home on a Friday. The claimant's desire to work from home on Fridays puzzled the Tribunal and there was never any explanation from the claimant to the respondent as to why this was so.
27. The next issue 5.3 – was the unfavourable treatment because of any of those things?
28. Mr Porter put it to the claimant that there had to be a causative link between the 'unfavourable treatment' (Mr Porter agreed that the allegations were accepted as unfavourable treatment) and the matters claimant complained of (issue 5.3) was 'because of something arising in consequence of the claimant's disability'.
29. When this was put to the claimant, particularly in respect of 5.1.2.1 (the absence in September 2019), it appeared to become clear to the claimant the difficulties which he faced. Mr Porter invited the claimant to withdraw that complaint, however, as there was going to be an adjournment over the lunchbreak, it was suggested the claimant reflect then. Subsequently, when Mr Porter indicated he had no further cross-examination on this point, it was

indicated that the claimant could further reflect (once his evidence had concluded and when he was not under a restriction with the result that he could not discuss matters with anyone else).

- 30. There was no evidence-in-chief from the claimant as to how the unfavourable treatment arose as a result of his disability (osteoarthritis) and he could not explain this either in cross-examination or in his submissions.
- 31. It appears (and this is not a criticism) that the claimant did not understand this part of his claim and did not know what he needed to do to advance it.
- 32. The Tribunal finds the claimant has not transferred the burden of proof in respect of this claim per s.123 EQA in the absence of any direct evidence and any attempt to provide a causative link.

Reasonable adjustments

6.2 Did the respondent have the following PCPs

6.2.1 Requiring employees to attend the office at least four times a week

6.2.2 Requiring employees to attend the office between 8am and 4pm

- 33. This aspect of the claimant's claim again proved problematical for him.
- 34. The respondent did not agree the alleged PCPs were applied.
- 35. The claimant did not advance the PCPs either in his evidence-in-chief or in his cross-examination. Indeed, the claimant appeared to have abandoned the PCPs. In his evidence-in-chief he referred to '35 hours per week Monday and Friday with core hours 10-12 and 2-4' (witness statement paragraph 33).
- 36. He gave no evidence and nor did he refer to office hours or core hours of 8am to 4pm.
- 37. In addition, in questions put to Ms Smallcombe, the claimant referred to the rota which applied to him being Monday to Friday with the hours of 9am to 5pm. This was not how the PCP was framed and was not the case the respondent had prepared to answer.
- 38. Not only has the claimant not established the PCPs, as Mr Porter submitted, the duty to make reasonable adjustments did not arise. The claimant was unfit for work from 8/7/2021 and there was no realistic prospect of him returning to work (acknowledging initially the OH report of 4/8/2021 did refer to him returning to work within the next six to eight weeks (page701)). Indeed, as submitted, two independent medical experts (one instructed by the

respondent and one by another London borough) both found not only was the claimant unfit to perform his substantive role to the scheme retirement age, but that he could not engage in any other meaningful employment.

Breach of contract

8.2.1 In December 2020 advise the claimant to present his concerns as a grievance rather than through the respondent's whistleblowing procedure;

8.2.2 Fail to respond within a reasonable time to the claimant's grievance lodged on 3/12/2020?; and

8.2.3 Fail to respond within a reasonable time to the claimant's grievance lodged on 3/2/2021?

39. Mr Porter submitted that not only were these matters not a breach of contract, they could not possibly be a repudiatory breach of contract (so as to lead to the claimant claiming constructive dismissal, as was his case).

40. The Tribunal finds that all Mr Costello did, was to agree with the claimant that his concern over Ms Smallcombe's secondment being extended with her taking the newly created role of Covid Co-ordinator merited further investigation to establish whether there had been a breach of the respondent's procedures (Mr Costello's witness statement paragraph 16). It was however Mr Costello's view that as the claimant was the only person affected (only he and Ms Smallcombe had applied for the original secondment), the matter fell under the respondent's grievance procedure, not the whistleblowing policy. He felt it was a personal matter and not one of wider public interest.

41. In his evidence-in-chief, the claimant sought to advance that this was some sort of conspiracy to avoid wider public scrutiny of the respondent. It is not clear in any event, even if the concern had proceeded under the whistleblowing policy, how that would have led to wider scrutiny.

42. In fact, the claimant said to Mr Costello on the 14/12/2020 (page 349):

'I agree Grievance and not WP is the most appropriate route'

It is assumed 'WP' is a typographical error and it should read 'WB' referring to whistleblowing.

43. In any event, Mr Costello's referral to HR was headed as a 'Whistleblowing Allegation' on the 15/12/2020 (page 345). He went on to say (page 346):

'Whistleblowing Policy / Grievance Procedure'

In relation to taking this matter forward whilst I am satisfied that further enquiries are necessary I am not convinced that the Council's whistleblowing policy is the correct policy under which the concerns should be addressed and that the grievance procedure is perhaps more appropriate.

I did discuss this with Taiq at our meeting and explained my rationale. I also advised him that Human Resources (as the owner of both policies) would be the ultimate arbiter as to whether the matter would be investigated further and under which policy.

My view is largely based on the fact that Taiq alleges that he has suffered personal detriment / discrimination as a result of management actions

The protections for employees as whistleblowers are detailed primarily within the Public Interest Disclosure Act 1998. Ordinarily a whistleblower is someone who raises wrongdoing in the public interest and there is an impact on others and they are not directly impacted themselves.

In general, cases of bullying, harassment or discrimination are not ordinarily covered under whistleblowing, unless in the public interest.

I would highlight that Taiq's email includes a serious allegation that states; 'On that basis I and others were denied equality of opportunity to develop and advance our careers and in my case, I believe on the basis my race'. (Subsequent to our meeting Taiq has indicated that he believes his age may also be a factor)

As this relates to alleged discrimination, this is a further reason why I feel it more appropriate that the matter be investigated in line with the Council's Grievance Procedure.'

44. The Tribunal finds Mr Costello expressed his view and the claimant agreed with that view. Even then, Mr Costello did not impose his view, he left it as a matter for HR.
45. Notwithstanding that, it is difficult to see what disadvantage was caused to the claimant. He did not, at the time, protest or insist that his complaint proceed under the whistleblowing policy and his concern was investigated.
46. In terms of the timing of this grievance (referred to during the hearing as the first grievance), the claimant wrote to Mr Costello on the 3/12/2020 (page 326). It is worth noting the decision about which the claimant complains was taken by Mr McDermid in March 2020 and even if not communicated then, it

would have become obvious to the claimant once the substantive post holder returned at least in April 2020 (in his question to Mr Fanawopo on this matter the claimant used the date of April 2020). It is also of further note that the respondent's grievance policy states that it will not apply to complaints or grievances which are over three months old (page 861).

47. Mr Costello replied to the claimant on the 3/12/2020 (page 335). They met on the 9/12/2020 and Mr Costello, after consultation with the claimant, referred the matter to HR on the 15/12/2020 (page 345). Invariably, there would be some delay then due to the Christmas period.

48. Notwithstanding the claimant had submitted a second grievance on the 3/2/2021 (see below), Ms Thompson interviewed the claimant on the 25/2/2021 (page 537). Ms Thompson interviewed Mr McDermid on the 17/3/2021 and she completed her report in June 2021 (page 527). The respondent accepts that an outcome letter was not sent to the claimant at the time, as an oversight.

49. In his closing submission, the claimant referred to chasing up the grievance outcome numerous times. Unfortunately again, this is a misrepresentation of his case. To cite one example, on the 28/7/2021 in an email to Mr Fanawopo, the claimant complained about another incident with Ms Smallcombe and he said (page 601):

'Would you like me to complete a separate grievance for or can it be added to the existing investigation... I am happy to take your advise.'

50. The Tribunal finds the claimant did refer to a grievance in emails to the respondent, however, there was not one express separate email that specifically referred to the first grievance or to any delay. Also, it is not clear which of the two grievances the claimant is referring to. The first grievance concerned an extension to a secondment. There were many issues outstanding regarding the claimant and it is therefore understandable that this may have then been overlooked.

51. The claimant raised a second grievance on the 3/2/2021 (page 380). That grievance concerned the warning Ms Smallcombe issued on the 26/2/2020. Almost a year ago by that stage. The claimant was interviewed by Ms Plummer on 26/3/2021 (page 487), the interview having originally been set for the 25/2/2021 (page 419). The investigation report was produced on the 7/7/2021 (page 561). The outcome letter was sent to the claimant on the 13/7/2021 (page 584).

52. The claimant had begun a period of sickness absence on the 8/7/2021 and prior to that in an OH report of the 23/6/2021 it was reported due to the chronic nature of his conditions; the claimant had started to vaguely consider

taking early retirement (page 696). The claimant quite rightly wanted to consider his treatment options first. At this time, the claimant was aged 60 (page 5).

53. The claimant appealed the outcome of the second grievance on 24/7/2021 (page 590).

54. Following that, both parties' focus was on either voluntary redundancy or ill health retirement (IHR).

55. Notwithstanding the failure to provide the outcome of the first grievance, it cannot be said that there was a failure to 'respond within a reasonable time' to the grievances. Both were responded to within a reasonable time. The claimant does not specifically complain about the failure to provide an outcome to the first grievance. The claimant appears to refer to the entirety of the grievance process, including the appeal outcome when he complains of delay in his evidence. He did not frame his breach of contract as referring to the entire process and overall delay. He specifically referred to a failure to respond within a reasonable time to two grievances presented on two specific dates.

56. Furthermore, personnel had left the respondent or were ill at various points during the currency of the grievances.

57. It should also be remembered that these events were taking place during the biggest national emergency for over a century; the unprecedented covid pandemic. The second national lockdown commenced on the 5/11/2020 and the third national lock down started on the 6/1/2021. On the 16/4/2021 the Prime Minister said the lockdown would continue for at least three weeks. On the 23/6/2021 he announced the period of national hibernation was coming to an end.

Unfair dismissal

2.1 Was the claimant dismissed?

58. The Tribunal finds the claimant first raised the possibility of early retirement, via OH on 23/6/2021 (page 696). Mr McDermid gave unchallenged evidence that the claimant had previously raised voluntary redundancy or early retirement with him in 2019.

59. Mr Fanawopo sent the claimant the figures for voluntary redundancy on the 10/9/2021 (page 631). Voluntary redundancy was discussed as there was an impending reorganisation and this possibly of 'first refusal' was raised by the Trade Union representative upon the claimant's behalf (page 621). There was an exchange of emails in which the claimant raised perfectly reasonable

queries regarding his position, including his previous 25/26 years local government pension scheme service with the London Borough of Harrow.

60. There was an Independent Medical Assessment of the claimant's health on the 11/3/2022 (page 710). After the Assessor sought input from the claimant's GP, he confirmed on the 6/5/2022 the claimant was not only unfit for work in his substantive role, but also, that he was unable to undertake any gainful employment, even in an entirely sedentary role, in the future (page 712).
61. The claimant cannot have been forced to attend these assessments. It therefore has to be inferred that he attended of his own free will and that it was his position that he at least wished to explore IHR and then he subsequently confirmed he did want to take IHR. He said himself, he was on zero pay (or he was shortly to go onto zero pay) and the medical advice was there was no prospect of him returning to work or of being gainfully employed in any role. If the claimant did not accept IHR (Tier 1 which was explained as meaning the pension he received was enhanced as if he had continued to work until the retirement age of that scheme) he would have no income and presumably, he would have had to apply for benefits.
62. The claimant emailed Mr Fanawopo on the 9/5/2022 to ask for pension computations, together with voluntary redundancy option (a calculation) for him to decide the most appropriate option for him (page 637).
63. Following that interaction, on the 1/7/2022 the claimant informed Mr Fanawopo he had decided to go with the IHR option and asked for it to be put into 'immediate effect' (page 638). He also thanked the respondent for its assistance which he said was greatly appreciated. By this point, the claimant had been absent through ill-health for almost a year. On his own account, he was on zero pay (the Tribunal presumes he had exhausted his contractual sickness pay). At no point did the respondent raise any capability issue with the claimant and it did not operate its capability policy.
64. On the 13/7/2022 the claimant emailed Mr Fanawopo to say that it had been 10 days since he had advised of his preferred option and he asked for an indication as to how long it would take to conclude (page 640).
65. The respondent wrote to the claimant on the 25/7/2022 to invite him to a final review meeting on the 10/8/2022 further to the application for IHR (page 642). The letter enclosed a consent form for the claimant to sign.
66. The claimant signed the form on the 9/8/2022 (page 646):

'EARLY RETIREMENT FROM SERVICE ON HEALTH GROUNDS

I agree with the conclusion based on the report of the Medical Adviser to the Independent Medical Assessor that I am permanently unfit to undertake the duties of my current post or any other employment within the Council. I accept that I should be retired early from the Authority's service for this reason.'

67. By letter dated 10/8/2022², the respondent confirmed the claimant's application had been approved and his contract was terminated by mutual consent on the 10/8/2022 (page 647). The Tribunal finds the claimant's employment terminated on the 10/8/2022.
68. In respect of the claimant's position vis-à-vis the London Borough of Harrow, a further Independent Medical Assessor found in respect of that pension scheme, he was permanently incapable of discharging his duties and the report stated it was unlikely further medical intervention will enable him to return to work (page 722).
69. The claimant confirmed he intended to reflect and take independent advice (page 637). He had the support of his Trade Union representative. He was not coerced, tricked or pressurised into firstly, asking for figures and information in order that he could make a reasoned assessment as to what was in his best interest and, secondly to then taking matters forward participating in the steps which were needed for the IHR to take effect. Indeed, it was the claimant who complained about delay on the 13/7/2022.
- Time Limits EQA
70. Any act complained of before the 23/7/2022 is *prima facie* out of time. This applies to the claims under the EQA in the list of issues (issue 1) (page 63).
71. The list of issues also set out the test which the claimant would need to satisfy to persuade the Tribunal to exercise its discretion to extend the time limit under s.123 EQA.
72. The claimant made references to the time limit in his evidence-in-chief (paragraphs 60, 160 and 162). The claimant essentially blamed the respondent's conduct (paragraph 60) and also said that it would have been unreasonable to present his Tribunal claim any earlier, when on his case, so many matters were outstanding against the respondent and he hoped the respondent would take corrective action.
73. If, as the claimant claims, the respondent was not progressing his grievances, then that is all the more reason for the claimant to take action and to contact Acas. The claimant had indicated from June 2021 that he was considering

² The letter in the bundle is dated 6/3/2024, yet it refers to termination on 'today, August 10th 2022'. The date of 10/8/2022 is taken from the respondent's chronology.

leaving the respondent and that view had become a firm intention by the 4/10/2021 when he referred to ending his current relationship with the respondent (page 618). It does not appear therefore that the claimant was concerned about protecting an on-going employment relationship.

74. It is also observed that damaging the employment relationship had not prevented the claimant raising two formal grievances. Which included being critical of Ms Smallcombe and accusing her of bullying and harassing him.

75. The claimant had advice from his Trade Union representative throughout including and up to him taking ill health retirement.

The Law

Constructive unfair dismissal

76. The right not to be unfairly dismissed is set out in section 94 of the Employment Rights Act 1996 (ERA). For these purposes, an employee is dismissed by their employer if:

‘the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct’

(section 95(1)(c) ERA)

77. This treatment of the employee's resignation as ‘constructive dismissal’ pre-dates the ERA, and Lord Denning MR in the Court of Appeal decision in Western Excavating (ECC) Ltd v Sharp [1978] ICR 221 described the nature of the contractual breach which entitles the employee to accept that breach and treat the employer's conduct as dismissing them:

‘If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed.’

78. Therefore there are three elements that an employee needs to prove so as to demonstrate that they have been constructively dismissed:

a) A fundamental breach of the contract of employment between them on the part of the employer;

b) A causal link between the employee's resignation and that employer breach; and

c) Evidence of the employee accepting that breach before any affirmation of the contract.

79. Underhill LJ giving the judgment of the Court of Appeal in Kaur v Leeds Teaching Hospital NHS Trust 2019 ICR 1 CA observed:

'In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:

- (1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
- (2) Has he or she affirmed the contract since that act?
- (3) If not, was that act (or omission) by itself a repudiatory breach of contract?
- (4) If not, was it nevertheless a part (applying the approach explained in Omilaju [2005] ICR 481) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation...)
- (5) Did the employee resign in response (or partly in response) to that breach?'

80. Fundamental breach

81. An employer may, per Lord Denning MR in Western Excavating, '[show] that [they] no longer [intend] to be bound by one or more of the essential terms of the contract' through a course of conduct, which may cumulatively amount to a fundamental breach of contract. This is so even if the 'last straw' incident does not, by itself, amount to a breach of contract (Lewis v Motorworld Garages Ltd [1986] ICR 157), although that 'last straw' must contribute to the course of conduct relied upon. A blameless act by the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his or her trust and confidence in the employer (Omilaju v Waltham Forest London Borough Council [2005] ICR 481).

82. The test of whether the term of the contract has been breached is an objective one. There will be no breach simply because the employee subjectively feels that such a breach has occurred, no matter how genuinely this view is held (Omilaju).

83. The term breached may be an express term of the contract, or an implied one. In the case of the implied term of trust and confidence:

‘A finding that there has been conduct which amounts to a breach of the implied term of trust and confidence will mean inevitably that there has been a fundamental or repudiatory breach going necessarily to the root of the contract, and entitling the employee to resign and claim constructive dismissal’ (Morrow v Safeway Stores plc [2002] IRLR 9).

84. Causal link

85. There must be a causal link between the breach by the employer and the employee’s resignation (Meikle v Nottinghamshire County Council [2005] ICR 1 CA).

86. Acceptance of that breach without affirming the contract

87. The issue of affirmation was discussed in the EAT case of Leaney v Loughborough University [2023] EAT 155:

Where one party is in fundamental breach of contract, the injured party may elect to accept the breach as bringing the contract to an end, or to treat the contract as continuing, requiring the party in breach to continue to perform it – that is affirmation. Where the injured party affirms, they will thereby have lost the right thereafter to treat the other party’s conduct as having brought the contract to an end - unless or until there is thereafter further relevant conduct on the part of the offending party.

An employee who claims unfair constructive dismissal based on a continuing cumulative breach is entitled to rely on the totality of the employer’s acts notwithstanding prior affirmation of the contract provided that the later act – the last straw – forms part of the series. The effect of the final act is to revive the employee’s right to terminate his or her right to terminate the employment contract based on the totality of the employer’s conduct (Kaur v Leeds Teaching Hospital NHS Trust [2018] EWCA Civ 978).

88. Affirmation may be express or implied. Affirmation can be implied if the innocent party:

- a) calls on the guilty party for further performance of the contract, since that conduct is only consistent with the continued existence of the contractual obligation; or
- b) themselves does an act which is only consistent with the continued existence of the contract. However, if the innocent party further performs the contract to a limited extent but makes it clear that he:
- c) is reserving his rights to accept the repudiation; or
- d) is only continuing to so as to allow the guilty party to remedy the breach, such further performance does not prejudice his right subsequently to accept the repudiation (WE Cox Toner (International) Ltd v Crook [1981] ICR 823).

89. Burden of proof – in unfair dismissal where there is an actual dismissal by the employer and once the reason for dismissal is established (the burden is on the employer to do so), the burden of proof is then neutral. In a claim of constructive unfair dismissal the burden is upon the claimant to establish the elements of the claim.

Discrimination arising from disability

- 90. Under s.15(1) of the Equality Act, a person (A) discriminates against a disabled person (B) if 'A treats B unfavourably because of something arising in consequence of B's disability and A cannot show that the treatment is a proportionate means of achieving a legitimate aim'.
- 91. S.15(2) provides that there will be no such discrimination if 'A shows that A did not know, and could not reasonably have been expected to know, that B had the disability'.
- 92. 'Something arising in consequence of' the disability should be given its ordinary and natural meaning (T-Systems Ltd v Lewis EAT/0042/15). In that case the EAT rejected the submission that the scope of the consequences arising from a disability is confined to things over which the employer has no control or are limited to the effects of the claimant's disability on the disabled person rather than the employer.
- 93. Mrs Justice Simler considered the causative link required by s.15 in Pnaiser v NHS England and another [2016] IRLR 170 and then again in Shiekhholeslami v University of Edinburgh [2018] IRLR 1090. In the latter she stated:

'On causation, the approach to s.15... is now well established... In short, this provision requires an investigation of two distinct causative issues: (i) did A treat B unfavourably because of an (identified) something? and (ii) did that something arise in consequence of B's

disability? The first issue involves an examination of the putative discriminator's state of mind to determine what consciously or unconsciously was the reason for any unfavourable treatment found. If the "something" was a more than trivial part of the reason for unfavourable treatment then stage (i) is satisfied. The second issue is a question of objective fact for an employment tribunal to decide in light of the evidence.'

94. Burden of proof - in a complaint of discrimination arising from disability, the claimant will need to establish that they have been treated unfavourably and will have to prove that the something upon which they rely arises in consequence of their disability. They will also need to adduce some evidence to suggest that the unfavourable treatment could be because of the something arising.

95. The claimant also claims the respondent failed in its duty to make reasonable adjustments per s.20 EQA:

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage...

96. S.21 EQA provides that:

...

(2) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(3) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

97. Tribunals should take a structured, step-by-step approach to the consideration of whether there was a duty to make reasonable adjustments. The duty does not arise in every case of disability.

98. Firstly, identify the provision, criterion or practice ('PCP') being applied?

99. Secondly, does that PCP put the claimant to a substantial disadvantage compared with a person who is not disabled?

100. Thirdly, has the employer taken reasonable steps to avoid that disadvantage? This is an objective question, the focus being on the practical result. There must be a prospect (some cases say a 'real prospect') of the step being effective.
101. Paragraph 7.29 of the Code³ sets out factors that may be relevant in deciding what is reasonable. The size and resources of the employer; what proposed adjustments might cost; the availability of finance or other help in making the adjustments; the logistics of making the adjustment; the nature of the role; the effect of the adjustment on the workload of other staff; the other impacts of the adjustment; the extent it is practical to make. Another factor is the likely effectiveness of the step: the chance that it is likely to be successful.
102. The duty to make adjustments arises in respect of those steps that it is reasonable for the employer to take to avoid the disadvantage experienced by the disabled person.
103. The first factor listed in paragraph 6.28 of the EHRC Employment Code that an employer may wish to consider when deciding what is a reasonable step to have to take is the extent to which taking a particular step would be effective in preventing the substantial disadvantage caused to the disabled person. In practice, it is most unlikely to be reasonable for an employer to have to make an adjustment that involves little benefit to the disabled person.
104. In Madarassy v Nomura International plc [2007] ICR 867, CA, Mummery LJ stated that: 'The bare facts of a difference in status and a difference in treatment only indicates a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent has committed an unlawful act of discrimination'.
105. If a claimant establishes a *prima facie* case of discrimination, then the second stage of the burden of proof test is reached, with the consequence that the burden of proof shifts onto the respondent. According to the Court of Appeal in Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases [2005] ICR 931, CA, the respondent must at this stage prove, on the balance of probabilities, that its treatment of the claimant was in no sense whatsoever based on the protected ground.
106. In respect of the vagueness of the allegations, it is important to establish that the treatment was because of a protected characteristic it must be shown that a named individual (or a number of individuals) who subjected the claimant to a detriment was consciously or subconsciously influenced by the protected characteristic. Unless the claimant identifies the alleged

³ Equality Act 2010 2010 Code of Practice - Employment

discriminator(s), that exercise cannot be conducted and the claim will fail Reynolds v CLFIS (UK) Ltd [2015] IRLR 562.

107. Breach of contract. It is not clear upon what legal basis the claimant advances this aspect of his claim. It would appear to be under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.

Conclusions

Discrimination arising from disability s.15 EQA

108. The respondent accepts the treatment of which the claimant complains was unfavourable treatment.
109. The issue is however, whether there was a causal link between the claimant's disability and the treatment (was the unfavourable treatment because of any of those things issue 5.4)? Or, to use the words of the statute was the claimant treated unfavourably because of something arising in consequence of his disability.
110. There was no evidence-in-chief from the claimant linking the unfavourable treatment to his disability. When it was put to him in cross-examination, he seemed to realise the difficulty he was in.
111. The specific matters the claimant relied upon were: his mobility difficulties and his desire to work from home. The claimant was unable to articulate how the unfavourable treatment arose from the consequences of his disability. There was no causal link between the written warning for his non-attendance in September 2019 and his failure to attend a meeting; and the difficulties arising from his disability (issue 5.1.1).
112. The Tribunal has found the factual allegation of 'threatening' him with disciplinary action is not made out (issue 5.1.2). Even if the allegation could be interpreted as telling the claimant Ms Smallcombe was considering taking disciplinary action, the same reasoning as per issue 5.1.1 applies.

Reasonable adjustments s. 20 and s. 21 EQA

113. The conclusion is the claimant has not established he was subjected to a PCP. The claimant agreed he worked from home three days per week and this began during the first covid lockdown. The claimant's own evidence-in-chief did not suggest there was a required working pattern of 8am to 4pm.
114. In any event, the Tribunal agrees with the respondent that the duty had not arisen. The claimant was on sickness leave from the 8/7/2021 and during

that period of time until his employment ended, there was no prospect of him returning to work, so as to engage the duty. Prior to the claimant's absence he indicated he was considering early retirement and he had previously suggested the same to Mr McDermid in 2019.

115. Previously adjustments had been made for the claimant and the Tribunal has no reason to doubt that if there had been a prospect of the claimant returning to work, the respondent would have correctly engaged with its duty.

Breach of contract

116. The Tribunal concludes the matters there was no breach of the claimant's contract and therefore no fundamental breach.
117. Mr Costello did not advise the claimant to present the complaints under the grievance procedure, rather than the whistleblowing policy. Even if Mr Costello did do as alleged, the claimant stated he agreed with Mr Costello's approach. It was open for the claimant or his Trade Union representative to assert to HR, that they believed the correct approach would be to advance these matters under the whistleblowing policy.
118. There was no failure to respond to either grievance within a reasonable time. Particularly in light of the circumstances of the pandemic for much of the material time.

Unfair dismissal

119. The burden of proof is on the claimant to prove his was dismissed for the purposes of s.95 ERA. There was no dismissal of the claimant by the respondent. There was a mutual agreement to terminate the claimant's employment in order that he could access the IHR benefit as a result of the Assessor's conclusion that he 'is not going to be able to reliably and efficiently undertake gainful employment, and even an entirely sedentary role, in the future' (page 712).
120. The Tribunal found there was no pressure or coercion applied to the claimant and once he decided IHR was his better and preferred option, he provided the necessary information, attended meetings and signed the paperwork.
121. The claimant had time to reflect and to take advice. His view and that of the Independent Assessors was that he had no prospect of being able to work in any capacity from the time of the assessment to his normal retirement age.

122. This was not a case where the claimant consented to being dismissed by the respondent. He clearly and unequivocally consented to the termination of his employment in order that he could access the IHR benefit and receive his enhanced pension, some years earlier than he would have been entitled to the same.

Time Limits under the EQA

123. The allegations of unlawful discrimination contrary to the EQA are out of time. The s.15 EQA allegations are out of time by (if the discussion about the absence was in October 2019) by 33 months and in respect of the warning (26/2/2020) by 29 months.
124. If the claimant were to claim the two matters (issue 5.1.1 and 5.1.2) were conduct extending over a period of time (continuing acts), the Tribunal is prepared to accept this. The failure to attend the meeting on 24/1/2020 was referred to in the warning letter; therefore the end of the period was the 26/2/2020.
125. That does not assist the claimant as the allegation is still out of time.
126. The Tribunal does not accept there was any delay by the respondent so as to excuse the claimant's failure to present his complaint about those allegations within time. Plus the claimant had the advice of his Trade Union representative.
127. The Tribunal was not persuaded to exercise its discretion to extend the time limit on a just and equitable basis.
128. The duty under s.20 EQA did not arise.

Decision

129. There was no breach of s.15 EQA and the duty to make reasonable adjustments did not arise.
130. There was no breach of contract.
131. There was no dismissal. The claimant's employment came to an end by him consenting to the termination of his employment.
132. The EQA claims were presented out of time.
133. For those reasons, the claimant's claims are not well-founded and are dismissed.

Approved 14/8/2025 by
Employment Judge Wright

JUDGMENT SENT TO THE PARTIES ON:
02/10/2025

DA Amponsah
FOR THE SECRETARY OF EMPLOYMENT
TRIBUNALS