EMPLOYMENT TRIBUNALS

Claimant: Christopher Turner

Respondent: Paul Hartmann Limited

Heard at: Manchester **On:** 1-12 July 2024 and 12-13 August 2024 (in chambers)

Before: Employment Judge McDonald
Mr A Murphy
Mr P Dobson

REPRESENTATION:

Claimant: Ms N Dinnes (Solicitor)
Respondents: Mr J Boyd of Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

Complaints under the Equality Act 2010

1. The complaint of harassment related to disability (s.26 Equality Act 2010) is not well-founded and is dismissed.

2. The complaint of unfavourable treatment because of something arising in consequence of disability (s.15 Equality Act 2010) is not well-founded and is dismissed.

3. The complaint of victimisation (s.27 Equality Act 2010) is not well-founded and is dismissed.

Unfair Dismissal

4. The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed.

5. There is a 100% chance that the claimant would have been fairly dismissed in within a period of 6 Weeks of his actual date of dismissal.

6. The respondent unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 ("the ACAS Code") and it is just and equitable to increase the compensatory award payable to the claimant by 25% in accordance with s 207A Trade Union & Labour Relations (Consolidation) Act 1992.

7. The claimant caused or contributed to the dismissal by blameworthy conduct and it is just and equitable to reduce the compensatory award payable to the claimant by 100%.

8. It is just and equitable to reduce the basic award payable to the claimant by 100% because of the claimant's conduct before the dismissal.

9. The respondent shall pay the claimant the following sums:

   (a) A basic award of £0.00.

   (b) A compensatory award of £0.00

REASONS

Introduction

1. By a claim form dated 22 September 2021 (Case no.2411199/2021), the claimant brought complaints of disability discrimination. By a claim form dated 13 May 2022 (Case no.2403516/2022), the claimant brought further complaints of disability discrimination and a complaint of unfair dismissal. At a preliminary hearing on 20 September 2022, the Tribunal directed that the cases be heard together.

2. The respondent accepted that the claimant was at all relevant times a disabled person by reason of both autism spectrum disorder ("ASD") and cancer. In this judgment we have adopted the approach taken by the claimant in his witness statement and in the documentary evidence when it comes to terminology referring to autism. We have referred to ASD as the claimant's diagnosis, to "the claimant's autism", to him as an "autistic person" and to the claimant's "condition". We accept that "Asperger's" or "Asperger's syndrome" are no longer used as diagnostic terms and are considered controversial, but have used them where we are quoting from evidence in the case which used these terms.

Application for an Anonymity Order

3. During submissions, Ms Dinnes confirmed that the claimant sought an anonymity order under rule 50(1) and (3)(b) of the 2013 Rules of Procedure (now Rule 49 of the Employment Tribunal Procedure Rules 2024). We reserved our decision on that issue. We have decided not to grant the application. We have set out our reasons for that decision in our written order of today's date.

Preliminary Matters

4. At the start of the hearing, we dealt with the scope of the case and what reasonable adjustments we should make in hearing the case to take into account the claimant's disabilities.

The scope of this final hearing

5. The parties agreed that the hearing would deal with liability only. A separate remedy hearing would be listed if required.

6. One of the protected acts relied on by the claimant for his victimisation claim included his bringing an employment tribunal claim against the respondent in 2018.The respondent accepted that was a protected act for the purposes of s.27(2) of the Equality Act 2010. That 2018 claim was settled through ACAS via a COT3 agreement.

7. We made it clear to the parties we were not deciding that 2018 claim. However, some of the incidents which we understood were included in that 2018 claim were important as background matters to the issues we were deciding. It was not suggested that evidence about those incidents should be excluded because of the COT3 settlement.

Reasonable Adjustments in hearing the case

8. At the start of the hearing, we discussed what adjustments might be required to the way we conducted the hearing to alleviate the impact of the claimant's disabilities.

9. We gave the claimant the opportunity to consider whether the layout of the Tribunal room needed to be adjusted in any way to enable him to give his best evidence. He confirmed no such adjustment was required.

10. We discussed and agreed other adjustments with the parties. We accepted that the claimant's hypersensitivity to touch meant that he was dressed less formally than others might for a Tribunal hearing. We agreed that the claimant could take more regular breaks than would usually be the case. That reflected both the impact of his autism and the fact that he had had surgery on his mouth because of his cancer. That made speaking for long periods of time painful for him.

11. The hearing was held in public. On some days, including when the claimant was giving evidence, we had a number of observers present. The claimant confirmed that he had no objection to those observers being present.

12. Ms Dinnes submitted that it was important for the Tribunal to be aware of the impact of ASD on the way the claimant might present when giving evidence. She submitted that we should before the start of the evidence read Dr David Ruthenberg's Expert Witness Report (pp. 1336-1364 of the joint hearing bundle) ("Dr Ruthenberg's Report") to get an insight into how the claimant's autism might manifest when he was giving evidence. We did so.

13. Ms Dinnes also submitted that the claimant's autism meant that clear and direct communication was required when asking him questions. When it came to assessing the claimant's credibility as a witness and the reliability of his evidence she submitted that the claimant's tone modulation may be idiosyncratic and that the claimant's autism

might affect his body language when giving evidence. We took those submissions and the expert evidence that we read into account in assessing the credibility of the claimant as a witness and the reliability of his evidence.

The Issues

14. The issues in the case were set out in an agreed List of Issues. We have annexed it to this judgment. It was agreed that we would deal with liability but not remedy. However, we would deal with Polkey, contribution and the ACAS Code.

15. During the hearing the claimant clarified that:

- Logically, the protected acts which post-dated the detriment of not being provided with the pay rise requested in May 2021 could not have been a cause of that alleged act of victimisation in breach of s.27 of the Equality Act 2010.

- the claimant's harassment complaint was based on an allegation that there had been unwanted conduct having a harassing effect rather than unwanted conduct with a harassing purpose.

The Hearing

16. After discussing the issues and potential reasonable adjustments with the parties, the Tribunal spent day 1 of the hearing reading the witness statements and key documents in the case including Dr Ruthenberg's Report.

17. We heard the claimant's oral evidence on days 2-4. From Day 5 to the morning of Day 10 we heard the respondent's witnesses' evidence. The Tribunal was unable to sit on the afternoon of day 9 due to the Employment Judge having a pre-existing commitment.

18. Both Mr Boyd and Ms Dinnes provided written closing submissions. We heard oral submissions from them on the afternoon of Day 10. There was limited time to do so and we gave the parties permission to file additional written submissions by 26 July 2024, limited to the points they were not able to cover in their oral submissions.

19. The Tribunal met in chambers on 12-13 August 2024 to make its decision. The Employment Judge apologises to the parties that, as explained to the parties, absences from the Tribunal due to his ill-health have led to a delay in finalising this judgment. He is grateful for their patience in that regard.

20. **Relevant Law**

Unfair Dismissal

21. Section 94 of the ERA gives an employee a right not to be unfairly dismissed by their employer. To qualify for that right an employee usually needs two years' continuous service at the time they are dismissed, which the claimant had in this case.

22. In determining whether a dismissal is unfair, it is for the employer to show that the reason (or if more than one the principal reason) for dismissal is one of the potentially fair reasons set out in s.98(2) of ERA or "some other substantial reason justifying dismissal" ("SOSR"). A dismissal following a breakdown in the employment

relationship can be a dismissal for SOSR (**Ezsias v North Glamorgan NHS Trust 2011 IRLR 550, EAT**).

23. The reason or principal reason is derived from considering the factors that operate on the employer's mind so as to cause him to dismiss the employee. In **Abernethy v Mott, Hay and Anderson [1974] ICR 323**, Cairns LJ said, at p. 330 B-C:

> **"A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."**

24. If the employer shows a potentially fair reason or dismissal then s.98(4) provides that:

> **the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—**
>
> **(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and**
>
> **(b) shall be determined in accordance with equity and the substantial merits of the case.**

25. In **Turner v Vestric [1981] IRLR 23**, the EAT held that where a dismissal was due to a breakdown in a working relationship it was necessary, before deciding whether or not the dismissal was fair, to ascertain whether the employer had taken reasonable steps to try to improve the relationship. To establish that the dismissal was not unfair, the employers had to show not only that there had been a breakdown but that the breakdown was irremediable.

26. The EAT in **Vestric** went on to say that "before somebody in that position is dismissed on this ground there must be some sensible, practical and genuine efforts to see whether an improvement can be effected."

27. In **Matthews v CGI IT UK Ltd [2024] EAT 38** the EAT agreed with the submission that this does not mean "all" reasonable steps must be taken by the employer. It also agreed that where an employer is to blame for the breakdown, it may be reasonable to expect them to do more to repair the relationship. "

28. In terms of what constitutes a fair process where the reason for dismissal is the breakdown of the employment relationship, **Phoenix House Ltd v Stockman 2017 ICR 84, EAT** held that the ACAS Code does not apply to dismissals for some other substantial reasons in the sense that it does not set out a specific process which an employer needs to follow to dismiss for that reason. That appears to be inconsistent with the EAT decision in **Lund v ST Edmund's School, Canterbury UKEAT/0514/12/KN** in which Keith J considered that an employee dismissed for alienating his colleagues, which was characterised as being a dismissal for some other substantial reason did have the protection of the ACAS Code.

29. In **Rentplus v Coulson [2002] EAT,** the EAT expressed doubt about the correctness of **Phoenix.** HHJ James Tayler said he "inclined to the view that the ACAS Code is applicable even if it said that dismissal is for SOSR because it resulted from the response of fellow employees to the misconduct or poor performance that had led

to a breakdown in working relationships." It was not necessary to formally decide the point but he considered it "clear that the applicability of the ACAS Code is a matter of substance rather than form. I do not consider that an employer can sidestep the application of the ACAS Code by dressing up a dismissal that results from concerns that an employee is guilty of misconduct, or is rendering poor performance, by pretending that it is for some other reason such as redundancy."

Remedy for Unfair dismissal

30. When it comes to the compensatory award for unfair dismissal, section 123(1) of the 1996 Act provides:

> **"(1) Subject to the provisions of this section and sections 124 and 126, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer."**

31. It has been established since **Polkey v A E Dayton Services Limited [1988] ICR 142** that in considering whether an employee would still have been dismissed even if a fair procedure had been followed, there is no need for an all or nothing decision. If the Tribunal thinks there is doubt whether or not the employee would have been dismissed, this element can be reflected by reducing the normal amount of compensation by a percentage representing the chance that the employee would still have lost his employment. Although this inherently involves a degree of speculation, Tribunals should not shy away from that exercise. Guidance on the approach to be taken is given by the Employment Appeal Tribunal in paragraph 54 of **Software 2000 Limited v Andrews [2007] IRLR 568**

The ACAS Code

32. Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 gives the Tribunal a power to adjust compensation where there has been an unreasonable failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures ("the ACAS Code"). Compensation can be increased where it is just and equitable but by no more than 25%.

33. The Tribunal's discretion under s.207A is very broad, both as to whether there should be an uplift at all, and as to the amount of any uplift: **Slade and anor v Biggs and ors 2022 IRLR 216.** We had regard to the guidance in **Slade** that the top of the range of 25% should be applied only to the most serious cases but that the statute does not state that such cases should necessarily have to be classified, additionally, as exceptional.

34. In **Slade**, the EAT suggested that a Tribunal in applying s.207A "might choose to apply" a four-stage test:

a) Is the case such as to make it just and equitable to award any ACAS uplift?

b) If so, what does the Tribunal consider a just and equitable percentage, not exceeding although possibly equalling, 25%?

c) Does the uplift overlap, or potentially overlap, with other general awards, such as injury to feelings; and, if so, what in the Tribunal's judgment is the appropriate adjustment, if any, to the percentage of those awards in order to avoid double-counting?

d) Applying a final sense-check, is the sum of money represented by the application of the percentage uplift arrived at by the Tribunal disproportionate in absolute terms and, if so, what further adjustment needs to be made?"

Contributory Fault

35. A reduction because of contributory fault by the employee can apply both to the basic award and to the compensatory award by virtue of differently worded provisions in sections 122 and 123 respectively:

> **"Section 122 (2) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly….**
>
> **Section 123 (6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding."**

36. As to what conduct may fall within these provisions, we had regard to the decision of the Court of Appeal in **Nelson v BBC (No 2) [1980] ICR 110** and to **Steen v ASP Packaging Ltd [2014] ICR 56.** The focus is on whether the behaviour of the claimant amounts to "culpable and blameworthy" conduct.

Equality Act 2010 claims

37. S.39 and 40 of the 2010 Act prohibit discrimination, victimisation or harassment of employees. So far as material to this case they provide as follows:

> **"39 Employees and applicants**
>
> **(2) An employer (A) must not discriminate against an employee of A's (B)—**
>
> **(a) as to B's terms of employment;**
>
> **(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;**
>
> **(c) by dismissing B;**
>
> **(d) by subjecting B to any other detriment.**

(3)….

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

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

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

(c) by dismissing B;

(d) by subjecting B to any other detriment.

(5) ……

40 Employees and applicants: harassment

(1) An employer (A) must not, in relation to employment by A, harass a person (B)—

(a) who is an employee of A's;

(b) ….

The Burden of Proof

38. The 2010 Act provides for a shifting burden of proof. Section 136 so far as material provides as follows:

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

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

39. This means that it is for a claimant to establish facts from which the Tribunal can reasonably conclude that there has been a contravention of the 2010 Act. If the claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention by, for example, identifying a different reason for the treatment.

40. As for what is required to discharge the burden at the first stage, that must be something more than a difference in the relevant protected characteristic and a difference in treatment; see **Madarassy v Nomura International plc [2007] ICR 867, CA**. That said, the something more required at the first stage need not be a great deal; see **Deman v EHRC [2010] EWCA Civ 1279**.

41. A finding that an employer has behaved unreasonably, or treated an employee badly, will not, however, be sufficient, of itself, to cause the burden of proof to shift; **Glasgow City Council v Zafar [1998] ICR 120**.

42. The guidance in in **Igen Ltd v Wong [2005] ICR 931, CA** states when the burden has passed, not only must the respondent provide an explanation for the facts proved by the claimant, from which the inferences could be drawn, but that explanation must be adequate to prove, on the balance of probabilities, that the protected characteristic was no part of the reason for the treatment. However, that explanation need not be "adequate" in the sense of providing a reason which satisfies some objective standard of reasonableness or acceptability – it does not matter if the employer has acted for an unfair or discreditable reason provided that the reason had nothing to do with the protected characteristic (**Royal Mail Group v Efobi [2021] UKSC 33** at para 29).

Discrimination arising from disability ("a s.15 claim")

43. Section 15 of the 2010 Act states:

> **(1) A person (A) discriminates against a disabled person (B) if--**
>
> **(a) A treats B unfavourably because of something arising in consequence of B's disability, and**
>
> **(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.**
>
> **(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability**.

44. There is a need to identify two separate causative steps in order for a s.15 claim to be made out (**Basildon and Thurrock NHS Foundation Trust v Weerasinghe 2016 ICR 305, EAT**):

- the disability had the consequence of 'something';
- the claimant was treated unfavourably because of that 'something'.

45. In **Basildon** the EAT said it does not matter in which order the tribunal approaches these two steps: 'It might ask first what the consequence, result or outcome of the disability is, in order to answer the question posed by "in consequence of", and thus find out what the "something" is, and then proceed to ask if it is "because of" that that A treated B unfavourably. It might equally ask why it was that A treated B unfavourably, and having identified that, ask whether that was something that arose in consequence of B's disability'.

46. In **Pnaiser v NHS England and anor 2016 IRLR 170, EAT**, the EAT summarised the proper approach to establishing causation under S.15:

- First, the tribunal has to identify whether the claimant was treated unfavourably and by whom.

- It then has to determine what caused that treatment — focusing on the reason in the mind of the alleged discriminator, possibly requiring examination of the conscious or unconscious thought processes of that person, but keeping in mind that the actual motive of the alleged discriminator in acting as he or she did is irrelevant.

- The tribunal must then determine whether the reason was 'something arising in consequence of the claimant's disability', which could describe a range of causal links. This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

47. For a s.15 claim to succeed the 'something arising in consequence of the disability' must be part of the employer's reason for the unfavourable treatment. The key question is whether the something arising in consequence of the disability operated on the mind of the alleged discriminator, consciously or unconsciously, to a significant extent (**T-Systems Ltd v Lewis EAT 0042/15**). "Significant extent" means a more than trivial part of the reason for the unfavourable treatment (**Sheikholeslami v The University of Edinburgh [2018] IRLR 1090)**.

48. A claimant needs only to establish some kind of connection between the claimant's disability and the unfavourable treatment. In **Hall v Chief Constable of West Yorkshire Police 2015 IRLR 893, EAT** the EAT confirmed that a s.15 claim can succeed where the something arising has a significant influence on, or was an effective cause of, the unfavourable treatment. In **Sheikholeslami** the EAT said that the connection with the disability may involve more than one link in the chain of consequences**.**

49. Mr Boyd in his submissions referred to **McQueen v General Optical Council [2023] EAT 36**. In that case the EAT upheld a Tribunal's decision that the claimant's conduct on the occasions when he came into conflict with co-workers was not something arising in consequence of his disabilities (dyslexia, symptoms of Asperger's Syndrome, neurodiversity and left sided hearing loss). The EAT confirmed that once the Tribunal had made those findings, the question whether any unfavourable treatment alleged and proved had been "because of" something arising in consequence of his disabilities did not arise.

50. Para 5.9 of the Equality and Human Rights Commission's Code of Practice on Employment ("the EHRC Code"), in answer to the question "what does "something arising in consequence of a disability" says that:

> **"The consequences of a disability include anything which is the result, effect or outcome of a disabled person's disability. The consequences will be varied, and will depend on the individual effect upon a disabled person of their disability. Some consequences may be obvious, such as an inability to walk unaided or inability to use certain work equipment. Others may not be obvious, for example, having to follow a restricted diet".**

51. Where an employer dismisses a disabled employee for misconduct caused by his or her disability, the dismissal can amount to discrimination under S.15 of the 2010 Act even if the employer did not know that the disability caused the misconduct (**City of York Council v Grosset 2018 ICR 1492, CA)**.

52. A s.15 claim will only succeed if the employer (or other person against whom the allegation is made) is unable to show that the unfavourable treatment to which the claimant has been subjected is objectively justified as a proportionate means of achieving a legitimate aim.

53. The EHRC Code sets out guidance on objective justification. In summary, the aim pursued should be legal, should not be discriminatory in itself and must represent a real, objective consideration. Although business needs and economic efficiency may be legitimate aims, the EHRC Code states that an employer simply trying to reduce costs cannot expect to satisfy the test (see para 4.29). As to proportionality, the EHRC Code notes that the measure adopted by the employer does not have to be the only possible way of achieving the legitimate aim, but the treatment will not be proportionate if less discriminatory measures could have been taken to achieve the same objective (see para 4.31).

54. A failure to make a reasonable adjustment will make it very difficult for the employer to argue that unfavourable treatment was nonetheless justified. The converse is not necessarily true. Just because an employer has implemented reasonable adjustments does not guarantee that unfavourable treatment of the claimant will be justified, e.g. if the particular adjustment is unrelated to the unfavourable treatment complained of or only goes part way towards dealing with the matter.

55. In **O'Brien v Bolton St. Catherine's Academy [2017] EWCA Civ 145** the Court of Appeal said that the tribunal in that case, which had found that the dismissal in question in that case was in breach of section 15 of the 2010 Act, was also entitled to conclude from this that it had been an unfair dismissal. In **City of York Council v P J Grosset [2018] EWCA Civ 1105** the Court of Appeal said that Underhill LJ in **O'Brien** was addressing his remarks to the particular facts of that case, and was not seeking to lay down any general proposition that the test under section 15(1)(b) of the 2010 Act and the test for unfair dismissal are the same.

56. This means there is no inconsistency between a Tribunal dismissing a claimant's claim of unfair dismissal but upholding a claim under section 15 of the 2010 Act in respect of the same dismissal. This is because the test in relation to unfair dismissal is whether dismissal was within the range of reasonable responses available to an employer, thereby allowing a significant latitude of judgment for the employer itself. By contrast, the test under section 15(1)(b) of the 2010 Act is an objective one, according to which the ET must make its own assessment: see **Hardy & Hansons plc [2005] EWCA Civ 846; [2005] ICR 1565 , [31]-[32],** and **Chief Constable of West Yorkshire Police v Homer [2012] UKSC 15**.

57. The burden of proof provisions apply to s.15 claims. Based on **Pnaiser**, in the context of a S.15 claim, in order to prove a prima facie case of discrimination and shift the burden to the employer to disprove his or her case, the claimant will need to show:

- that he or she has been subjected to unfavourable treatment
- that he or she is disabled and that the employer had actual or constructive knowledge of this

- a link between the disability and the 'something' that is said to be the ground for the unfavourable treatment

- some evidence from which it could be inferred that the 'something' was the reason for the treatment.

58. If the prima facie case is established and the burden then shifts, the employer can defeat the claim by proving either:

- that the reason or reasons for the unfavourable treatment was/were not in fact the 'something' that is relied upon as arising in consequence of the claimant's disability, or

- that the treatment, although meted out because of something arising in consequence of the disability, was justified as a proportionate means of achieving a legitimate aim.

Disability-related harassment

59. The definition of harassment appears in section 26 of the 2010 Act which so far as material reads as follows:

> **"(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 conduct has the effect referred to sub-section (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."**

60. The EHRC Code gives more detail on the factors relevant in deciding whether conduct has the effect referred to in s.26(1)(b) ("a harassing effect") at paragraph 7.18:

> "7.18 In deciding whether conduct had that effect, each of the following must be taken into account:
>
> a) The perception of the worker; that is, did they regard it as violating their dignity or creating an intimidating (etc) environment for them. This part of

> the test is a subjective question and depends on how the worker regards the treatment.
>
> b) The other circumstances of the case; circumstances that may be relevant and therefore need to be taken into account can include the personal circumstances of the worker experiencing the conduct; for example, the worker's health, including mental health; mental capacity; cultural norms; or previous experience of harassment; and also the environment in which the conduct takes place.
>
> c) Whether it is reasonable for the conduct to have that effect; this is an objective test. A tribunal is unlikely to find unwanted conduct has the effect, for example, of offending a worker if the tribunal considers the worker to be hypersensitive and that another person subjected to the same conduct would not have been offended."

61. For a complaint of disability-related harassment to succeed, the Tribunal must be satisfied that there was unwanted conduct which was disability-related and which had a harassing purpose or a harassing effect. Harassment can occur even if the conduct did not have a harassing purpose, so long as it had the harassing effect.

62. The test of whether conduct is "related" to a protected characteristic (in this case disability) is different to that of whether it is "because of" a protected characteristic which applies in a case of direct discrimination. The term 'related to" is wider and more flexible than "because of". In a disability-related harassment case, conduct could be found to be "related to" disability where it was done because of disability, but that is not a requirement. So, for example, if A subjects B to unwanted conduct with the purpose of "creating an intimidating environment for B" in circumstances in which it is established that A would not have subjected someone without the disability to the same conduct, that would establish that the conduct was "related to disability". But there are many other ways in which conduct could be "related to disability". One example given in a case of race-related harassment is where there is conduct that is inherently racist such as telling racist jokes (**Blanc de Provence Ltd v Ha [2023] EAT 160**).

63. Whether conduct is 'related to' a protected characteristic is a matter for the appreciation of the Tribunal, making a finding of fact drawing on all the evidence before it. The fact that the claimant considers that the conduct is related to that characteristic is not determinative. There must be still, in any given case, be some feature or features of the factual matrix identified by the Tribunal, which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim (**Tees Esk and Wear Valleys NHS Foundation Trust v Aslam and anor 2020 IRLR 495**).

64. Case-law has made it clear that the language used in s.26, i.e. "violation of dignity" and "intimidating, hostile, degrading, humiliating, or offensive" is significant:

> "Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment." (per Elias LJ in **Grant v HM Land Registry [2011] EWCA Civ 769** at paragraph 47)

> "The word 'violating' is a strong word. Offending against dignity, hurting it, is insufficient. 'Violating' may be a word the strength of which is sometimes overlooked. The same might be said of the words 'intimidating' etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence." (per Langstaff P **Betsi Cadwaladr University v Hughes UKEAT/0179/13** at paragraph 12)".

Victimisation

65. S.27 of the 2010 Act makes victimisation unlawful:

> **"(1) A person (A) victimises another person (B) if A subjects B to a detriment because -**
>
> **(a) B does a protected act, or**
>
> **(b) A believes that B has done, or may do, a protected act.**
>
> **(2) Each of the following is a protected act -**
>
> **(a) bringing proceedings under this Act;**
>
> **(b) giving evidence or information in connection with proceedings under this Act;**
>
> **(c) doing any other thing for the purposes of or in connection with this Act;**
>
> **(d) making an allegation (whether or not express) that A or another person has contravened this Act.**
>
> **(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith."**

66. This means that for a victimisation claim to succeed, a claimant has to show three things. First, that they did a protected act (or that the respondent believed they had or may do such an act); second, that they were subjected to a detriment; and third that they were subjected to that detriment because of the protected act.

67. As to the meaning of a protected act in 27(2)(c), the EAT in **Kirby v National Probation Service for England and Wales (Cumbria Area) [2006] IRLR 508** described the equivalent (though differently worded) subsection in Section 2(1)(c) of the Race Relations Act 1976 as a "catchall" in a case where the alleged "victim" has otherwise done anything … by reference to this Act in relation to the discriminator" or any other person.

68. In **Kirby** the claimant had given information in connection with a complaint of race discrimination raised in internal grievance proceedings.

69. In **Aziz v Trinity Street Taxis Ltd [1988] ICR 534, 542, CA** Slade LJ said: "An act can, in our judgment, properly be said to be done "by reference to the Act" if it is

done by reference to the race relations legislation in the broad sense, even though the doer does not focus his mind specifically on any provision of the Act."

70. In relation to "allegation" in s.27(2)(d), in **Beneviste v Kingston University (UKEAT/0395/05) the EAT** said "that there is no need for the allegation to refer to the legislation, or to allege a contravention, but the gravamen of the allegation must be such that, if the allegation were proved, the alleged act would be a contravention of the legislation."

71. In **Fullah v Medical Research Council (UKEAT/0586/12)** the EAT held that it was not necessary, for example, to refer to "race" using that word but that there must be something sufficient about the complaint to show that it is a complaint to which at least the Equality Act 2010 potentially applies. In that case, the word "discriminatory" was used but the tribunal was entitled to find it was used to mean unfair treatment rather than detrimental action based on a protected characteristic.

72. S.27(1)(a) refers to subjecting to a detriment because of a protected act but does not refer to "less favourable treatment". There is therefore no absolute need for a tribunal to construct an appropriate comparator in victimisation claims. The EHRC Code at para 9.11 states: 'The worker need only show that they have experienced a detriment because they have done a protected act or because the employer believes (rightly or wrongly) that they have done or intend to do a protected act'.

73. The question in any claim of victimisation is what was the 'reason' that the respondent did the act complained of: if it was, wholly or in substantial part, that the claimant had done a protected act (or that they believed the claimant had or may do such an act), the employer is liable for victimisation; and if not, not.

74. The protected act need not be the only reason for the detrimental treatment. It is sufficient that the protected act has a "significant influence" on the decision to act in the manner complained of (**Nagarajan v London Regional Transport [1999] IRLR 572)**. For an influence to be "significant" it must be "an influence which is more than trivial" (**Igen Ltd Wong [2005] ICR 931, CA).** In **Villalba v Merrill Lynch and Co Inc and ors [2007] ICR 469,** the EAT held "if in relation to any particular decision a discriminatory influence is not a material influence or factor, then in our view it is trivial".

Separability of the protected act from the manner of doing it

75. There will in principle be cases where an employer has subjected an employee to a detriment in response to the doing of a protected act but where it can, as a matter of common sense and common justice, say that the reason for the detriment was not the complaint as such but some other genuinely separable feature of the complaint (such as the unreasonable or offensive manner in which it is made) (**Martin v Devonshires Solicitors [2011] ICR 352.**

76. In **Martin [para 22],** the EAT acknowledged that it would be contrary to the policy of the anti-victimisation provisions if employers were able to take steps against employees simply because in making a complaint they had say, used intemperate language or made inaccurate statements. An employer who purports to object to "ordinary" unreasonable behaviour of that kind should be treated as objecting to the

complaint itself. Tribunals should be slow to recognise a distinction between the complaint and the way it is made save in clear cases.

77. In the Court of Appeal in **Kong v Gulf International Bank (UK) Ltd 2022 EWCA Civ 941, CA, at para 58,** (a whistleblowing case) Underhil LJ, revisiting his judgment in **Martin** confirmed that **Martin** does not establish a rule of law that so long as there is no more than "ordinary" unreasonable behaviour by the person doing a protected act any detriment will be treated as being because of that act. There is no objective standard against which behaviour must be assessed to determine whether the separability principle applies in a particular case, nor any question of requiring behaviour to reach a particular threshold of seriousness before that behaviour or conduct can be distinguished as separable from the making of the protected disclosure itself.

78. The key question is one of fact, i.e. what were the reasons for any detrimental treatment. Once the reasons have been identified, the Tribunal must evaluate whether the reasons so identified are separate from the protected disclosure, or whether they are so closely connected with it that a distinction cannot fairly and sensibly be drawn. Were this exercise not permissible, the effect would be that whistle-blowers would have immunity for behaviour or conduct related to the making of a protected disclosure no matter how bad, and employers would be obliged to ensure that they are not adversely treated, again no matter how bad the associated behaviour or conduct.

79. In **Fecitt and others v NHS Manchester [2011] EWCA Civ 1190, [2012] ICR 372,** (a whistleblowing case cited in **Kong**) Elias LJ said in the Court of Appeal that where the whistleblower is subject to a detriment without being at fault in any way, the Tribunal will need to look with a critical - indeed sceptical - eye to see whether the innocent explanation given by the employer for the adverse treatment is indeed the genuine explanation. The detrimental treatment of an innocent whistle-blower necessarily provides a strong prima facie case that the action has been taken because of the protected disclosure and it cries out for an explanation from the employer.

80. That does not mean, however, that in the case of such an innocent whistleblower there could be no explanation which the employer could offer in these circumstances which would relieve him from liability. In **Fecitt**, that meant that the "need to resolve a difficult and dysfunctional situation could provide a lawful explanation for imposing detrimental treatment on an innocent whistleblower.".

Evidence

81. There was an agreed bundle consisting of 1,410 pages. During the hearing further pages (1411-1416) were added to the Bundle without any objection.

82. Dr Ruthenberg's "Expert Witness Report" was dated 7 August 2023. It was prepared for the purposes of these proceedings. It was not a joint expert report. He had been instructed by the claimant's solicitors, rather than jointly by both parties. However, the respondent had had an opportunity to ask written questions on the report. Dr Ruthenberg had responded to those in an Addendum Report dated 5 July 2024 (pp.1363-1373).

83. Each of the witnesses had provided a written witness statement

84. The claimant gave oral evidence in support of his case. He was cross-examined by Mr Boyd, answered questions from the Tribunal and was re-examined by Ms Dinnes.

85. For the respondent, we heard from the following witnesses:

- On day 5, Richard Cornwell, at the relevant time the respondent's managing director ("Mr Cornwell").
- On the morning of day 6, Emma Deakin, at the relevant time the respondent's Sales and Marketing Director ("Mrs Deakin")
- On the afternoon of day 6, Eleri Jones, an HR Consultant engaged by the respondent in November 2021 ("Ms Jones").
- On Day 7, Jens Marquard, Senior Vice President/Regional Director Eastern and Northern Europe for Hartmann Group ("Mr Marquard").
- On the morning of day 8, Maximilian d'Huc, Senior Vice President - Human Resources Management for the Hartmann Group ("Mr d'Huc").
- On the afternoon of day 8, Trevor Coupe, the respondent's Finance Director ("Mr Coupe").
- On the morning of day 9 and the morning of day 10, Abid Al-Qasmi, the respondent's Head of HR, UK and Ireland ("Mr Al-Qasmi").

86. Each of the respondent's witnesses was cross-examined by Ms Dinnes, answered the Tribunal's questions and was re-examined by Mr Boyd.

Findings of Fact

87. We set out below our findings of fact based on the evidence we heard and read and taking into account the parties' submissions on that evidence.

88. Issues about how the claimant communicated with others are central to deciding the issues in this case. As a result, we have found it necessary to make more detailed findings than usual about what was said or written between the individuals concerned.

Background

The claimant and his role

89. The respondent is a supplier of wound, continence and disinfection products. It is an UK company. It is part of the Hartmann Group of companies ("the Group"), a worldwide group of companies which has its headquarters in Germany.

90. The claimant excels at computer programming and has done so from a young age. He started working as a Programmer for his father's company in 1998. He became a Senior Programmer and then Site IT Manager from 2001. The vast majority of that work was done for the respondent. In 2006 the respondent brought that work in-house and the claimant TUPE transferred over to the respondent as IT Manager.

91. From February 2013 the claimant was promoted to IT Solutions Architect. That was a Grade 6 role. He reported to Mr Coupe. The claimant managed the respondent's IT team, line managing the members of that UK team. At that point and until late 2019 there were equivalent "local" IT teams in other countries where there were Group companies. Each local IT Team had their own IT lead. There was also a central Group IT team.

92. We find that from at least 2015 onwards the claimant became increasingly frustrated by what he saw as a lack of recognition of his contribution to the business. The Group had in 2015 identified him as one potential long term (2+ years) successor for the role of Vice President of IT for the Group (p.187). More specifically, we find that from 2015 the claimant was increasingly frustrated that that contribution had not been recognised by promoting him to the role of IT Director at Grade 7.

93. Dr Ruthenberg in his Expert Witness Report said that it was clear that the claimant felt that "his performance and achievements were not sufficiently acknowledged or appreciated by Mr Cornwell" and that "[the claimant] never accepted the argument that his not becoming an IT Director was owing to the post not being available in the UK subsidiary. He was of the view that had he been fully appreciated such a post may have been actively worked towards by senior management." Dr Ruthenberg's view was that the claimant's perception that the request was not taken seriously, even if implausible to implement, was experienced by the claimant as him "being fobbed off and not appreciated and became rigidly set in his mind-set as prejudice owing to his autism".

The management structure of the respondent and the Group.

94. Mr Cornwell joined the respondent as Managing Director in January 2017, replacing Olaf Heinzel ("Mr Heinzel").

95. At that point there was an executive leadership team consisting of the sales and marketing heads, the Finance Director (Mr Coupe) and Head of HR (Mr Al-Qasmi). They reported directly to the Managing Director. There was a second tier of senior managers consisting of the head of supply chain, the contracts manager and the claimant. They reported to Mr Coupe. One of Mr Heinzel's last acts before leaving was to create that second tier. The claimant viewed that as Mr Heinzel effectively "demoting" him from the executive leadership team. He wanted to report directly to the MD rather than to Mr Coupe, the Finance Director.

96. Within 3 months of his appointment Mr Cornwell decided that the senior managers in that "second tier" should be part of one senior management team ("SMT"). As the claimant acknowledged, that meant Mr Cornwell restored him to the respondent's executive leadership team. The claimant was a member of SMT from 2017 until his employment ended. At that point, however, he continued to report to Mr Coupe rather than Mr Cornwell. That was also the case for the contracts and supply chain managers.

97. Mrs Deakin joined the respondent in July 2018 as Marketing Director and was appointed to the role of Sales and Marketing Director from December 2020. She was also a member of the SMT. In January 2021 she became a statutory director of the respondent alongside Mr Cornwell, Mr Coupe and Marc Perez (Mr Perez") the respondent's chairman.

98. Mr Marquard's role as Senior Vice President/Regional Director meant he was in effect the regional managing director, responsible for the financial performance of each country within his region, Region 3. The managing directors of each country within his region reported to him. From Summer 2021 his region included UK and Ireland which meant Mr Cornwell reported to him. Mr Marquard in turn reported to Francois Georgelin, who was a member of the Group's Management Board.

99. Mr D'Huc was Global Head of HR for the Group. The HR structure in the Group mirrored the management structure. There was a Head of HR for Region 3. Mr Al-Qasmi reported to them and they reported to Mr d'Huc. Mr d'Huc in turn reported to Britta Fuenfstueck ("Ms Fuenfstueck"), the Group's CEO.

The claimant's autism diagnosis

100. In October 2015 the claimant was diagnosed as an autistic person. He confirmed his formal diagnosis with Asperger's Syndrome to Mr Coupe in an email on 6 October 2015. He reported that he was "high functioning, deliberately compensating for most 'normal' activities". He said he did not want to make a big deal but suggested sharing the diagnosis with a small group of people along with some education might be beneficial (p.189)

101. The claimant shared his diagnosis with Mr Cornwell's predecessor as MD of the respondent, Mr Heinzel, in November 2015. He had shared it with Mr Cornwell by May 2017. The claimant did not share his diagnosis with the wider management team at that point. The claimant believed that Mr Heinzel had shared information about his diagnosis with a previous director without the claimant's consent. There was no evidence that Mr Coupe or Mr Cornwell had done so. We find Mr Al-Qasmi was not made aware of it until 4 December 2017.

Events from December 2017 to January 2018 - the "2018 Target issue" and the Claimant's "Request for Employee Support"

December 2017 – "the 2018 Target issue"

102. At the start of December 2017 there was an exchange of emails between the claimant and Mr Cornwell about targets and bonuses for 2018. Mr Cornwell had emailed the respondent's executive leadership team on 30 November 2017 about the need for targets to be SMART. He told them that their targets for 2018 were to be split 50/50 between a Business Target and Individual Targets. The Business Target was based on the respondent's EBIT (earnings before interest and taxes) for 2018. 20% of the Individual Targets were to be based on the respondent's sales in 2018 with the remaining 30% to be targets linked to their specific roles.

103. We find the claimant was very concerned about this. He felt he had in the past been "diverted" into accepting higher bonus percentages instead of basic salary rises. He viewed the changes to targets as a radical change with the potential to significantly impact on his bonus. He emailed Mr Cornwell on 2 December to query whether the proposed targets applied to him. Mr Cornwell confirmed by return email that the rules applied to everyone (p.195).

104. The claimant responded with a longer email setting out his concerns about his bonus depending to such an extent on sales and EBIT (earnings before interest and

taxes). He said he viewed the proposals as unfair because he was not in a position to influence EBIT and sales in the way that others, including Mr Cornwell, were. He noted that there seemed to have been special arrangements for others when it came to their incentives and asked for a consultation on tailoring his incentives. He said that was "to avoid discrimination and find a structure that is suitable for me that will incentivise me to complete tasks I can actually influence, as should be the nature of a bonus scheme." He asked Mr Cornwell to consider his points and closed his email by saying that "If these points are of no importance to you at least we can understand each other position very clearly".

105. Mr Cornwell responded on the same day. He told the claimant that they would discuss the matter the following week but that "your push back on every single item I discuss with you is beginning to get tiresome" (p.194). He pointed out that he set targets to drive the business in the right direction, not to benefit individual employees. He pointed out that the claimant would have earned more bonus in 2017 had he had agreed to a 2017 target based 50% on EBIT.

106. The claimant responded 15 minutes later to challenge Mr Cornwell's use of the word "tiresome". He said that they needed to talk again to "reset for all our benefits". He said he did not challenge Mr Cornwell's authority, only the logicality of decision making. He would always comply if the decision was final. He said he had explained to Mr Cornwell in detail his thought patterns and diagnosis and they both knew why this was his nature. He asked whether Mr Cornwell was really inviting him to do a session in front of the management team on neurodiversity when Mr Cornwell considered the claimant, who was (in the claimant's words) "a top performer in his company who happens to be on the autistic spectrum?!" to be "tiresome". He said there was "nothing wrong in employment in politely questioning the logic of decisions but everything wrong with an intolerant attitude".

107. The exchange of emails continued that afternoon. Mr Cornwell reiterated they would discuss the following week. The discussion would include the importance of the whole leadership team being focussed on EBIT and sales, regardless of functional role. The claimant responded by telling Mr Cornwell that he was feeling extremely stressed as a result of his email. He said he had never been told he was "tiresome" before and had always been treated with dignity by Mr Cornwell's predecessors both before and after his ASD diagnosis became known to them.

108. Mr Cornwell forwarded the email exchange to Mr Coupe and Mr Al-Qasmi on the same day suggesting they discuss the following week. In his forwarding email (not copied to the claimant) he made it clear the claimant would need to "change his attitude and could not complain each time he felt financially out of pocket". It was not, he said, acceptable for a senior manager to reject EBIT as a target. Mr Cornwell said that if his choice of words was wrong, he would take responsibility for that. There was nothing in that forwarding email to suggest that Mr Cornwell took issue with the claimant's manner of communication being "direct or "overinclusive".

4 December 2017 – the claimant's request for "Employee Support"

109. On the morning of 4 December 2017, the claimant emailed Mr Cornwell and Mr Coupe a request for "Employee Support". He requested 2 things. The first was a "package of assistance" to include a formal assessment of how his disability affected him and how the respondent could support him in the workplace. The second was a

"documented retrospective review whether there had been any intentional or unintended discrimination with regards to [his] career path progression both pre and post diagnosis."

110. The claimant said that in his opinion equivalent activities should already have been carried out. He said he could provide many inputs into the exercise and that he "would expect it to be highly consultative". He said that autism was highly nuanced and far reaching in its effect and research and external expertise would also be needed. He ended his email by stating his belief that if these exercises were completed thoroughly, it would provide a tool kit for "minimising the risk of discrimination for and future employees with [his] condition and be in the best interest of both individuals and [the Group]".

111. We find that Mr Cornwell's "tiresome" comment had triggered a belief on the claimant's part that his career progression had been impacted by discrimination related to his being an autistic person.

112. Mr Cornwell responded the same day to say he was happy to discuss the claimant's request. Noting that the claimant had in the past asked that his diagnosis was not discussed with Mr Al-Qasmi, he asked for the claimant's permission to do so because of the need to involve him. The claimant gave permission by return email (p.202). We accept Mr Al-Qasmi's evidence that it was on the 4 December 2017 he first became aware of the claimant's autism diagnosis.

113. The same day, having taken legal advice, Mr Al-Qasmi advised Mr Coupe that the respondent should arrange an Occupational Health ("OH") appointment to try and better understand the claimant's condition and identify possible reasonable adjustments. He also advised the claimant's email should be treated as a grievance.

114. Mr Cornwell responded by email to Mr Al-Qasmi and Mr Coupe the same day to say he was "really not sure" on what grounds [the claimant] was judging that there was any discrimination. He set out his view of the facts as he saw them. That was that if anything the respondent had positively discriminated in the claimant's favour. He had been promoted to the SMT and had a clear line of communication with Mr Cornwell. He had been awarded overtime for work on a server upgrade overnight despite the urgency for that upgrade being due to a blockage of the claimant's own making in Mr Cornwell's view. He had also been awarded an extraordinary bonus for work on a software project. The claimant was allowed to work from home when he saw fit and had been given a new office with windows. Mr Cornwell said he had also gone on record thanking the claimant for his work on the software project. He reiterated that the claimant's 2018 bonus, with its focus on EBIT, was fully aligned to his peer group and aimed to help the team to understand that requests for expensive IT equipment, significant pay rises and high end business skills training all had a major impact on the respondent's bottom line. (p.199)

115. On 8 December 2017 the claimant emailed Mr Al-Qasmi asking to see the complete information on his personnel file. He also asked for comprehensive details of the sources, purposes for processing and of the disclosure of any data relating to him together with an explanation of how any decisions taken about him solely by automated means had been made (P.205). The request was treated as a data subject access request and processed after the claimant had paid the £10 fee requested of him.

January 2018 to 10 May 2018 – seeking an OH Assessment and the claimant's informal grievance

Sourcing an OH assessment

116. In December 2017 the respondent had taken steps set up an OH assessment of the claimant through its preferred OH provider, Medigold. An appointment was arranged for 2 January 2018 but cancelled. The cancellation was partly because the claimant was not satisfied that the OH assessment would be carried out by someone sufficiently specialised in autism. The other reason was that he had found Medigold staff unprofessional and unsatisfactory in their communications with him, to the extent that he had lodged a formal complaint with its Chief Executive (p.206). On 20 December 2017 Medigold wrote to the respondent and claimant to recommend that the claimant be seen by a consultant in autism rather than an OH physician.

117. By 8 January 2018 the claimant had received and reviewed his personnel file. He emailed Mr Al-Qasmi, Mr Cornwell and Mr Coupe to say that in doing so he had found evidence of "continuing unintentional discrimination" which had delayed his career development in the Group (p.211). He referred specifically to an incident in 2013 when he had communicated his views about the failings of the Group's Central IT team to the then CEO in direct terms. The CEO had reacted negatively. The claimant's belief was that that incident had affected his standing in the Group and led to his influence and status at local level "waning" between 2013-2016. That included being "shut out" of the UK executive team (a reference, we find to what he perceived as his "demotion" by Mr Heinzel). He acknowledged that Mr Cornwell had done something to rectify that already but maintained that his career had been set back.

118. The claimant asserted his career was still set back from where it should be and he "had no evidence that the incident in 2013 has not affected my standing in the Group". We find it was a feature of the claimant's communications from this point that he attributed what he saw as his lack of career progression or pay/bonus rises to discrimination due to his autism in the absence of evidence to prove otherwise.

119. He said he could also not be sure that his ongoing, sometimes direct communication style was not viewed as challenging by "other career influencing individuals in the Group" when it was "well-meaning with a goal of group success". He referred to other historical factors in the Group which he said still had residual effects, He cited a lack of diversity training including on disability, a toxic culture from Central IT with poor treatment of country colleagues, flawed matrix team management and little support from central management in meeting conflicting goals and competing resources. He also referred to ambiguous communication messages – on the one hand being told to be open and challenge but on the other hand it being made clear "don't' get out of your place or else".

120. The claimant proposed an informal (but minuted) discussion between him, Mr Al-Qasmi, Mr Cornwell and Mr Coupe on how to "maximise [his] potential despite personal challenges and minimise the risk of ongoing discrimination in the group or local company".

121. Mr Al-Qasmi responded the same day to suggest they meet after the OH assessment had taken place. Because there was then a delay in sourcing a suitable OH assessment, Mr Al-Qasmi wrote on 30 January 2018 to ask whether the claimant

wanted to meet up before the OH assessment took place. The claimant confirmed he was happy to wait for the OH assessment. He suggested that in the worst-case scenario, he could create his own document explaining the support he needed from his perspective and "retrospective challenges".

Search for a specialist OH Assessment

122. From January to April 2018, the respondent's HR team worked with the claimant to find someone to carry out the proposed OH assessment. The claimant insisted that whoever carried out the OH assessment had the same level of expertise in autism as the specialist who had diagnosed him. We find the difficulty was finding someone with that level of specialism who also carried out OH assessments.

123. Medigold had suggested a specialist autism centre (the Tuke Centre) but it advised it did not have an Occupational Therapist. It suggested contacting the National Autistic Society. Ms Johnson of the respondent's HR team tried to contact the Society a number of times without success. Mr Al-Qasmi also contacted an organisation called Clinical Partners but they did not have anyone with the specialist knowledge required to carry out such an OH assessment.

124. The respondent also spoke to BUPA. It assured the respondent that all its OH physicians were medically qualified with a minimum of 5 years' experience in occupational medicine. It confirmed they would be able to recommend any reasonable adjustments required in the workplace. On 16 April 2018 Ms Johnson wrote to the claimant to confirm that an appointment had been made for him with BUPA on 15 May 2018.

125. The claimant raised concerns that the BUPA assessor would be a generalist, rather than someone specialising in autism. On 17 April he emailed to say he did not feel it would be beneficial for him to end up "educating a generalist OH about the condition and them making notes". He said that unless they got a specialist involved, he might as well do a written statement derived from his diagnosis notes and discuss that direct with HR to identify and agree reasonable adaptations (p.217).

126. Ms Johnson emailed back the same day to say that despite the respondent's best efforts they had not managed to find an OH provider which met the claimant's requirements for a specialist. She made it clear that it was ultimately up to him whether he went ahead with the BUPA appointment. Later that day the claimant confirmed he would decline the BUPA appointment.

127. We find the claimant was frustrated by what he saw as the respondent having given up the search for a specialist too easily. We find the respondent's view was that it had taken reasonable steps to find an OH Assessor meeting the claimant's requirements.

The 24 April 2018 informal grievance

128. A meeting was due to take place on 30 April 2018 between the claimant, Mr Cornwell, Mr Coupe and Mr Al-Qasmi. On 24 April 2018, the claimant emailed Mr Al-Qasmi, Mr Cornwell and Mr Coupe to say that in view of that approaching discussion he wanted to "formalise this into a grievance".

129. In the email he said he had been passed over for promotion, career development and the subsequent rewards because of "his condition". No documented consideration had been given to his request for promotion to IT director while his peers and newcomers had achieved the role of director in the respondent. He noted their combined failure so far to source a specialised OH assessor but said he felt this was still the best course of action. They should keep trying. He would help but it was primarily the respondent's role to source such a specialist.

130. He explained that he was raising the grievance because he did not want the topic to drag on for years. He was happy to explain in person or in writing his perspective on how his condition affected his interaction with others and what adaptations were needed, subject to further clarification when the OH assessment was complete.

131. The claimant's stated aim was to "arrive at a clear statement that said either:

- We recognise your contribution and the fact that you may have been discriminated against previously, but we now understand your condition better and can accommodate it and would like to promote you to a IT Director

- As above, but if you achieve x,y,z you will be promoted to an IT Director in this timescale, x,y,z- being achievable reasonable goals, sufficiently resourced.

- You will never achieve a IT Director position at Hartmann UK because of x,y,z - being tested reasons that will stand to scrutiny and not just group culture or norms"

132. We find that underlying the claimant's position was the already fixed conviction that the only realistic explanation was that his career (and pay) would have progressed further had he not been subjected to discrimination. Even his third option, which did not explicitly refer to past discrimination, effectively put the burden on the respondent if disprove the discrimination as the reason the claimant would not progress.

133. Mr Al-Qasmi responded the same day to say he understood the claimant to be raising a formal grievance. He confirmed it would be heard by Mr Coupe at 3:30 pm on the 30 April and that the claimant was entitled to be accompanied at that meeting. He confirmed he would also be present. If the claimant objected to Mr Coupe chairing the meeting he must state his reasons as soon as possible and in writing to Mr. Al-Qasmi. If the respondent accepted the claimant's reasons for objecting to Mr. Coupe a replacement chair might be nominated (Mr Al-Qasmi suggested the then Sales Director, Mr Rees).

134. Mr Al-Qasmi said the respondent was entitled to make a decision about who it instructed as an OH provider, subject to considering any suggestion that the claimant put forward. He noted the claimant had recently cancelled the appointment with BUPA and suggested it was in both their interests that he attend an OH appointment. He confirmed that if the claimant wished they could set up an appointment with Medigold or BUPA. Otherwise, the respondent could only proceed and take decisions based on the limited information they had. As a final attempt to better understand the claimant's condition and how he could be supported in he workplace he suggested that they write

to the specialist who diagnosed the claimant. He asked the claimant to let him know if it would be useful to explore that option (p.233)

135. The claimant responded to say that Mr Al-Qasmi had misinterpreted his email and was “jumping the gun”. He was not yet wanting to raise a formal grievance. He suggested it was “perhaps best to talk before coming to such conclusions”. He explained that he was instead wanting to raise an informal grievance under the formal grievance procedure. His view was that to dive into a formal procedure without an OH assessment would be a mistake. He said that the respondent had not taken up his offer to explain his condition and needs in a statement. He said that as an alternative he could contact the clinician and organisation who completed his diagnosis.

136. Mr Al-Qasmi forwarded that e-mail to Mr Cornwell and Mr Coupe. Mr Cornwell responded saying that Mr Al-Qasmi had not “jumped the gun” because the claimant had clearly said he wanted to formalise his grievance. Mr Cornwell said that the way the claimant spoke to Mr Al-Qasmi and his lack of respect was “noted and will be dealt with as part of his overall process”.

137. On 25 April 2018 Mr Al-Qasmi emailed the claimant to confirm the meeting with Mr Coupe on the 30 April would remain as an informal grievance meeting and would take place in Mr. Al-Qasmi's office. He confirmed that in the absence of an OH report it would be helpful for the claimant to provide a statement giving an insight into his condition and suggesting any workplace adjustments they could consider as his employer.

138. He also agreed it would be useful if the claimant provided him with the contact details of the clinician and organisation which had diagnosed his autism. The claimant did so but when Mr Al-Qasmi approached them, they were unable to provide an OH service and were not aware of any OH specialising in autism. Mr Al-Qasmi emailed the claimant that in those circumstances, there was nothing more the respondent could do in terms of OH, unless the claimant was now happy to agree to an assessment with an OH physician from BUPA or Medigold. The claimant said he was “not prepared to give up so easily” and that he would find a specialist OH.

139. In the meantime, the claimant emailed Mr Al-Qasmi that he wanted Mr Cornwell to attend the meeting on 30 April as originally planned. He explained he had had detailed discussions with Mr Cornwell about his career development and diagnosis and felt that at times he and Mr Cornwell had misunderstood each other. He felt that was mainly due to neurological differences and approach. He believed Mr Cornwell’s presence would save time in toing and froing after the meeting and be more likely to result in the clarity which he was seeking.

140. Mr Al-Qasmi confirmed that Mr Cornwell would not be attending the meeting. That was because it was best for him to remain neutral in case the claimant wanted to raise a formal grievance later. The claimant did not think that was the right decision but agreed to meet.

141. On 25 April 2018 the claimant emailed a personal statement to Mr Al-Qasmi, Mr Coupe and Mr Cornwell. In it he set out how his neurodiversity affected him at work and what adaptations could be made. He made it clear that it did not replace a specialised OH statement but was a resource that could be used in the meantime to support him and to understand historically his career development.

142. He said that over the years compensated for the challenges he faced by consciously asking himself "what would a normal person do here?". Post-diagnosis he said he was much better equipped with an understanding of his condition and the variances between neurotypical and non-neurotypical behaviour. However, compensating in that way was mentally draining. He said that over the years flashpoints had occurred when the claimant had not always been able to mask his differences. He said those differences could now be understood. He stressed the positives of his neurological makeup and said that in the future with the right levels of influence and seniority he would bring his strategic input into a new wave of IT technology working with OneIT.

143. Over the next 4 pages of the statement he set out in tabular form a description of the challenges he faced and the suggested adaptations. In summary, those adaptations were an increased awareness of neurodiversity via sourced training, an increased understanding of the claimant's actions and behaviours in the context of the challenges he faced and a recognition if unfair advantage had been given to those who displayed neurotypical behaviour. The claimant grouped the descriptions and suggested adaptations under 9 headings. They were: communication style; reactions to change; social cues; social situations; neurological differences; burnout and overwork; anxiety and stress; environment and learning and development. He also included a page of links and resources on neurodiversity available on the Internet.

144. Among the key concerns highlighted were management being offended and shutting down challenge. The claimant explained that it was extremely stressful for him not to speak out if he perceived a wrong, injustice or inefficiency. He also needed clarity. His communication style could be direct. Those, combined with a difficulty anticipating social cues (including others' emotional needs unless voiced) could give rise to offence. He said he was also less aware of unwritten rules or protocols, especially in a social situation with a high-power differential, e.g. when he was dealing with superiors. One adaptation was for management to be aware of those matters and not to take offence but accept challenge at times as "an opportunity". He suggested help with communications or pointing out a possible other approach but with "tolerance of different styles not blunting or silencing necessary points made or removing autonomy". He also suggested evaluating whether those who were good at social situations and "toeing the line without question or using lateral thought" had been unfairly advantaged. We find that again reflected the claimant's conviction that the reason for what he saw as his career progression having been hampered was discrimination arising from his autism (p.222-227).

145. On 28 April the claimant emailed Mr Al-Qasmi, Mr Coupe and Mr Cornwell about the meeting on 30 April. He attached to it a document setting out what he referred to as a more descriptive explanation of his grievance. In his email he set out points to be taken into account for the best outcome. They included noting that his communication style might be affected by autism so that he may appear uncomfortable at times or refer to his notes so he could be coherent and confident in his approach. He also said he would prefer the meeting to take place in his office because it offered more privacy and because it was a familiar environment for him. That would also, he said, avoid the feeling that he had of being "summoned" to Mr. Al-Qasmi's office.

146. Lastly, he said he was somewhat uncomfortable that some of the points may appear to criticise both HR processes and Mr Coupe line management. He explained

that was one reason why he had wanted Mr Cornwell to attend. The 3 of them were now aware of his condition and he felt that would increase the chances of the informal meeting being a success. If Mr Cornwell attended as it would remove some of these feelings of uncomfortableness.

147. Finally, he said that after "15 minutes of Googling and a phone call" he had found a specialist agency dealing with autism assessment in the workplace, called Aspiedent. He was awaiting confirmation they could undertake the necessary specialist OH assessment. If they were not an option, he was happy to keep searching. In the meantime, the respondent had his personal statement which he recommended they read fully before the meeting and asked any questions necessary.

148. The grievance meeting took place on 30 April 2018. As the claimant had requested, it took place in the claimant's office (p.237). There were no notes of the meeting in the Bundle and we heard no direct evidence about it. Based on the outcome letter and other documents we find that during early May 2018 Mr Coupe and Mr Al-Qasmi carried out an investigation. They spoke to current and senior management in the Group (including the former UK MD, Mr Heinzel on 9 May 2018).

Events during the claimant's absence due to stress 10 May to 11 June 2018

149. The claimant was signed off work for 4 weeks from 10 May to 8 June 2018 due to stress at work.

150. By that time, the Group was implementing a re-organisation of its IT function. The reorganisation created a centralised IT function called OneIT, bringing together the IT function across the Group. The intention was that IT employees would report to their OneIT manager on functional matters rather than their in-country line manager. The claimant had already had discussions with Sinanudin Omerhodzic ("Mr Omerhodzic"), Group Senior Vice President of IT, about the claimant's potential place and role in the OneIT matrix.

Mr Cornwell and then the claimant contacting Mr Omerhodzic

151. On 11 May 2018 Mr Cornwell emailed Mr Coupe and Mr Al-Qasmi to say that there were obvious concerns that the claimant's demeanour, communication style and behaviours were sometimes viewed in a negative way amongst senior management in the Group including members of the board. Those concerns appear to have arisen from Mr Coupe's investigation meeting with Mr Omerhodzic that morning. Mr Cornwell said he would contact Mr Omerhodzic to discuss the claimant's medical condition and to have an open but confidential conversation such that allowances could be made for what he described as the claimant's "out of what we would consider 'normal' behaviour" (p. 247).

152. Before he returned to work after his sickness absence, the claimant himself contacted Mr Omerhodzic. On 9 June 2018 he sent him a document marked as confidential setting out "Blockers to full participation in OneIT". He attached the personal statement which he had prepared for the informal grievance hearing on the 30th of April.

153. The 9 June document refers to a discussion they had had on the previous day during which the claimant had disclosed his diagnosis of autism. The claimant

confirmed that the document and the disclosure of disability were confidential. Mr Omerhodzic could discuss the implications and key points with Mr Cornwell, Mr Coupe and, if necessary, Mr Heinzel, since they were already aware of the diagnosis. The claimant might be open to further disclosure to board members or Group HR if Mr Omerhodzic felt that was useful.

154. The claimant referred to their discussion about the discrimination he had met in the UK. Mr Omerhodzic had asked what would be needed to resolve those issues and move forward. He had also said that he would hold open the technical senior management position in the OneIT matrix during his illness. The claimant confirmed that he hoped to resume that role after his illness.

155. The claimant identified 3 things as necessary to for him to succeed in his career and to maximise his contribution to OneIT and the Group. They were about ensuring that the claimant had the correct position, authority and level of influence in the UK to support wider OneIT goals with the correct support for his condition. Specifically:

- Direct reporting to the Managing Director rather the Finance Director. That was partly about Mr Coupe and partly about the role. The claimant said that he had lost confidence in Mr Coupe's impartiality, objectivity and ability to represent his interests. He also believed that the future importance of IT for the Group and the changes needed to operate as OneIT needed a global, technically enabled vision and that that was "beyond Mr Coupe". Instead, it was "[the claimant's] domain". He did not feel he should have to continually justify dividing his team's attention between global and local projects to a Finance Director but should instead have autonomy and command of IT resources to enable such participation and flexibility.

- A local title change to IT Director. That should be accompanied by a secondary title when referenced in a Group context, reflecting the technical senior manager role in OneIT. He said promotion to a non-statutory IT director role represented the appropriate level of seniority in a company with a significant technology dependency. It was also important to represent IT amongst UK board peers such as the Sales and Marketing Directors. He warned that "any status quo within the Group not to have IT directors would be fundamentally challenged in his grievance as discriminatory". He said that neither Mr Heinzel nor Mr Cornwell had outright rejected the suggestion nor given him clarity about the reasons for not promoting him to IT Director. He said that he had evidence that linked that to his disability because he had "been considered perhaps challenging, tiresome or difficult."

- An agreed strategy to minimise the risk of misunderstanding his condition in future and "rectifying previous damage". He referred to the flashpoints that he had had in the past with senior management including the incident in 2013. Now that he had his diagnosis and understood himself better, he said that others should be trained on the implications of neurodiversity and any damage to his career should be rectified with that understanding wisdom no problem.

156. The claimant closed the document by saying in bold that:

> **"As I have already said to [Mr Coupe], [Mr Cornwell] and HR, there are 2 ways this could end, one could be a bright light and good story on**

> **inclusiveness with disability and IT reflected on the UK board, one could be a shameful outcome with a high award for injury and very bad publicity to an esteemed global group and its management. This all depends on reasonableness of the local directors in the face of overwhelming evidence and adapting to the changes that comes with Neurodiversity but also our digital ambitions. I do hope you can influence them to take the right course."**

157. The claimant did not specify what the "overwhelming evidence" of discrimination was. We find the claimant's absolute conviction by this point was that the only possible explanation for any setbacks to his aim to be appointed IT Director was discrimination on the part of the respondent's senior management.

The claimant's request to change line manager

158. On 10 June the claimant sent a confidential e-mail to Mr Al-Qasmi. He said it was not to be shared directly with Mr Coupe. He repeated what he had said in his email to Mr Omerhodzic about his lack of confidence in Mr Coupe. He recommended that with immediate effect (i) he no longer report to Mr Coupe and (ii) that Mr Coupe no longer chair the informal grievance process. The claimant said that although he'd been open in his criticisms of Mr Coupe previously, he now felt that continuing to include him in communications might create feelings of resentment and lead to Mr Coupe victimising the claimant. He would allow Mr Al-Qasmi to give Mr Coupe key points in an appropriate way but only where that could be justified.

159. The claimant made it clear that while he continued to be under Mr Coupe's management it would be under duress. He would copy key emails to Mr. Al-Qasmi. He would be wary of one-to-one face to face meetings with Mr Coupe specially ones without agreed minutes and other participants. He said he was also wary of Mr Coupe's ability to impartially carry out performance reviews.

160. The claimant confirmed that his disability and the situation (including his lack of confidence in Mr Coupe) had been disclosed to Mr Omerhodzic so he might initiate contact with the UK directors or with Mr Al-Qasmi. Because there had already been disclosure, he was happy for Mr Al-Qasmi to discuss the claimant's disability with Mr Omerhodzic in the hope of reaching a successful resolution to the informal grievance before it concluded. However, "my perspective bearing all factors in mind and evidence will be the final deciding factor on my part for accepting any proposals to rectify the grievance".

Events from 11 June 2018 to 11 July 2018 - the informal grievance outcome, formal grievance, change of line manager and the Aspiedent report.

161. Mr Coupe had a brief meeting with the claimant on his return to work on 11 June. Afterwards he emailed Mr Al-Qasmi a brief update. He said that the claimant was very awkward and at no point made eye contact. He said in his opinion the claimant was not really listening. He said it could have been taken as quite disrespectful but as the claimant had been off with stress and because of his condition Mr Coupe said he did not make anything of it. He summarised the meeting as being very awkward but said he was sure that that was to do with the claimant's condition and that it would take a while for him to settle back into the role. At the Tribunal hearing the claimant criticised Mr Coupe for referring to him as "awkward" and not making eye

contact. We find that although Mr Coupe noted those things it is clear he did not take any offence at them or view them as a negative. Instead, he acknowledged them to be manifestations of the claimant's autism. We find it was an example of Mr Coupe acknowledging the claimant's disability rather than, as the claimant suggests, viewing him adversely because of it.

Informal grievance outcome

162. Mr Coupe rejected the claimant's informal grievance in an outcome letter dated 14 June 2018. In summary, his conclusions were that:

- There was no business requirement for an IT director for the respondent in the UK.

- Mr Coupe had discussed with Mr Omerhodzic whether the claimant needed to report to Mr Cornwell for OneIT to be successful. Mr Omerhodzic wanted the claimant to have a close working relationship with the UK executive team to help the respondent better understand and utilise the technology available. However, Mr Omerhodzic's position was that the size of a Group country organisation determined the appropriate reporting line. His view was that the claimant reporting directly to the managing director was not a requirement for OneIT to be successful.

- However, because the claimant had raised the issue of his line management, Mr Coupe had arranged a meeting on 19 June for the claimant, Mr Cornwell and Mr Al-Qasmi to review and discuss that issue

- During his investigation he'd found no evidence that there had ever been any unintentional or intentional discrimination towards the claimant and no evidence to support his belief that he had been passed over for promotion.

- He believed that the claimant was rewarded appropriately and fairly for the role which he currently undertook. His rewards were in line with the performance of the business and his market rate and matched with the respondent's overall ability to pay.

- When it came to the claimant's criticisms about the failure to take steps to understand the claimant's condition and make adaptations from October 2015, Mr Coupe decided that the respondent had tried to support him by allowing him to work flexibly from home when he chose and providing him with a new office with natural light. The respondent had also tried to set up an OH appointment but that the claimant had not been happy with the choice of OH physician. He noted the respondent was now making arrangements for Aspiedent to carry out a workplace assessment.

- If an employee needed specific support they should ask the respondent and all reasonable requests for support would be considered. The respondent would consider any recommendations made by Aspiedent

- When it came to the suggestion of awareness training, the respondent would await the report from Aspiedent and discuss that with the claimant before making any decisions to arrange any training on neurodiversity. He suggested that the claimant should perhaps consider making the wider management team aware of his autism so they could adopt their style when working or communicating with him. The

respondent was concerned that if they did arrange neurodiversity training the fact the training was being carried out might unintentionally disclose the claimant's autism.

163. The claimant emailed Mr Al-Qasmi later that same day to confirm that he would now like to proceed to a formal grievance

The claimant's formal grievance

164. The claimant's email (pp.259-260) confirmed that the substance of his formal grievance was the same as his informal grievance. However, there were additional points arising from the outcome of the informal grievance which he wanted to add because they were causing him "sustained and continual injury to feelings and stress". He outlined those additional points in six bullet points.

165. In summary, he said that:

- He did not think that all relevant evidence had been consulted and found it. "incredible" that there could not have been any acknowledgment that there may have been unintentional discrimination because of his "obvious differences in approach and required adaptations."

- He lacked confidence in Mr Coupe's ability to carry out an unbiased, objective, informal grievance process and had asked for him to be taken off this responsibility prior to the outcome.

- The decision not to have an IT director was "spurious" and "career and influence limiting" for him. He said he wanted to explore this given it had wide-ranging implications for the Group.

- If there never had been an IT Director role he queried why he had not been given clarity about that back in 2015 instead of the decision on that role being continually deferred.

- He had not been promised a change in reporting line only a review meeting which he suggested was to delay that decision.

- He would provide further comment on the outcome document once that had been provided in Word format.

166. He asked whether the respondent had taken any legal advice to come to the informal outcome. He concluded by saying "Ever hopeful, but pragmatic that this was the expected outcome from Mr Coupe's leading of this. Let's try again in the formal context." The informal process had, he said "wasted his time and caused further stress."

The meeting on 19 June 2018 and the change of line manager

167. In light of the issues about Mr Coupe raised by the claimant in his formal grievance, Mr Cornwell decided it was appropriate to consider changing the claimant's line management. He discussed that at a meeting with the claimant and Mr Al Qasmi on 19 June 2018. The claimant's notes of that meeting were in the Bundle (pp.261-

262.) Mr Cornwell's view at the time was that they accurately reflected the meeting (p.263) and we base our findings on them.

168. We find that at the meeting the claimant again made clear his lack of trust in Mr Coupe's management of him. Mr Cornwell mentioned that he felt the claimant had been disrespectful in continuing to copy Mr Coupe into emails which criticised his management and lack of support of the claimant. The claimant explained he'd been keeping Mr Coupe copied into those emails because he hoped that he would "see the mistakes he was making and change course". The claimant said he had now realised, theoretically, that he might be winding Mr Coupe up unintentionally so had decided to just send criticism of Mr Coupe's management to Mr Al Qasmi.

169. The claimant said he was sorry if Mr Coupe's feelings were hurt but said that was unintentional. He said that unfortunately Mr Coupe's management of him had been dysfunctional. He suggested that had been with an overall goal of "keeping [the claimant] in his place". He cited the outcome of the informal grievance as being an example of that bias on Mr Coupe's part.

170. Mr Cornwell asked the claimant whether he felt that adaptations had been made. He referred specifically to the respondent allowing home working and providing the claimant with an office with natural light. (At that date, the claimant was working 3 days a week at home and 2 days in the office). The claimant said that neither of those had been anything to do with his autism. The home working had been for childcare reasons and getting an office had taken numerous requests over a decade. The claimant cited the latter as another example of where Mr Coupe could have done more to support the claimant

171. There was then a discussion about why it would be appropriate for the claimant to report to Mr Cornwell rather than, for example, another senior manager. The claimant made the case that IT had an important enabling role and should be central to what the respondent did in the next few years. Reporting directly to Mr Cornwell as managing director would enable that.

172. The claimant also referred to his achievements within the company. That led to what the notes referred to as "crossed wires", with Mr Cornwell perceiving the claimant to be diminishing the contribution of others. The claimant explained that was a misunderstanding caused by his communication style. He confirmed he was not questioning the contribution of others, only saying that the claimant's vision, talent and area of expertise could bring large benefits for the way the business operated from the top to the bottom.

173. As a result of their discussion, Mr Cornwell agreed that as a temporary measure while the grievance was ongoing, the claimant would report to him rather than Mr Coupe.

174. Mr Cornwell raised concerns at the end of the meeting that the claimant was already jumping ahead in his mind to legal proceedings. The claimant made it clear that as he had expressed in writing he was keen to see matters resolved at the earliest stage and stressed his loyalty to the respondent and the Group.

175. It was agreed that the claimant's grievance meeting would take place on 28 June 2018, chaired by Mr Cornwell. Mr Cornwell acknowledged the need to set aside

enough time to ensure the grievance was fully discussed. He asked the claimant to ensure that he provided Mr Cornwell with all the relevant evidence needed to deal with the grievance. The claimant agreed to prepare accordingly.

The claimant's concerns about the Aspiedent Report

176. In the meantime, the respondent had commissioned a workplace assessment report from Aspiedent, the organisation suggested by the claimant. That resulted in a report ("the Aspiedent Report") dated 25 June (pp.268-279). It was based on a face to face meeting Dr Guest of Aspiedent had with the claimant on 20 June 2018. She also spoke to Mr Coupe and Mr Cornwell by phone. Although they were not in the Bundle, it is clear that there were email exchanges between Dr Guest and the claimant on the 21 June 2018 in which he raised concerns about the proposed approach in the report.

177. On 21 June 2018, the claimant emailed Mr Al-Qasmi, copying in Mr Cornwell to express his concerns about the approach which Aspiedent was taking in the report. He said that in his opinion, they might have to find another provider and that the Aspiedent Report might not address his personal needs.

178. He set out his reasons for that in his email. The core disagreement was with what the claimant saw as Dr Guest's insistence on extended disclosure of the claimant's autism as the way to get the right support. The claimant favoured targeted disclosure. He accepted that required him to maintain a level of masking and "containing his condition" in certain situations. His view was that doing so was fundamental to existing and working in a highly structured corporate environment. He said he was happy to compensate most of the time and work to accommodate others when he could. While stressing that he was not suggesting that Aspiedent would intentionally act unprofessionally, the claimant also suggested that its approach might give rise to an unintended conflict of interest. The wider disclosure advocated by Dr Guest would enable Aspiedent to provide training and awareness for the respondent and have a continued business relationship with it.

179. In those circumstances, the claimant said that Aspiedent's report would "likely be rejected by myself even if some points have validity". He suggested that they may need to source further dedicated expertise in ASD who could assist and make recommendations in the context of the claimant's preferred "limited disclosure" approach.

180. Mr Al-Qasmi responded by email the following day. He pointed out that the respondent had engaged Aspiedent at the claimant's request. They had spent significantly more on the report than they would have spent with Medigold or on an OH report. The respondent felt that Aspiedent offered a service which would be beneficial for it in better understanding the claimant's condition and trying to make reasonable adjustments where possible. The report was important for the respondent in order to support the claimant further within the workplace. Mr Al-Qasmi confirmed that having checked in with Mr Cornwell, they would both like to continue working with Aspiedent. He suggested that they await the report itself and the claimant could provide comments on any areas that he disagreed with. He stressed that if the claimant did not wish to disclose his condition to others, then that would be his choice. Dr Guest couldn't force him to do so only make recommendations.

181. Later that afternoon the claimant emailed Mr Al-Qasmi to confirm he would not be interfacing with Aspiedent anymore and did not approve of their using his personal data in any context beyond the production of their report. If the respondent wanted to source generic training from Aspiedent that was its choice, but while there was a focus on a "rigid approach" (i.e. wider disclosure) he would not approve that as suitable because it might be biased to disclosure as the only route (pp.265).

182. The claimant gave consent for the Aspiedent Report to be released to Mr Cornwell and Ms Johnson late on 28 June. Dr Guest emailed it to them on 29 June.

The contents and recommendations from the Aspiedent Report

183. The Aspiedent Report was in 4 sections.

184. The first section ("Background") set out the respective perspectives of the claimant and his managers (i.e. Mr Coupe and Mr Cornwell).

185. It reported that the claimant had a very strong sense of hierarchy and a belief in the power that results from that hierarchy. He viewed his role as being at a different "power level" to others in the leadership team because they reported direct to the managing director and he did not. He believed that meant that the IT function did not have the recognition in the business that it should have. He also believed he could not fulfil his role effectively unless he was IT Director. The report reported the claimant's belief that because he had not been promoted to IT Director, he must have been discriminated against. It noted the claimant's formal grievance and his desired outcomes from it and the risk that the claimant would take the respondent to the Employment Tribunal for disability discrimination.

186. That section also recorded the managers' recognition of the claimant's excellent contribution to the business, being seen as a visionary regarding IT. Mr Coupe and Mr Cornwell agreed that the claimant could do the job of an IT Director and if the post was available, he would almost certainly get the promotion. The lack of promotion was, they said, nothing to do with the claimant but with the management structures of the Group. In short, there was currently no IT director role in the UK because the UK subsidiary (i.e. the respondent) was not considered by the Group to be large enough for a full IT Director. That's also the case in relation to other subsidiaries in other countries of a similar size. It was also the case for other roles in the respondent, e.g. there was no HR Director in the UK (Mr Al-Qasmi's post was Head of HR).

187. There were areas for improvement relating to slippage on the delivery of IT projects and information only being provided when requested. Mr Coupe and Mr Cornwell confirmed that they had not intentionally or unintentionally discriminated against the claimant. They expressed frustration that claimant had limited their ability to support him by refusing to disclose his autism more widely. They said they had tried to protect him from "the ire" of senior managers who he had inadvertently offended, but that was difficult when they could not explain why the claimant behaved as he did. Occasionally they perceived that the claimant saw conspiracies that were not there. They confirmed that Mr Cornwell spent time with him to try and explain what was really going on.

188. Section 2 of the report was headed “Autism profile”. It reported the claimant had little awareness of how his autism affected him apart from his communication issues. It recorded the claimant’s sensory issues such as his hypersensitivity to touch and his finding large crowds very difficult. A sub-section dealt with “Emotions”. It reported that the claimant prided himself on logic but was hypersensitive both to his own emotions and the emotions of others. It noted that the claimant got upset when he discovered that he had accidentally offended someone and that that was a source of stress. The report noted that the claimant did react emotionally rather than logically on a couple of issues.

189. Section 3 was headed “Cognitive Profile”. The sub-section on “Mental Model” characterised the claimant as a “word-rule thinker” which meant that he modelled the world via a set of rules and attempted to get by with a logical application of those rules. There were issues when applying the rules to cope with social interaction, because people regularly break the rules. The difficult problem was working out the “meta-rules” that tell you when it is acceptable to break the rules and when not to, which is very difficult. Logic was important which meant that if something did not make logical sense to the claimant, he found it very difficult not to challenge it. That had got him into trouble because senior managers don't like having their decisions challenged.

190. The sub-section on “Executive Functioning Issues” reported that the claimant's executive function skills were well developed, although he had a few weaknesses, e.g. struggling to deal with change and struggling when having to stop what he was doing to attend to something else.

191. The sub-section headed “Social communication Issues” reported that the claimant had significant communication issues. He admitted to not understanding people and could not predict how they would react. He was acutely aware that he was different. Although he could put in effort and interact in socially acceptable ways, he found that tiring. He preferred to interact with people through technology. That was one reason why he would prefer not to spend more time in the office.

192. The final part of section 3 was headed “Other Issues”. In it, the report raised the possibility that the claimant had OCD. The report suggested that some of the emails the claimant had sent Dr Guest after his assessment showed signs of the kind of anxiety common to OCD. It suggested that would explain much of the claimant’s “more puzzling behaviour that cannot actually be explained by autism” such as seeing conspiracies that weren't there. An obsessive fixation on something, especially something the claimant was feeling a lot of emotion about would lead to the claimant being ruled by emotion rather than logic. In that state, he would selectively choose material to back his story while discounting the rest, as in fact most people do. It would explain his belief that Mr Coupe, who had known him for 20 years did not care about him and was not interested in understanding how best to help him.

193. The sub-section headed “Reserve and Neurodiversity” reported that the claimant found it extremely difficult to talk about himself and to share anything of “the real person behind the façade”. It suggested that maintaining that “façade”, as it characterised it, was not helpful and healthy in the long run. We find this was a core area of contention between Dr Guest and the claimant which led to the claimant stopping his involvement with Aspiendent.

194. The report advised that the claimant used logic to try to explain everything, including things about himself. It suggested that, for example, the claimant accusing his managers of unintentional discrimination because they hadn't given him the promotion he wanted provided an excuse for not examining whether there might be other reasons for the decision, perhaps reasons that could not be explained logically. The report suggested that it did not occur to the claimant that his managers might not have the power to give him what he wanted or that it might not be the most efficient thing for the business at that time to promote the claimant for reasons that might not be related to logic and operational efficiency.

195. The report noted the claimant's view that the experience of others (including other autistic people) was of no relevance to him unless they thought in a very similar way to him. The report recommended that the claimant needed to become more flexible in his thinking in this area. It suggested there was potentially a lot to learn from other autistic adults and that the claimant should "have the humility to listen" and sift the information for relevance to him instead of dismissing them outright because they don't think just like he does.

196. The report voiced concerns that the claimant was very disparaging of "neurotypicals". It also noted that the claimant appeared to consider his way of thinking to be superior to how others think. It acknowledged that was true in some situations but not others. It said the claimant's list of reasonable adjustments made the assumption that if people were not listening to his ideas, that was because they were being narrow minded. There was no room in his mind for the notion that the problem might be that he had fundamentally misunderstood something that could not be explained logically.

197. Section 4 of the report was a table of "Recommended Reasonable Adjustments". They were set out in 2 columns. That was because the report recommended that while the claimant did need some reasonable adjustments to be made, the claimant also needed to make reasonable adjustments for those around him. He needed to appreciate neurodiversity in others and accept that everyone had their strengths and weaknesses. There were "parallel" adjustments required for the claimant by the respondent and of the claimant.

198. The recommended adjustments by the respondent included steps such as minimising the need for the claimant to attend social occasions, giving warning of change and setting clear objectives in writing making clear what would need to be achieved in order to achieve promotion (and how that was measured). They were parallelled by recommended adjustments for the claimant to develop strategies to cope with social occasions and accepting that people see social occasions as important to build relationships. The report recommend that he accept that change would happen and that not all change would be logical or look optimal. He was recommended to be less rigid in his thinking and to accept there may be political and organisational constraints that the claimant was unaware of and struggle to understand.

199. When it came to issues related to communication, the report recommended that the respondent be "lenient" when the claimant said something that could be construed as offensive and accept he does not understand social norms and has little or no concept of organisational politics. The parallel recommendation for the claimant was

to “Accept and appreciate the different ways in which people think and perceive the world. Be lenient when they accidentally upset you. They are not able to get it right all the time.”

200. The respondent was recommended to “Try to explain everything in a logical way. It will help to make reference to efficiency.” That was parallelled by a recommendation that the claimant “Accept that not everything has a logical explanation and that there may be times when you are unable to understand why something is happening. Accept that most people find logical reasoning very difficult and be more patient.”

201. The respondent was recommended “When providing difficult feedback on [the claimant’s] work, try to concentrate on the actual work rather than on [the claimant]. Try to find solutions to the work issue rather than make it an issue about [the claimant], e.g. in an email ask when the job will be done rather than asking when he will get round to getting the job done”.

202. The claimant was recommended to “Reduce the fear of disclosure by gradually disclosing. This is gradually disclosing content and gradually widening the number of people who know.”

203. The respondent was also recommended to “Acknowledge [the claimant's] comments and ideas. Provide feedback where possible.”

204. The claimant was recommended to “Carefully consider any feedback you are given. Accept that not all your ideas will be good. Accept that you may have a fundamental misunderstanding that nobody knows how to explain to you.”

205. In giving consent for the report to be released to the respondent the claimant thanked Dr Guest for her input. While acknowledging their differences he expressed the view that it had been worthwhile seeking a more detailed assessment than a standard OH assessment would have provided. We find that he was pleased with some aspects of the report, specifically Mr Coupe and Mr Cornwell’s confirmation that if there was an UK IT Director role the claimant would be promoted. We find that overall, he viewed the report as helpful. However, there is no evidence that he made the respondent aware that he had shifted position from that set out in his email of 22 June to Mr Al-Qasmi.

The formal grievance meeting and outcome

206. The formal grievance meeting took place on the 28 June 2018, before the Aspiedent Report was released to the respondent. The meeting was chaired by Mr Cornwell. Ms Johnson of the respondent’s HR team attended to take notes. The claimant was accompanied at the meeting by a colleague, Mr Collin.

207. On 5 July Mr Cornwell met Mr Coupe to carry out further investigation into the points raised by the claimant. Mr Cornwell emailed the claimant the grievance outcome on the 11 July 2018. By that date Mr Cornwell did have the Aspiedent Report. He rejected the claimant’s grievance.

208. In summary, Mr Cornwell concluded that:

- There was no requirement for an UK IT Director. That was because of the size and turnover of the respondent and because the introduction of OneIT meant local markets would have less power to make decisions.

- The claimant's 2017 Leadership Review had been conducted fairly and without bias and there was no basis for retrospectively reviewing the claimant's scores. Mr Coupe's scoring had been reviewed by the Group management who had recommended reducing the claimant's scores because they did not see evidence of over performance compared to his peers. It had not been possible to adjust that to take into account the claimant's disability because he was not willing to share his diagnosis with the Group management. However, adjustments had been made in setting targets. Mr Cornwell gave as an example the Total Purchase Plan Project where adjustments had been made including allowing the claimant to work from home so he could focus at times that suited him, removing the burden of monthly reporting and allowing the claimant to be absent or leave management meetings early. Despite those adjustments the project was not completed within the timeline set.

- There had been no lack of workplace adaptations. In the wake of his diagnosis, Mr Coupe had asked the claimant to let him know if there was anything the respondent could do to help the claimant. The claimant had not raised any problems or adjustments other than requesting flexible working or a change of office. Those had been granted. Mr Coupe had made discrete changes to the way he managed the claimant having a better of understanding of how he worked and why he reacted in certain ways. Mr Coupe accepted he could have carried out more detailed research into autism and maybe insisted they disclose the claimant's autism to Mr Al-Qasmi at an early stage to enable discussion about wider workplace adjustments. At that point the claimant was not in favour of wider disclosure.

- When the claimant asked for a formal workplace assessment the respondent had commissioned the Aspiedent Report, the claimant having rejected 3 other OH providers identified by the respondent. Although the claimant no longer wished to engage with Dr Guest, he had agreed that some of her report, including the recommended adjustments, carried merit. Mr Cornwell suggested there may be value in continuing to work with Dr Guest to provide mediation or ongoing advice and support if the claimant was willing to do so.

- There was no evidence of unintentional discrimination against the claimant stifling his development opportunities. Mr Cornwell did not accept that Mr Coupe did not encourage development of talent as there were plenty of examples of individuals who had developed under his management. By his own account, Mr Omerhodzic had offered the claimant a more senior role which the claimant had turned down because he preferred a hands-on role. There had been flashpoints with Mr Omerhodzic but since Mr Omerhodzic did not know about the claimant's autism he could not have discriminated against the claimant because of his disability.

- Disclosure of the claimant's autism more widely would help the respondent and the Group to make adaptations. The claimant accepted that disclosure to senior

managers would be beneficial because most of the misunderstandings which occurred were with senior managers and those with influence.

- At the claimant's request, and without any criticism of Mr Coupe's ability to develop and manage his teams, the claimant's reporting line to Mr Cornwell would be made permanent.

209. Mr Cornwell identified the next steps as being for the claimant, Mr Cornwell and Mr Al-Qasmi to meet to discuss the workplace adjustments recommended in the Aspiedent Report. There would also be a meeting to discuss how, when and to whom the claimant would disclose his autism. Mr Cornwell would support him in any disclosure. More generally, the respondent would arrange Equality and Diversity training for all managers and had launched an online Diversity in the Workplace and Unconscious Bias training module for all employees. The aim was to increase education for all employees without disclosing the claimant's autism. We find that training did subsequently take place. It was not specific to autism but attendance was monitored and enforced by the respondent's HR team.

11 July 2018 to 1 September 2018 – the claimant's grievance appeal and 2018 Tribunal claim

The claimant's grievance appeal

210. Mr Cornwell's grievance outcome letter provided for a right of appeal to Marc Perez, Regional Director. The claimant exercised that right on 15 July 2018. He did so in a document called "Formal Grievance rebuttal" in which he went through Mr Cornwell's outcome letter and inserted his rebuttal comments. In brief, he did not accept that the respondent had made any (or at least any significant) adaptations for him related to his disability, did not accept the delays in delivery of the Total Purchase Plan were his fault and continued to maintain that discrimination (or at least unconscious bias) had hampered his review score and progression. When it came to the denial of development opportunities, the claimant said he still "held to [his] theory of possible unconscious bias in operation". He provided detail to support each rebuttal. He prefaced his detailed rebuttal with 4 points he said were outstanding:

> "**1. There is a challenge to the 2016/2017 leadership review process and its execution in that it may have created discrimination. This is in the context of disclosure to my line manager previously and explicitly pointing out that my condition should be taken into account. - Action requested - detailed analysis and presentation of evidence of the process and execution and if flawed, a written apology, compensation and a detailed review of the 2016/2017 leadership review and the implications actioned if I would have scored for vertical progression.**
>
> **2. There was a 2 year+ delay in telling me after my repeated enquires a position that I sought in the UK was not available, leaving me with a false impression and affecting my personally held career development aims which I could have modified. - Action requested- a written apology and compensation for the delay in telling me such a position was not available.**
>
> **3. I want to explore the possibility that bias, even unintentional or unconscious held by those undisclosed of my condition, but only seeing its perceived 'negative' effects in my career history may have impacted my**

> **scoring or view of my capability or potential for more senior executive roles. - - Action requested- a balanced detailed holistic review of my career presenting evidence to the contrary convincing me of lack of bias as opposed to evidence I have that would indicate it has been present.**
>
> **4. As my condition continually affects me, implications on the roles I can take unless they are adapted should be understood because of my disadvantage, a review should be completed and forward planning put in place., Actions requested - a detailed written review of how I might grow in seniority in future years with a built in consideration of my condition and subsequent strengths and weaknesses. Special consideration or compensation if I am unable to take a more senior role or turn one down because of circumstances connected to my disability.**"

211. When it came to the suggestion that the respondent had made adaptations by granting him flexible working and giving him and office with natural light the claimant again said that those had been unrelated to his disability. In response to the suggestion that he had not asked for help, the claimant said that the process for seeking adjustments was a technical one. He disputed that he had not asked for help or that there had been opportunities for Mr Coupe to provide it. Specifically, he suggested that there had been a number of conversations in 2017 which had resulted in flash points which provided opportunities for Mr Coupe to mention or propose things.

212. The claimant went on to note Mr Coupe's "concession" that he could have insisted on disclosing to HR in order to get support. The claimant said, "This is a fault" and that he "hoped it would not happen again if someone else presented a disability to [Mr Coupe]". The claimant suggested he had made many concessions for Mr Coupe such as his business and focus on his duties and what he referred to as "pressure from above to normalise my scorings". Therefore, the claimant said he "can personally forgive such fault by Mr Coupe as an individual" but the claimant still had to address the fallout and hurt to his feelings to set future precedent for improved company process and management awareness."

213. When it came to Mr Cornwell's proposed next steps, the claimant welcomed the decision to change his reporting line to Mr Cornwell on a permanent basis noting it as "an important development that has been conceded". He confirmed that not all parts of the Aspiedent Report were accepted but some parts were, and they could discuss that. However, he again made it clear that he would not be comfortable working with Dr Guest going forward.

214. Mr Cornwell had exchanged emails with Dr Guest about Aspiedent potentially providing social skills and networking training and support for the claimant. Dr Guest also offered training about autism or neurodiversity for staff more widely. Mr Cornwell confirmed he would suggest it to the claimant but that it was very much up to him whether he would want to take up that support. We accept the respondent took the view that there was no purpose in pursuing that support or training given the claimant's position on further engagement with Aspiedent in his rebuttal.

31 July 2018 Appeal outcome

215. The grievance appeal meeting took place on 24 July 218 by Skype. It was chaired by Daniel Martin, the Group's HR Director & Regional HR Business Partner for Region 2. Mr Al-Qasmi attended to provide HR support and Ms Johnson acted as

note taker. The claimant's trade union representative, Mr Collin, was on annual leave but the claimant confirmed he was happy to continue in his absence.

216. Mr Martin did not uphold the claimant's appeal. The outcome letter addressed each of the claimant's 4 points at para 210 above in turn. The appeal was by way of review of Mr Cornwell's decision as opposed to a re-hearing. Mr Martin agreed with Mr Cornwell that the claimant's Leadership Reviews had been conducted fairly and without bias. He confirmed that there was no IT director role for the UK because of the size of the UK business. Noting that the claimant had been offered a new Senior Manager role and core membership of the Architecture Advisory Board in 2018, Mr Martin said he could not see any bias, even unintentional or unconscious bias by those to whom the claimant had not disclosed his condition. While acknowledging the claimant was a technical expert with a strong ambition to take his career further, he said that could not automatically work in three-year cycles. New opportunities for the claimant would present themselves as and when there was a business need for such roles. When it came to future development, Mr Martin encouraged the claimant, if he wanted to undertake a particular role to formally express his interest to the relevant HR team. In summary he said that he had found no evidence that there had been any unintentional or intentional discrimination towards the claimant nor any evidence to support his belief that he had been passed over for promotion.

217. He also encouraged the claimant to highlight that he had a disability should he decide to apply for a role. Mr Martin shared his own positive experience of having disclosed his disability to line managers and colleagues in the Group. He said that had enabled them to adapt their working styles while working with him. He said his disability had never been perceived as a negative and he had never experienced discrimination, just positive support from the whole organisation.

218. Mr Martin's letter said the appeal decision was final.

219. The claimant started ACAS Early Conciliation on 31 July 2018 and submitted his 2018 Tribunal claim on 1 September 2018. The original grounds of claim set out a timeline of events from 2006 onwards over 17 pages which the claimant explained was necessary to explain the background to his case. He identified as a "critical event" an incident in June 2013 when the CEO of the Group, Andreas Joehle ("Mr Joehle") visited the UK. Mr Joehle had been offended by a presentation given by the claimant which was critical of the Group's central IT function. The claimant said Mr Joehle had "erupted with belittling offensive language" towards the claimant in front of his peers. The claimant identified that as incident "set the scene conducive to ongoing discrimination and bias" in the way managers dealt with the claimant.

220. He restated his concerns about the 2016 and 2017 Leadership Reviews and the delay in providing clarity about the existence of an UK IT Director role what he saw The essence of his claim was summarised at para 12:

> "Due to historical 'flashpoints', connected to his disability, (that Is where the Claimant is perceived as challenging) with senior figures in the local company and international group including the current CEO, pre and post diagnosis, there has been consistent delay because of unfavourable bias in addressing the Claimant's ambitions for career development despite repeated petitions. The Claimant has been passed over for a title change or promotion in the local company despite requesting this since December 2015 and showing recognised talent and, exceptional effort with output of strategic value.

Other comparators in the UK and international company have experienced promotion in this time period."

221. The claimant sought damages, a retrospective review of the respondent and Group HR's talent development and promotion processes. He also sought compensatory measures or adaptations to address the claimant's inability to assume certain roles in OneIT because of disability, disability in his family and resource constraints. He suggested this could mean "a more flexible approach to local promotion, roles, titles and reward of country-based IT staff than perceived as dictated by Group matrix organisation structure". In essence, we understand that to mean that the claimant was seeking to be appointed as IT Director in the UK with commensurate benefits despite that not being in accordance with the Group's usual practice for smaller country group companies like the respondent.

October 2018 to November 2019 - transition to OneIT

222. Throughout this period there were discussions about the claimant's transition to OneIT. Because the claimant was head of the UK IT team, his new role had to be sorted out before the rest of the team could be transitioned into OneIT. The role originally proposed for the claimant was as Senior Manager, Technical Delivery Lead Digital process Automation (p.368). A key element of that role related to a technology called PEGA and it was referred to in discussion as "the PEGA Role". The intention was that his matrix manager for OneIT would be Subhrajyoti Bose ("Mr Bose"). He was the Director Digital Project Engineering.

223. In a document dated 20 March 2019 headed "Requirements for successful Transition to One IT Role" the claimant set out his assumptions, requests for clarifications and requested adaptations relating to the PEGA Role (pp.348-353). He said his primary motivation was to seek promotion in any new role. His assumptions were that he would be based in the UK, his management and reporting line would change and that job adaptations would be made to take into account his disability and support him in the job. Another assumption was that his job would be funded from the OneIT budget not the respondent's budget. He asked for clarity about how many staff he would be managing and whether further team members in the UK would be migrated to One IT.

224. The claimant set out a list of 11 examples of adaptations which he said would be more fully documented in future:

"1) Training and awareness of those already disclosed in cooperation with CT and material sourced.

2) Regular communication with his manager Mr Bose to provide feedback to CT

3) To not take challenge to logic as challenge to authority. Cultural adjustments on the part of managers.

4) Working from home to current arrangements

5) Limiting travel

6) Communication style and counteracting misunderstandings

7) Help with priority management

8) Support with relationships, introductions. Help with conflict resolution

9) Other items raised in future which are an aspect of the disability.

10) Assistance with cross cultural communications.

11) Targeted disclosure at CT discretion to senior management to facilitate understanding."

225. On 20 March 2019 the claimant met with Mr Cornwell and Mr Bose. His suggested adaptations were agreed in principle. Mr Bose confirmed that initially the claimant would not be managing staff except external contractors but that there was a possibility that further UK team members would be migrated in future. The claimant had asked for confirmation that the new role was funded from the OneIT budget not the UK budget. Mr Bose and Mr Cornwell's answer was "yes and no". The position, we find, was that the claimant's full salary and benefit was paid for the respondent but it received payment from the Group for the work done by the claimant for the Group. We find that this was important to the claimant because he was frustrated by what he saw as a reluctance by the respondent (specifically Mr Cornwell) to award him the pay rises and bonuses he felt he deserved. We find, however, that the key sticking point for the claimant was that the new role was effectively a demotion. It was at Grade 5 rather than the claimant's current Grade 6. As such it was not the promotion that the claimant saw as a crucial characteristic of any new role. He made that clear in a follow up email to Mr Bose and Mr Cornwell that afternoon.

226. Mr AL-Qasmi raised the issue with Sven Leiske ("Mr Leiske"). He was the VP of Total Rewards in the Group's Compensation & Benefit team. He in turn discussed it with Mr Omerhodzic. On 30 April, Mr Leiske confirmed to Mr Al-Qasmi that according to the Group's Grading methodology, the PEGA Role was at Grade 5. As a clear exception, however, they agreed to offer the role at Grade 6. That recognised the claimant's existing Grade 6 role and the importance of the PEGA technology for the Group. That position was confirmed by Mr Cornwell and Mr Al-Qasmi in a formal "Variation of contract" letter to the claimant dated 8 May 2019. It proposed a 3 June 2019 start date for the PEGA Role and confirmed that the claimant's current role would be disbanded and his current duties re-assigned to existing members of the IT team. The letter was approved by Mr Bose and sent to the claimant on 14 May.

227. The claimant responded on 16 May by email to Mr Cornwell and Mr Al-Qasmi. He said he had a number of questions which would have to be resolved before he took up the role (p.374). He said that in the absence of an actual promotion, the "only way to give the job offer the characteristics of the promotion I desire "was a "significant salary shift". Otherwise, he said, he was being asked to "sign and accept a status quo of non-progression". He invited the respondent to "open with an offer". He also asked whether there were any imminent positions in the Group in One IT or otherwise at Grade 7 level.

228. On 16 May 2019 Mr Al-Qasmi asked Mr Bose whether there was any chance of reviewing the claimant's salary. Mr Cornwell shared his view that they should be fair and equitable. If the claimant's new role merited a higher package that should be given but if he was already in line, there was no requirement for a pay increase. He said that his view was that the claimant was minded to accept the role but only if the salary was reviewed. He said they should not "be held to ransom" but should also make sure they were being fair and equitable.

229. Mr Bose provided his feedback by email on 16 May 2019. He said that having interacted with the claimant and with a fair analysis of the rest of the team, he did not see that his capabilities were at Grade 6. While he accepted the argument of the claimant being Grade 6 because of his current role he did not see any reason (from a functional assessment point of view) for a salary increase. There was a lot of learning for him to get adapted the new global role and he did not really see him at a stage to be "promoted " to the role.

230. Mr Al-Qasmi relayed that to the claimant on 17 May. He confirmed there were currently no Grade 7 positions open within One IT. He gave the claimant until 23 May 2019 to decide whether to accept the PEGA Role. The claimant responded asking what the Group would do if he did not accept the role on offer.

231. On 21 May Mr Al-Qasmi confirmed that the implementation of OneIT meant the duties of the claimant's current role would be reassigned and his role would cease to be required. If he did not wish to accept the new role and suitable alternative employment could not be found in the One IT structure, the respondent would consider placing his current role at risk of redundancy. Mr Al-Qasmi pointed out that the proposed roll out date for OneIT in the UK was 1 January 2019. That had been significantly delayed. He set a revised deadline of 7 June 2019 for the claimant to make his decision with a proposed start date in the new role of 1 July 2019. The claimant was sent an updated version of the formal Variation to Contract reflecting that new proposed start date.

232. The claimant responded with a 2-page email on 21 May making it clear he was not prepared to accept a new role unless it had the characteristics of promotion, i.e. a salary increase. He said the respondent's assertion of the potential of redundancy was "shocking, stressful and completely disrespecting him as an individual his role and contribution, historic and current to the respondent". He asked on whose authority that "threat of redundancy" had been issued if he did not agree to the variation of contract. He asked for detailed reasoning why current his role would not be required and set out his initial reasons why that was not the case. He said that the true motive for threatening to put his role at risk way related to the 2018 Tribunal claim. He said that this "strong arm" approach, continually dismissing his concerns was considered by him to be victimisation. He said the respondent was effectively trying to oust him from a position because he had been considered a troublemaker locally for exercising his legal rights not to be discriminated against. He made it clear that if he was selected for redundancy because he did not agree to the new role, he would bring legal action. He also referred to his email to Ms Fuenfstueck of 14 April 2019 and said he was awaiting the ultimate outcome of that because she was the ultimate authority in the Group. He said that Mr Cornwell had claimed there was breakdown of working relationship between them (pp.380-382).

233. Mr Al-Qasmi responded on 22 May. He denied there was a “threat” of redundancy. The claimant had asked what would happen if he did not accept the PEGA Role and the respondent had provided clarity on that. He said an employee could not dictate company structure nor demand promotion or a salary increase. The claimant had requested a promotion or salary increase, they had considered it and had confirmed they could not offer that. He pointed out the wider opportunities for promotion a role in OneIT potentially offered. He referred to the respondent’s flexibility in increasing the PEGA Role from a Grade 5 to 6 to accommodate the claimant’s

concerns about his grade and its commitment to match his current salary and protect existing benefits. He confirmed that the respondent and the Group were happy to discuss any reasonable adjustments required. The claimant was asked to raise those with Mr Bose. He reiterated the deadline of 7 June 2019 (pp.378-379).

234. The claimant responded by e-mail the same day. He suggested that Mr Al-Qasmi had avoided his question about the authority levels involved in putting his role at risk of redundancy. He said that he was reasonably trying to negotiate salary based on a proposal for a variation of contract. He expressed the view that the respondent was paying lip service to supporting him with adaptations. He had already made clear in his document of 20 March that a key adaptation was for any transition to be on a trial basis. That document also made clear his expectation of an increased salary. The claimant said that the attempt to separate out the various issues "did not meet my viewpoint". From the claimant's point of view his desire for promotion, the grievance and 2018 Tribunal claim and the way the transition to OneIT was being approached were all interlinked. The claimant confirmed he would raise the issues with Mr Bose.

235. Prior to that discussion, Mr Al-Qasmi emailed Mr Bose to bring him up to speed. He explained that the claimant had pushed back on the attempts to integrate him into OneIT. He also explained that UK employment law required reasonable adjustment for someone with a disability but said that an employee could not request "excessive or unreasonable adjustments" such as a significant pay rise or for the role to have characteristics of a promotion. Mr Cornwell was also involved in the discussions with Mr Bose.

236. On 3 June the claimant met with Mr Bose and Mr Al-Qasmi to discuss adaptations for his proposed new role. The claimant set out his requirements in a "Requested adaptations and adjustments" document dated 2 June 2019 (p.391-393). In summary, the requirements were:

- a 3 month trial period in the new role
- the claimant to be completely relieved from UK responsibilities and tasks during that trial period
- the claimant and Mr Bose to jointly agree at the end of the trial period whether the role was suitable.
- If it was not, the claimant to return to his current role (or an evolved version of it).
- Extensive support for up to a further 12 months if the new role was accepted.
- A bonus for undertaking the trial (at 150% as a default).

237. The claimant also required continuation of his current home working pattern (a maximum of 2 days in the office per month) and a “workable limit” on international travel agreed. His document also set out points about the working relationship with Mr Bose and others. Those included not taking challenge to logic as challenge to authority, helping the claimant to resolve misunderstandings and providing company-wide Neurodiversity training. Limited disclosure of the claimant's autism was

envisaged, with an expectation that those to whom disclosure was made would do some learning to understand Autism but discussing the learning with the claimant "as no Autistic person is the same".

238. The discussions at that first meeting centred on the proposed trial period and what would happen if it was unsuccessful. We find that both sides took the view that the other had been inflexible, contributing to delay in finalising the claimant's transition to the new role.

239. A further meeting on 11 June resulted in agreement on a trial period from 22 July to 22 October 2019. On 18 June 2019 the claimant was sent an updated version of the Variation of Contract letter (pp.394-395). It said that if the trial period was unsuccessful, the respondent would seek to find an alternative role for the claimant in OneIT. In the "unlikely event" that was not possible a formal redundancy consultation would begin alongside a continuing search for other suitable roles in One IT.

240. The claimant refused to sign the variation letter. In his response on 26 June 2019 to Mr Cornwell and Mr Omerhodzic (p.396) he expressed his concerns that he was being forced in to a "trap". He was being required to move to the OneIT on a "trial" basis but on the understanding that his UK role would be made redundant even if the trial was unsuccessful. He argued the UK role was still needed and there were precedents for those in OneIT retaining local responsibilities. He said that unless there was real concession, incentivisation and improvement of approach by the respondent and the Group by 5 July 2019 he would "consider the matter closed" and would continue working in his current UK role. His email referred to the then ongoing 2018 Tribunal claim and the "possible perception of me by various individuals including those addressed in this letter". He referred to a "heavy-handed move to get me away from UK responsibilities and change my role with restrictive caveats, even if that is not right for me personally". He said if that approach continued it could amount to victimisation or discrimination" and would result in legal action.

241. The discussions continued over the summer of 2019. Proposed meetings on 12 and 19 July were postponed for various reasons. Given the claimant's reservations about the role he had been offered, Mr Cornwell discussed possible alternatives with Mr Omerhodzic. They identified a lead role in the re-design of the respondent's home delivery systems. In an exchange of emails with Mr Cornwell on 1 August 2019 the claimant confirmed that that role would play to his strengths and that he had already told Mr Omerhodzic it seemed more suitable (pp.404-404).

242. Following further discussions, on 18 September 2019 Mr Bose emailed the claimant the job description for the proposed role of Technical Solution Owner Home Delivery ("the Home Delivery Role") (p.416). In answer to queries raised by the claimant in his email in response, Mr Bose confirmed the job would be on the claimant's existing grade with the same remuneration. After more discussions it was agreed that the claimant would remain the UK IT team's line manager for legal/HR purposes. That was on the understanding that would take up no more than 5% of his time. On functional matters, the members of the team would report to the relevant OneIT functional manager.

243. On 2 October 2019 the claimant emailed Mr Bose (copying Mr Cornwell, Mr Al-Qasmi and Mr Omerhodzic) to accept the Home Delivery Role. In his email he said he

did so on the basis he would be fully supported in the transition into the role by the management of OneIT and the UK and there was a realistic prospect of future career progression and promotion in OneIT.

244. The claimant started in the Home Delivery Role on 7 October 2019. In a letter dated 4 October, Mr Cornwell and Mr Al-Qasmi congratulated the claimant on his appointment. The letter confirmed that the claimant would continue to report to Mr Cornwell from an HR perspective, but from a functional day-to-day perspective he would have a "dotted line report" to Mr Bose. The letter envisaged a 6-8 week transition period during which it said the claimant would be fully supported. (p. 417)

Other incidents October 2018 to October 2019 – email to Ms Fuenfstueck, DSAR, expenses, "York" incident, 2018 Bonus, 2019 peer review and September incidents

245. During the period when the discussions about the claimant's transition to OneIT were going on a number of incidents occurred. The claimant saw most of them as reflecting Mr Coupe and Mr Cornwell being less patient with him and putting more pressure on him about operational matters. Some of those incidents overlapped in time. We have found it preferable to deal with each incident in turn from start to finish rather than deal with all of them together chronologically.

246. At times during this period the claimant was absent from work due to ill-health. That included a period of sickness absence throughout February and into early March 2019 due to "Stress and Autism".

247. It was also during this period that the claimant wrote to Ms Fuenfstueck and Dr Raymund Heinen (another member of the Group's management board) about the 2018 Tribunal claim. He did so in a letter dated 14 April 2019 (pp.366-367). He explained that he was an autistic person and the challenges that posed for him when it came to communication. He said that even with his condition he knew it was not conventional to write to them in the way he was doing and that he had considered it very carefully. He explained that he had been seeking promotion to director level (Grade 7) unsuccessfully since December 2015 and set out reasons why he thought that was linked to his Autism. He said he was reaching out to find a way forward that took a "holistic view of possibilities" and to find a way that he could drop his legal action. He acknowledged in the letter that Ms Fuenfstueck and Dr Heinen may decline to answer the letter because of the stage matters had reached.

248. There was no evidence about a response to that letter. We accept the claimant's evidence that he was not told that it was inappropriate for him to have written to Ms Fuenfstueck.

The claimant's data subject access request (DSAR)

249. On 29 October 2018 the claimant sent Mr Al-Qasmi a letter dated 28 October requesting disclosure of documents (pp.319-326). It was to referred in evidence as a DSAR, so we have adopted that as a shorthand when referring to it. However, the claimant's letter makes it clear that his initial request was for disclosure of documents for the purposes of his 2018 Tribunal claim. It incorporated a DSAR but went much wider, seeking "all relevant information available in any format that pertains to any of the points raised in my claim and background" held by the Group and the respondent. The scope of the request was also wide-ranging in terms of the time period it covered,

which dated back at least to 2013. It was also wide ranging in the kinds of information sought. It included an (expressly non-exhaustive) list of 21 individuals or groups whose communications were of particular relevance. That included Mr Cornwell, Mr Coupe, Mr Al-Qasmi, Mr Omerhodzic, Mr Bose, Mr Heinzel, Mr Joehle, any Group board members active during Mr Joehle's tenure and "Group HR". The claimant requested the information by 12 November 2018. That was so he would receive it 10 days before the preliminary hearing listed on 23 November in the 2018 Tribunal claim.

250. Ms Miller, the respondent's solicitor, acknowledged the request on 31 October 2018. She explained that given the complexity and extent of the request the respondent would need to extend the deadline for response to 3 months.

251. On 23 January 2019, Ms Johnson of the respondent's HR emailed the claimant to confirm that the DSAR documents were ready for collection (p.331). She explained that they included documents stored in the claimant's electronic and manual personnel files from December 2018 (we think she meant 2017 the date of a previous DSAR request).

252. The claimant emailed Mr. Al Qasmi the following day to say that he considered the DSAR response was incomplete. He said the restriction of communications disclosed to the period post December 2017 was arbitrary. He said the disclosure should have been provided in electronic rather than paper format. He said that the DSAR was unconnected to the tribunal claim. He asked for clarity that the DSAR request would be fulfilled before the 3-month DSAR deadline on Monday 28 January 2019.

253. Following further exchanges between the claimant and Ms Miller (who was representing the respondent in the 2018 Tribunal claim) Mr Al-Qasmi sent the claimant a detailed letter of response dated 28 February 2019. A proposed meeting between them and Mr Cornwell on 21 February 2019 did not take place. The claimant was by then signed off as unfit for work until 4 March 2019 due to "Stress and Autism".

254. Mr Al-Qasmi's letter noted the wide scope of the claim request. Para 7 of the letter said an initial search of the email accounts referred to in the DSAR since 2013 using the search term 'Chris' had highlighted 37,738 emails excluding emails for which the claimant was the recipient or copied into. A wider search across all email accounts highlighted over 1.6 million items. Widening the search terms to include 'Chris Turner' and 'CT' and other combinations would give a substantially higher number of results. Based on that information, the Group's data protection department had decided to carry out a mailbox search using the search terms "Chris Turner" or "Christopher Turner" for the relevant period but limited to 7 people. They were Mr Joehle, Mr Henzel, Mr Cornwell, Mr Omerhodzic, Mr Bose, Mr Perez and Mr Martin.

255. The letter noted that the preliminary hearing in the 2018 Tribunal claim on the 21 January 2019 had made clear that disclosure for that case was not yet required. The DSAR and the process of disclosure for the Tribunal should be dealt with separately. The fact the claimant was conflating them suggested that his motive was to seek documentation relating to the Tribunal claim even though he was not entitled to personal data of others under the GDPR. The letter explained that certain personal data would not be provided because doing so would adversely affect the rights and freedoms of other data subjects. The respondent considered that the request to provide additional personal data over and above what had already been provided was

manifestly unfounded or excessive. The letter went on to say that, given that the claimant was the respondent's data protection co-ordinator and also managed the IT team in the UK, the fact that he was making a request for personal data in such wide-ranging terms and involving such a substantial number of Items of data suggested that the DSAR was made with malicious intent or with an intention to disrupt the respondent's business.

256. The letter confirmed that the respondent was prepared to meet with the claimant to discuss any specific and limited requests for the provision of additional personal data. Mr Al-Qasmi proposed rearranging the meeting between him, the claimant and Mr Cornwell so they could discuss any outstanding concerns the claimant had. He asked the claimant to contact him when he felt well enough to attend. He confirmed that any additional disclosure resulting from the search of the 7 email accounts would be provided after detailed review of the results. That would not be until after Mr Al-Qasmi had returned from annual leave on the 18th of March 2019.

257. A meeting was arranged for 20 March 2019 but had to be postponed because Mr. Al-Qasmi was ill. The claimant emailed him the following day. He noted Mr Al-Qasmi's illness and hoped he would get better soon. He disagreed with a number of the points made in the 28 February letter. He asserted that the letter showed dubious logic and "a level of unprofessionalism and bad will".

258. The claimant said he saw the use of language like "malicious" and "manifestly excessive" as "an attempt from you to victimise by casting a bad light on my character and intimidate and resist and harass me as an individual for exercising my information rights and context of the Tribunal case brought." He referred to the fact that there had been a case management order made in the 2018 Tribunal case at the preliminary hearing on 21 January 2019 requiring disclosure of documents by lists by 3 May 2019.

259. The claimant said that the comments in the letter would not deter him from pursuing his legal rights nor "intimidate him". The claimant set a final deadline of 12 April 2019 by which "all information had to be handed over". If the deadline was missed, he would write to the ICO to lodge a complaint. He ended by saying that he'd set up a meeting in his office on the 1 April, having checked Mr Al-Qasmi's availability in his outlook calendar. That meeting was to "have a detailed discussion on the information the company will disclose and the practicalities of handover before 12 April 2019".

260. Mr Al-Qasmi forwarded that email to Mr Cornwell who responded to Mr Al-Qasmi making it clear he was unhappy with the claimant spending work time on his Tribunal claim given the claimant's own assertions that the IT department was under resource stress. He refuted the allegation of "harassment, victimisation, intimidation" and said that was simply not true. He felt the harassment was the other way round.

261. The claimant sent a further e-mail to Mr Al-Qasmi on the 22 March. It criticised the search terms used to date. He provided what he referred to as "additional justification" for adding back the 14 people or categories from the original DSAR whose mailboxes the Group had decided not to include in the email search. The justification in each case was extremely brief. It did not provide a clear rationale for thinking that the person concerned had any relevant personal data beyond their roles in the respondent or Group. For example, for the "Group HR" category the justification was said to be "Communications relevant to [the claimant]".

262. Mr Al-Qasmi was still off sick. He forwarded that second e-mail to Mr Cornwell and said that he did not feel comfortable meeting with the claimant on his own. He suggested they both meet with him when the claimant was back from leave so they could agree a way forward which kept all parties happily and hopefully resolved matters.

263. He pointed out that some of the elements of the DSAR response had been outside of their control, being dictated by the Group. with the search terms being agreed by the group. He flagged the demand being placed on the respondent's HR Team, which had limited resources. He pointed out that the exercise of responding to the DSAR had by that point taken nearly 5 months because it was such a wide-ranging request. There were still a number of emails to review. He also highlighted that the respondent could not give the claimant the electronic access to data he was seeking because the respondent needed to protect the personal data of others which they were doing by redacting hard copies of the documents.

264. Mr Cornwell responded to Mr Ql-Qasmi the same day, expressing his agreement and support. He said that Mr Al-Qasmi had a right not to be bombarded with emails by the claimant when off sick. That was only fair given that the respondent had not bombarded the claimant with emails while he was off sick. He agreed that there should be more than one person present at the meeting with the claimant and that "an element of pushback was required". He agreed that at the claimant could not have the documents electronically because of the need to redact them. The claimant could also not also change his search terms causing significant additional work which was taking focus away from running the business. Mr Cornwell acknowledged that the claimant was entitled to his data and that the respondent was doing all in his power to give him it. But, he said, the claimant needed to be reasonable and not keep pushing for more.

265. Mr Al-Qasmi emailed the claimant on 27 March. He advised him that the 1 April was not suitable for him and suggested meeting on 3 April instead. He totally refuted the claimant's suggestion that he had acted in a way which could amount to an attempt to "victimise", "intimidate", "resist" or "harass" him. He pointed out that the terms "malicious" and "manifestly excessive" in his letter of 28 February were terms from the GDPR and ICO Guidance. We find that is the case.

266. Mr Al-Qasmi told the claimant that in light of his allegations he was not comfortable meeting the claimant on a 1:1 basis so Mr Cornwell would also attend the meeting. He made clear that the purpose of the meeting was to discuss the DSAR only and not the issue of wider disclosure for the 2018 Tribunal claim which was being dealt with by Ms Miller.

267. The meeting took place on 3 April 2019. It does not appear that notes were taken. On 4 April the claimant sent Mr Cornwell and Mr Al-Qasmi an email summarising their discussion (p.364). It records they agreed a staged handover of data, the first being due on 12 April. The claimant confirmed that if there was "not much further delay and I am kept in the loop regularly on process" he saw no need to escalate matters to the ICO "right now".

268. From that email it appears there was a discussion at the meeting of the response to the DSAR request, specifically to the reference in the 28 February letter to the request having a malicious intent. The claimant characterised that as a

seemingly retaliatory approach to his 2018 Tribunal claim. The claimant said that response was one he "would suggest is inappropriate and should be avoided in the future" and that "an employee voicing his feelings to HR" was "a chance to calm and resolve things, not a time to up the ante." He also asserted that when a Tribunal claim had been launched "the complaint is protected in law and a hardening of approach and language to the employee in non-related matters after this point, will be considered victimising."

269. Mr Cornwell accepted that he made a comment in the meeting about being "tired" with things being about the claimant all the time. We find that the context was the frustration he felt that the claimant's constant challenging of decisions he did not agree with, rejection of criticism and the way in which he pursued the DSAR was diverting resources and energy from running the respondent's business, involving as it did a great deal of his time and that of Mr Al-Qasmi and his team. In his email the claimant said he was "hurt and demoralised" by that remark. He also said it did not install much confidence in his career prospects given it was his line manager who held that viewpoint. The claimant linked the remark to his autism, suggesting that his behaviour was "centred around [his] own unique world view rather than social dynamics, I cannot change this core default." He suggested Mr Cornwell should now be aware of that. He referred to the stress of "working in a world of the more Neurotypical" which he accommodated and adapted to the best he could.

270. He said that even from his understanding of social etiquette, he would not tell his reports or peers that he was "tired" of them, To do so would be to be degrading, and he found it offensive and patronising when Mr Cornwell directed it to him, especially when he was aware of his condition. He said that if Mr Cornwell's patience was exhausted that was not "a matter he could take lightly" and raised "deep concerns". He closed by saying that "It is important that you have the capacity to do the job and to work with a diverse workplace and see me positively beyond my disability".

The December 2018 expenses incident

271. In mid-December 2018, the respondent held a 2-day management meeting in London. As a thank you to his direct team for their efforts during the year, Mr Cornwell took them out for a meal at the Savoy. The event included pre-dinner drinks. By way of a further thank you, Mr Cornwell had also sent his direct team (including the claimant) a Christmas hamper.

272. The claimant had a meeting with Mr Omerhodzic in London the following day so stayed overnight in a hotel. On 7 January 2019 he submitted an expenses claim for that evening. It included 2 meals and drinks, together totalling £138. Mr Cornwell had put in place a new process for approving expense claims by his direct reports. He approved the claim but emailed the claimant about it. That email was not in the Bundle but we find Mr Cornwell advised the claimant in it that he considered the £138 claim was excessive and questioned why 2 meals had been claimed for 1 night. He copied the email to Diane Coupe (Mr Coupe's wife) who was the respondent's Accounts Administrator. Mr Cornwell's evidence was that he did so to confirm that the claim was approved and that he had already challenged the expenditure in it. We accept his evidence that that was the process he followed with all his team.

273. The claimant's response to Mr Cornwell's email was a "letter of complaint" to Mr Cornwell dated 9 January 2019. It was addressed "Dear Sir" and started with a request that the letter be added to his personnel file. That was because it recorded his desire to "formally opt out" of receiving any hospitality such as food and drink and other unsolicited gifts from the respondent. He would continue to claim expenses for travel and accommodation but would pay for his own food and drink.

274. The claimant accepted that it was Mr Cornwell's prerogative to challenge expense claim but said that "more thought should have been applied before [Mr Cornwell] did so". The claimant provided his justification for the claim, namely that he had an early meal and wine in his room when he arrived at the hotel but still felt hungry and had therefore gone down and had a further meal and drinks later in the evening. He suggested his claim was far less than the cost of the meal at the Savoy arranged by Mr Cornwell and what he referred to as "drinks served in the nightclub" which he understood was "extremely expensive". He suggested he should have been allowed to claim more because he had not drunk the "expensive alcohol" served at the Savoy event.

275. He also asserted that Mr Cornwell's challenge was a change in approach which he "inevitably connected" with his grievance and the 2018 Tribunal claim. Referring, we find, to Mrs Coupe being copied in the claimant said that "any attempt to include others indiscreetly or unnecessarily in the correction of myself will be perceived by myself a mechanism of social manipulation to attempt to create a consensus of ill will towards me."

276. In parts, the letter appeared to be from both the claimant and his wife, referring to their both being "culturally deeply offended". It referred to his wife's Greek Cypriot cultural heritage which required that hospitality and food received must be rejected or returned unless given with goodwill. In view of that, he could no longer accept food and drink and hospitality. He withdrew any food expenses from his December expenses claim. He also said he and his wife had decided to pay £200 back to the respondent to reflect the cost of the Savoy meal and the hamper.

277. He concluded the letter by saying he was not a "scrounging employee with lavish expectations abusing his expenses provision and hoping to get away with it but an individual of high worth, integrity and importance to the respondent who had given many years' service. For that reason, he said, he "Chose dignity over anything offered without good will".

278. We find the letter was an extraordinary one for an employee to send to their line manager in relation to an objectively surprising expense claim involving 2 meals in one night for one person. One of the claimant's issues was that Mr Cornwell had copied his email to Mrs Coupe. He suggested Mr Cornwell should instead have had a quiet word with him. He did not feel he had been given the "dignity he deserved" particularly given that Mr Cornwell was well-aware of the issues he had with Mr Coupe's "dealing with [his] disability and enablement of [his] career ambitions".

279. The Claimant and Mr Cornwell met to discuss this issue on 10 January 2019. It was a lengthy meeting lasting about 90 minutes.

280. Mr Cornwell emailed the claimant a summary of the meeting and points agreed that same day, copied to Mr Al-Qasmi (p.327). It is clear from Mr Cornwell's email that

he was frustrated by the time taken by what he viewed as a trivial matter. He reminded the claimant that in dealing with the expenses claim he was doing the job he was employed to do which included leading a team, ensuring a process was followed and closely monitoring finances. He said that the claimant's comparison of his expense with the Savoy meal was both unfair and inaccurate. There had been no "nightclub" involved and the cost per head of that evening was £125, less than the amount claimed by the claimant for the following evening.

281. They discussed the claimant's rejection of the hamper. Mr Cornwell expressed his upset that the claimant had not thanked him for the gift. The claimant said he was socially unaware that he should thank someone for a gift. We find that unconvincing. Even if the claimant was not intuitively aware that it was customary to thank someone for a gift, there was evidence elsewhere of his awareness of his learning what social etiquette required in certain circumstances (e.g. his email to Briita on 14 April 2019) and we find it implausible that the claimant did not know that it was customary to thank someone for a gift.

282. We find Mr Cornwell was unconvinced by that and annoyed that the claimant seemed to be criticising him for not having an intimate knowledge of [the claimant's] wife's Greek Cypriot culture" while himself denying knowledge of a basic cultural norm like saying thank you for a gift. Mr Cornwell also expressed his concern about the claimants wife's apparent involvement in the matter, given that she was not an employee of the claimant.

283. After what Mr Cornwell referred to as "much discussion" the claimant revealed that his major upset was about the email to him being copied to Mrs Coupe. While confirming that that was the process he followed with all of his team members, Mr Cornwell conceded that, with the claimant circumstances in mind, he should have made an adaptation and reviewed the situation with him prior to involving Mrs Coupe. He conceded that he would ensure that in future he would discuss matters with the claimant in the first instance.

284. The claimant for his part conceded that refusing all sustenance at business events could become very awkward and costly for him and agreed to accept meals provided as part of business events. Moving forward, the claimant would decide what he claimed as expenses on a day-to-day basis.

285. Mr Cornwell confirmed that the respondent would not accept any money the claimant and his wife wanted to refund but would instead hold it securely until such time as they decided what they'd like to do with it. He urged the claimant to reconsider the desire to reject gives and business expenses reimbursement in this way.

286. Mr Cornwell closed his email by saying that:

> **"At this point I add that I find the constant challenge and lengthy push back from you on matters related to what is basic business process difficult to manage. At times I feel uncomfortable managing you and often feel unable to challenge you on business related matters for fear of upsetting you and causing an inordinate amount of additional follow up work."**

The "York" incident

287. In January 2019 an issue arose about a problem in the system which checked stock prices in one of the respondent's major contracts, York. At around 9.15 a.m. on Friday 25 January, Mr Coupe raised a "Ticket" about the issue with a "Very High" priority via the UK IT Support inbox (p.339). He emailed the claimant a few minutes later to ask him to get someone to answer the ticket and put Mr Cornwell in the picture asap. In a follow-up exchange Mr Coupe confirmed he had let Mr Cornwell know there was a problem with York pricing and estimated that the impact on the 2018 figures was around £40,000. At 10:06 the claimant emailed Mr Cornwell to confirm the issue was under "immediate and priority investigation" and that he was confident they would be able to identify the cause.

288. Mr Cornwell responded to stress the importance of the issue for the respondent and the Group. The estimated £40,000 error would represent 5% of the EBIT for 2018 and had various knock-on effects including putting employee bonuses at risk. He expressed frustration that the work he and Mr Coupe had done to ensure the EBIT targets were met and that staff would get bonuses might be wasted because of what appeared to be a system failure. He also reminded the claimant that in their discussion at the end of 2017 about his bonus targets the claimant had argued it was unfair for his bonus to be heavily linked to the EBIT because the IT team had limited effect on it. Mr Cornwell said this issue "very clearly demonstrates that they have". He asked the claimant to find the route cause so they could talk about next steps early the following week. He also referred to a potential issue relating to a contract in Ireland.

289. The claimant had not responded by mid-morning on Tuesday 29 January so Mr Cornwell sent a chasing email. He expressed his disappointment that the claimant had not reported back to him on the cause and remedies. He said he had understood that the cause had been identified on Friday and that a member of the IT team had worked on a solution over the weekend but had heard all that third hand. He told the claimant he had set a meeting on Thursday 31 January for the 2 of them and Mr Coupe to fully discuss the issue and of problems which had been raised regarding Ireland.

290. The claimant responded by email within 20 minutes to say the matter was still under investigation and that he had assumed they would discuss at an already arranged Issues log meeting. He was happy to discuss Ireland but asked Mr Cornwell to raise the issues he wanted to discuss in advance.

291. He then reminded Mr Cornwell of his long track record of good performance, said that his condition meant that he needed assistance in setting priorities at times and with communications, pointed to the resource constraints he was under and reiterated his need for clarity. He closed his email by saying that he had observed through documents disclosed that there had been a "distinct shift in the way things are discussed between you and [Mr Coupe] regarding me since my grievance and claim to the tribunal". He went on to say that he was

> "…v**ery aware of any attempts to "manage me out" and would not like you to fall into this pattern between you both as this will be victimisation. In addition, [Mr Coupe] may still be readjusting to these circumstances and indeed may not be privy to all the nuances of the adaptions I need. So, in all discussions and in all of [Mr Coupe's] or any other staff escalations, I would urge you to keep balanced and objective with these factors in mind and present your communications in a balanced way to minimise the stress I currently feel which is affecting my health."**

292. We find that Mr Cornwell was frustrated by that response. He pointed out that his email on Friday had been very clear that they would need to discuss the York issue "early" in the week, i.e. before Thursday. He utterly refuted the assertion of victimisation in the claimant's last paragraph. He explained he was copying his email to Mr Al-Qasmi because it was very much an HR matter.

293. He told the claimant that his management style was different to Mr Coupe's. He expected urgency and explanations where customers were let down. As the respondent's Managing Director, he had a duty to seek out the causes of issues when customers were let down. In this case it was particularly urgent and important because the combined impact of the York and Ireland issues were around £45,000, around 5% of the respondent's 2018 EBIT. As the issue appeared to lay within the IT department for which the claimant was ultimately accountable, so it was to him Mr Cornwell needed to speak to decide the resolution to the issue.

294. The meeting did take place on 31 January 2019 but we had no detailed evidence about what happened at them. The following day the claimant saw his GP and was signed off as unfit for work for 4 weeks due to "Stress and Autism".

The claimant's bonus for 2018

295. On 12 March 2019, Mr Cornwell wrote to the claimant to confirm his bonus for 2018. The claimant emailed back to ask for 2 points to be checked. The first issue was a misunderstanding because of wording used in the email and was resolved quickly. The second issue was that there had been a reduction to the bonus because of what the claimant said was a disability related illness in 2018. The claimant asserted this would constitute discrimination. When Mr. Al Qasmi returned from leave on 18 March 2019, Mr Cornell reviewed that issue with him. They emailed the claimant to confirm that the relevant absence was recorded as being due to "work related stress." Because the fit note did not in any way refer to disability, they did not believe that the respondent had discriminated in taking it into account. However, as an act of goodwill, Mr Cornwell confirmed that he had instructed that the claimant's bonus be paid in full.

296. The claimant responded on 20 March to thank Mr Cornwell but went on to confirm that his absence was disability related and that this was "a very serious matter" with implications going beyond the bonus payment. He explained why that was the case. Mr Cornwell responded on 27 March. He reiterated that the claimant's fit note in 2018 did not refer to his disability but that since the claimant had now confirmed his absence was related to his disability that had been noted on his personnel file. Mr Cornwell confirmed that the full bonus entitlement would be paid in and said he believed that the matter was now resolved.

July 2019 peer review

297. The respondent had a 360-degree feedback process. The feedback for the claimant was discussed by him and Mr Cornwell at a meeting on 22nd July 2019. Alongside acknowledging the claimant's positive contribution, there were some areas of improvement identified. In summary, they focused on the claimant's presence in the office, communication with colleagues about IT along with criticism that he had cancelled some 1:1 meetings and did not always recognise the efforts of others. There were also some areas for improvement for the IT team more generally. They included the team dressing informally when customers were present and engaging in

"chit chat". There was also a view that there was a lack of proactive communication with other teams and an impression that the IT team had no interest or appreciation of other teams' needs and the demand on them.

298. The claimant and Mr Cornwell discussed the points raised in an exchange of emails over the next few days. For example, the claimant agreed that he would look for opportunities to make face to face contact with colleagues when he was in the office. It was agreed that Mr Cornwell could inform the claimant's peers of his personal circumstances (albeit with no detail) and the agreement for home working so they could understand his absences from the office.

299. The claimant acknowledged there were definitely aspects of the concerns about communication which related to his disability and he would always need assistance with that. He agreed that an IT face to face meeting that Mr Cornwell had arranged was constructive and confirmed he would reach out for department to department meetings. He acknowledged the ticket prioritisation system for IT issues helped address his issues with prioritising. Mr Cornwell confirmed this was an area he would like the claimant and he to keep working on but would support in any way that he could. They had already arranged follow up meetings to discuss this.

300. When it came to the IT Team culture, the claimant agreed that it was informal. Mr Cornwell made it clear that as long as the work got done and deadlines were hit, he was happy for people to have fun along the way. There were clearly frustrations from other departments about communication with the IT team. It was seen as being all one way, the impression being that the IT Team had no appreciation of wider business challenges and opportunities. He suggested that they continue to work on integration into the wider teams, driving communication and feeling that people could approach the IT team with issues.

301. The claimant did not recognise all the points made in the feedback, e.g. about cancelling meetings and not recognising the efforts of others. Mr Cornwell made it clear that while he would like the claimant to bear those other points in mind, focussing on addressing concerns about his presence and communication would cause greater impact.

302. One criticism of the claimant discussed was of his being on his laptop in meetings. Mr Cornwell acknowledged that the claimant was not the only one to use his laptop in meetings but said that he was the most consistent in doing so. Others didn't do so in front of visitors. Mrs Deakin had raised a specific incident during a meeting with an external GDPR consultant when the claimant had been sending emails (including one about annual leave) on his laptop during the meeting. That was particularly notable because the claimant was the respondent's Data Controller so could be expected to be paying attention during the meeting. The claimant acknowledged that he did use his laptop in meetings to take notes. He said he felt that Mrs Deakin had singled him out.

303. In their e-mail exchange Mr Cornwell said he believed the reason that Mrs Deakin had "singled the claimant out" was that he was the one who had sent such an e-mail. It had popped up on a colleague's screen while that colleague was presenting at the meeting with the external consultant. The consultant had fed back to Mrs Deakin specifically about that, suggesting it showed the claimant was not

engaged with the meeting despite being the Data Controller. The claimant's response was that he could not "take a subjective assessment of an outside consultant on my 'engagement' as a basis for raising this point who knows little about me personally and how I operate (and there is a lot to know)."

304. The claimant and Mr Cornwell agreed the use of laptops in meetings was a management team cultural point and that a protocol defining when such use was appropriate was needed. They agreed they would discuss that point at the next management meeting. Mr Cornwell made it clear that note taking during meetings was 100% acceptable (maybe after confirming that that was what was being done). He also made it clear that sending emails about annual leave and other trivial matter matters that the participants in the meeting could see was not acceptable.

305. We accept the claimant's evidence that, overall, the tone of the exchanges was positive and constructive. Mr Cornwell forwarded the exchange to Mr Al-Qasmi.

The 17 September 2019 meeting and its aftermath

306. On 17 September 2019 there was a meeting at which the progress of an IT project had been challenged. Mr Cornwell saw it as critical because they had been getting numerous customer complaints due to lack of progress which raised the risk of losing a significant contract. There had been complaints of there being little constructive response from the IT team. The meeting had been, in Mr Cornwell's words, "quite a direct meeting". He had expressed his dissatisfaction with progress and asked the claimant to urgently progress the project to a satisfactory conclusion. We find the claimant had found the meeting particularly stressful because he felt he had had no warning of the issue in advance of the meeting.

307. At 22:39 that evening the claimant sent Mr Cornwell a short e-mail headed "today's meeting". It said:

> "I want to talk about today's meeting.
>
> Please set up a call".

308. Mr Cornwell found the tone of that email unreasonably abrupt and aggressive. In his email in response he confirmed that as a courtesy and to avoid stress he was responding during working hours, "a position [they] had both committed to several months previously". He said that he "assume[d] from the tone of your email below that you are issuing your line manager and the Managing Director of the UK organisation with a direct order as opposed to politely requesting further discussions?" (p.412). He confirmed "regardless of the tone" he was happy to meet. He had intended to set up a 1:1 meeting to discuss a couple of issues raised with him recently. He would look for a slot in the next 48 hours for them to meet.

309. In his email, Mr Cornwell set out brief details of the issues he would like to discuss. The first was a complaint from the respondent's Sales Director that the claimant had argued with him during a meeting in front of subordinates. That ran contrary to the agreement between the senior leadership team that if they disagreed, they would do so behind closed doors in a management meeting and agree on a united front in front of their teams. Mr Cornwell said he would like to "understand

your aggression on that day and talk to you about why we should not behave in that manner in front of more junior colleagues." The second issue was Mrs Deakin reporting that when she had challenged the claimant by email about delays on an IT project that was overdue, the claimant had responded in a challenging and aggressive manner. Mr Cornwell said that the claimant's response by email and in the phone call that followed was "extremely aggressive". In that response, the claimant had criticised Mrs Deakin for emailing rather than picking up the phone. Mr Cornwell said he would like to understand that challenge a little more because the claimant had always asserted that he would prefer written communication because he found that easier to assimilate than verbal communication.

310. Mr Cornwell closed his email by suggesting that there was a "pattern of [the claimant] not accepting challenge in the manner it was intended". If the claimant felt someone was challenging him he "often respond[ed] with aggression and very lengthy counter-arguments." He said that the claimant's challenge was "often seen by the recipient as disrespectful" and that "[Mr Cornwell] would like to try to understand this more". We find that was a reasonable assessment of the situation and reflected the feedback Mr Cornwell received form the claimant's colleagues.

311. The claimant responded the same morning by e-mail. He said that Mr Cornwell's assumption about his tone was incorrect. Rather than writing a lengthy e-mail in response he had decided to "constructively divert" that compulsion into a brief request for a call. He said he was attempting to navigate his disability and Mr Cornwell was taking offence. Mr Cornwell and others were, he said reading things into his communications which were not intended because of his disability. He refuted any claims of "aggression" on his part and attributed that to the perception of those witnesses who were not aware of his disability. Mr Cornwell would have to substantiate the allegation with evidence because the claimant found it "quite shocking" considering the swearing and so-called robust communications which he said he had received from Mr Cornwell. If he had been misunderstood by those unaware of his condition the claimant said he was happy to participate in the process of helping them understand his true intent.

312. He asserted that Mr Cornwell had been "presented with a unique opportunity to understand autism in a high functioning individual" and had instead chosen "to forget all you have learned or that has been presented for your understanding of [the claimant's] disability".

313. The claimant explained that he had felt very unwell after the meeting the previous day. He identified one of the main reasons for that as the introduction of a whole new agenda point of priority IT tickets without prior notice. The claimant had had to defend his position but being unprepared created immense stress for him. He said they had discussed many times the importance of his not being surprised with new points of critical importance. He also referred to "to the dynamic of the meeting" causing him stress, details which he said he would discuss at a future point. Receiving Mr Cornwell's e-mail had caused his stress too "rocket" and had "shattered" his emotions. He said he could forgive others if they were truly uninformed but was highly critical of Mr Cornwell's "lack of personal understanding" given his knowledge of the claimant's disability. The claimant said that "I will have to take the day off to rest as a sick day linked to my disability".

314. Mr Cornwell said he was sorry to hear the claimant was unwell and said if there was anything he or Mr Al-Qasmi could do to help, the claimant should just ask. The meeting arranged on 19 September did not take place because of the claimant's absence.

The claimant's 20 September email, 30 September meeting and outcome

315. The claimant returned to work on 20 September. He sent Mr Cornwell and Mr Al-Qasmi an email on that date setting out his position. He the expressed frustration and hurt that the correct adaptations and understanding were not in place resulting in a detriment to his health. He said that he had role to play in the Group but that was "being frustrated by this local ineffectuality". Although he still felt trepidation he had decided to "press on for now and give Hartman further opportunity to adjust".

316. In response to Mr Cornwell's request for him to let him and Mr Al-Qasmi know anything they could do to support the claimant he set out five bullet points. They focused on the respondent taking steps to understand and adapt to the claimant's condition. The claimant said that there "must also now be an intervention that goes beyond the respondent and local HR" because it was clear that so far his condition was not yet understood. He said he would be seeking that intervention through the channels available to him. (It is not clear what the claimant meant by this, but we find the claimant had in mind some form of intervention presumably involving senior Group management). The claimant also said the respondent must engage in ongoing specific measures to gain external ongoing support in understanding the claimant's condition with those disclosed before disclosure was widened. He suggested he was open to such wider disclosure. He suggested there were many routes available including training resources such as the National Autistic Society and ACAS.

317. In terms of reasonable adaptations, he identified communication support, constructive mentoring, changing the dynamic of meetings, being given time to prepare, moderating others' expectations and accommodation of different communication styles both written and verbal.

318. The claimant also asked Mr Cornwell to "review your feelings to see if this has become 'personal' for you. He suggested Mr Cornwell "may need support to understand that your authority is not under threat, you are not being personally disrespected and that your feelings can be managed to deal with my disability logically."

319. The claimant said that his current perception was that he was being managed out and that there was a change in management approach since his grievance and his claim. He summed up by saying that his health was his primary concern with the second being to "work in dignity with purpose under legal, compassionate and caring conditions". He said that he would evaluate each day his position on these two points but the respondent and the Group could have a great deal of influence over that and he "hoped to see improvement".

320. The claimant, Mr Cornwell and Mr Al-Qasmi met on Monday 30 September 2019. The claimant's perception was that Mr Cornwell was very defensive, refusing

to consider he might be at all biased or emotional in relation to the issues the claimant had raised and bemoaning the time the claimant took to manage. However, the claimant viewed the meeting as a helpful and open discussion about the issues. He felt that they all made an effort to understand each other's perspectives and that they had made some real progress.

321. In an email on 2 October, Mr Cornwell thanked the claimant for what he also thought was a constructive and helpful conversation. He took the opportunity to set out his response to the points made in the claimant's emails on 18 and 20 September 2019, making it clear that this was not meant to reopen the debate. He made his comments by annotating the claimant's emails of 18 and 20 September.

322. He rejected the suggestion that he, or the respondent, had failed to make adaptations or shown understanding of the claimant's disability. He pointed out that colleagues to whom disclosure had not been made had no way of understanding any impact of his disability on his communication style. Wider disclosure could alleviate the stress that resulted when the claimant felt where there were communication misunderstandings.

323. Mr Cornwell set out a number of adaptations which he said the respondents had made. They included formalising the claimant's working from home arrangements, allowing him to work 2-3 days per week from his home Office, moving him to an office with natural light, changing his reporting line from Mr Coupe to Mr Cornwell, agreeing the claimant did not have to attend management meetings on various occasions to avoid the stress travel caused the claimant and giving him a bonus out of cycle for work on Halo (despite it being delivered out of timeline). We find the respondent had done these things, although the claimant disputed they had all been done as adjustments because of his autism.

324. When it came to communication, Mr Cornwell said that in recognition of the claimant's need to be prepared, he emailed him details of meetings up front where that was possible. He pointed out that was not always possible in a fast-paced working environment where sometimes emergencies occurred and rapid discussion was needed. He also referred to his concession about not copying in Mrs Coupe arising from the 2019 expenses issue in recognition of the claimant's strong need for hierarchy.

325. Mr Cornwell's position was that he made adaptations. Referring to the extent of kickback when he challenged the claimant, he said that other members of his management team would have come under much greater scrutiny and pressure but that he had made allowances for the claimant due to his greater understanding of the way he worked. (We find that was the case). That was despite that causing Mr Cornwell a great deal of challenge as he balanced the claimant's needs with those of his peers and of the business. Mr Cornwell completely refuted the "gross generalisation" that there was "local ineffectuality", pointing to far more processes being in place, greater interdepartmental alignment and communication at an all time high. That had resulted in high staff retention and performance in terms of revenue growth ahead of its competition.

326. Mr Cornwell addressed the claimant's 5 bullet points of adjustments. He said that if the claimant still felt intervention beyond the UK team was required, he would

be happy to discuss that with the claimant. They had discussed that disclosure to the wider management group would very possibly result in much more understanding and Mr Cornwell confirmed that they would be very willing to bring in external support or training or advice to help the wider management team to understand more. In terms of training Mr Cornwell said that those to whom the claimant had already made disclosure had liaised with Aspiedent (the claimant's own choice of autism specific OH adviser). In relation to communication, he said that unfortunately they could not be "perfect all the time". There were times when they needed to have a challenging conversation, e.g. where a timeline had been missed, or when they could not allow the claimant the time he would like to prepare because of a business critical situation. Moderating others' expectations was difficult without wider disclosure because those peers who were unaware of the claimant's disability had an expectation of clear and open communication and commitment to hit timelines and meet commitments. Without wider disclosure it was very hard to moderate those expectation without it appearing that Mr Cornwell was being lenient on the claimant while keeping pressure on the peers' performance. Mr Cornwell reiterated that, as he said at the meeting, this was not a personal matter at all. He acknowledged he found their working relationship extremely challenging. He needed to be able to challenge his direct reports so that they met their commitments to the Group.

327. Mr Cornwell rejected the suggestion that the claimant was being managed out (something discuss at length at the meeting). He pointed to the advanced negotiations with regard to the new global OneIT role aimed at the claimant's specialism as evidence to the contrary. He also rejected the claimant's suggestion that he was being managed differently to how he was prior to lodging his grievance. Mr Cornwell pointed out that he had not been the claimant's manager prior to his lodging his grievance. He said that he had a very strong drive to see the respondent be successful which is why he had a focus on delivering projects on time. He argued that he did adapt the way he applied pressure to the claimant. He accepted that the importance of health. He pointed out that he felt that the respondent was a caring compassionate organisation and there were many examples of that to draw from including giving the claimant time away from work at to sort out family matters.

Events from November 2019 to the end of 2020 – the "Ferrari/Ford Fiesta incident, 2020 pay increase, bonus for 2019, 2020 Development Dialogue, concerns about exclusion from UK IT matters and request for continued adaptations and home working.

328. On 11 November 2019 the claimant withdrew the 2018 Tribunal claim on agreed terms set out in a COT3 Agreement. His role remained the same. Mr Bose was still his line manager on functional issues. Mr Cornwell was still his line manager for Legal/HR issues.

The Ferrari/Ford Fiesta incident

329. On 4th December 2019 there was an e-mail exchange between Mr Cornwell and the claimant about a project which was due to launch imminently. Mr Cornwell raised his concerns that the project had not been delivered according to the agreed timeline. He was concerned that IT was seeking to design the perfect system rather than one which would be good enough. He expressed the view they were "trying to design a Ferrari when a Ford Fiesta would do!!". The claimant responded at 17:31 to

say that the UK IT Team were seasoned professionals and suggested the issue was a lack of clarity about what the business required. Mr Cornwell responded at 18:38 to point out that the claimant and the UK IT team had been involved in the project since day one to ensure clarity about the specification and requirements. They had been very clear about what was needed and not needing a perfect system so as not to put stress on the UKIT team. He believed it was the quest for the perfect system which had hampered progress and had "once again" led to a risk of missing of key project milestone.

330. The claimant responded at 19:07. He opened by saying that Mr Cornwell was emailing "well beyond post work hours breaking [Mr Cornwell's] request and insistence to respect home life". He was responding because it was difficult not to do so because of his autism "when we are seeming seemingly unbound now by your own etiquette". He said his family time had been disrupted. He said that "to be clear", Mr Bose was now his functional manager. He and the UK IT team now worked for the global OneIT organisation. He said he "had no idea" why Mr Cornwell was pursuing this point to this level of detail with him because he did not work as an UK IT manager in his new role. The project was not his, he did not claim ownership of it nor was he the senior supplier. He suggested that Mr Cornwell was wanting him to manage UK IT without his having management of the UK IT team. He completely disagreed with Mr Cornwell's points. His email ended in bold "**I would highly advise you to take this up with (Mr Bose) because right now you are stressing me out!**".

331. Mr Cornwell forwarded the exchange to Mr Al-Qasmi and Mr Coupe. He said, "Here we go, I've challenged [the claimant] again. Quite mildly actually (I believe)…..It would seem I am completely unable to challenge. And I note he's now copied in [Mr Bose]!". He asked for their view on whether they thought his challenge of the claimant was too much. He said that nothing needed to be done but that "I guess we do need to keep a record of these issues."

332. Mr Al-Qasmi responded to confirm he believed Mr Cornwell's emails were reasonable. He suggested that if the claimant found the situation stressful, they could explore whether he continued to undertake legal responsibility for the UK IT Team. Mr Coupe suggested that he had started things by challenging the claimant quite firmly. The claimant, he said, had been "quite rude, disrespectful and had taken the umph when challenged". He thought Mr Cornwell's email had got to the claimant because it repeated the comment Mr Coupe had made that the proposed system appeared over complicated. Mr Coupe's perception was that the claimant did not accept that they (as non-IT professionals) were in a position to come to that conclusion. Responding to Mr Coupe, Mr Cornwell suggested there was an obvious pattern of everything being fine if they allowed the claimant to do what he pleased but as soon as they "dare ask questions, disagree or challenge" they got a "barrage of emails". However, he said, they had a business to run and had to be allowed to challenge anyone who was not meeting expectations whether the person liked it or not.

The claimant's 2020 pay increase

333. On 10 January 2020 Mr Cornwell wrote to the claimant to confirm that his pay rise for 2020 would be 2%. With one exception, that was the same as the other

members of the UK Management Team. It was also in line with the agreed inflationary pay increase for UK Staff. Mr Cornwell explained that when it came to the claimant, the pay rise took into account that he was significantly the highest paid Grade 6 employee in the respondent. The claimant's pay was comparable to that for Grade 7 employees and within the respondent's top 4% highest earners. Mr Cornwell said he would be happy to discuss this with the claimant when he was in the office the following week.

334. The claimant emailed back to express his deep unhappiness at not being given a merit pay rise. He set out his position in 7 bullet points. At the heart of them was confusion that the rationale for his pay review was closely linked to the performance of the UK based respondent, whereas his role was now a global OneIT one. He expressed confusion about whether he should focus his energies on global priorities or on increasing UK EBIT. He said they need to "pin this down" in the next few days. He asked Mr Cornwell and Mr Bose to please give him clarity on this, that clarity being especially important to him (pp.425-427).

The claimant's bonus for 2019

335. On 12 March 2020 Mr Cornwell wrote to the claimant to confirm the bonus the claimant and the UK IT Team would be getting for 2019. 60% of the claimant's bonus was dependent on the respondent meeting sales and EBIT targets which it failed to do. The remaining 40% was tied to the claimant's personal objectives, focussing on delivery of the HALO project. An award of 100% of that element was made rather than the potential 150% award the claimant would have received had he reached his "stretch" targets.

336. The claimant was unhappy about that. He felt passionately that he had reached his "stretch" targets. In an email to Mr Cornwell, he said he had been "Denied a pay rise, now denied any stretch bonus modifier, and yet working extremely hard to supply digital leadership before transition and then after in a supportive facilitating way." He disagreed with Mr Cornwell's reasoning and said he was "not happy" and asked Mr Cornwell to "please explain the route to appeal". We find the claimant was the only employee who challenged their 2019 bonus.

337. Mr Cornwell responded on 13 March to point out that the bonus scheme expressly said that "irrespective of whether targets are set and agreed, the Board of Directors are able to moderate performance and could choose to make an adjustment to any bonus payment due as this would be determined by the overall performance of the company". He explained again that 2019 had been a very tough year for the respondent and they had had to make tough decisions. He said the claimant's bonus at 40% compared very favourably with the average of the respondent's other senior managers, whose average payout was 23%.

338. The claimant responded the same day to explain why he disagreed. He said that as an autistic person, being asked to accept that something agreed could be dismissed on discretionary grounds was a cause of stress. His view was that he had performed against his "stretch targets". He should not be penalised or suffer a detriment because of his transition to OneIT. He had worked in good faith towards aims for rewards promised and he and Mr Cornwell had been very clear on the goals set, which he felt had achieved. He accepted that Mr Cornwell's reply might be to

reconfirm his position but he asked him to reconsider in light of the arguments the claimant put forward.

339. Mr Cornwell responded on 17 March. He apologised for the stress caused and confirmed that was not his intention. He accepted that no one liked to earn less than they had expected and acknowledged that the claimant's autism would mean that the decision was more difficult for the claimant to accept. He explained that given the extent of the respondent's shortfall against targets in 2019 they had had to moderate bonus payments. Others, including Mr Al-Qasmi, had reached "stretch" targets which should have triggered 150% bonus but had been awarded 100% only after moderation. He confirmed that the claimant's bonus was significantly above that of other members of the SMT. He confirmed his decision in the matter was final.

340. The claimant responded by email on the same day. He had spoken to ACAS who had recommended that he ask for clarity on a couple of points. The first was what criteria were applied to decide in individual cases if stretch modifiers would not be awarded and awards moderated to a maximum of 100% award. The second was whether it was possible to somehow demonstrate that the criteria had been applied consistently. The claimant said that any help Mr Cornwell could offer in understanding that better might help to resolve the claimant's concerns.

341. There was a brief hiatus in the email exchange because of the need for Mr Cornwell to focus on the impact of the COVID pandemic and associated lockdowns. Having discussed with Mr Bose, on 8 April 2020 Mr Cornwell emailed the claimant to confirm that he had re-considered the award and the claimant's bonus would be increased to 125% of the personal objective part of his bonus, amounting to an additional £819. In his email he acknowledged that the claimant did express some valid points but explained that the decision to moderate the bonus of members of the senior UK team was never based on individual performance but on the respondent's poor performance in 2019. The claimant's bonus even before the increase to 125% was significantly higher than the claimant's UK peers. In the main the moderation only affected the senior team because they felt that as a team, they needed to show leadership by accepting the outcomes of poor performance.

342. The claimant responded the same day to confirm that that closed the matter for him. The reconsideration, he said, was motivating because it gave him greater confidence going forward with his goals in 2020.

343. Mr Cornwell emailed Mr Coupe and Mr Al-Qasmi to confirm his decision to reconsider "after much back and forth". He acknowledged that Mr Coupe would not be pleased by the decision. Mr Coupe responded that "for someone who has cost the business so much in the last year, it more than sticks in the throat". Mr Cornwell said that he couldn't agree more but that the "hidden costs of all the arguments back and forth quotes are far more!".

344. The claimant viewed the outcome as a fair compromise. We find that Mr Cornwell made the concession reluctantly in order to "defuse" the situation. We find that he feared the claimant would keep challenging the decision unless he gave in and was concerned about the expense and time the continued challenge would take, particularly in the context of the extraordinary challenge presented to the respondent's business by the COVID pandemic.

The claimant's 2020 Development Dialogue

345. The claimant and Mr Cornwell were due to meet to discuss the claimant's "Development Dialogue (i.e. his appraisal) on Wednesday 29 April 2020. This was the first formal appraisal Mr Cornwell had carried out as the claimant's manager. The claimant had not had regular formal appraisals in previous years.

346. On the Monday of that week Mr Cornwell sent the claimant the Development Dialogue form. Mr Cornwell had scored the claimant as 2/5 ("partially meeting") for "Collaboration" and "Role Model". "Collaboration" and "Communication" were identified as development needs. His rationale in the form was that although communication within the claimant's team and One IT seemed strong, communication with stakeholders outside those teams needed to be stronger. That included colleagues in other teams. They had reported lack of communication on progress on IT projects, tasks or fixes, often reporting that "it feels my task has gone into a black hole". Mr Cornwell said that the respondent had often let customers down as a consequence. There had been constant feedback to the claimant about the need for communication, particularly around when an IT solution would be delivered. The claimant's focus was on the effort and time needed to provide such fixes and deliver projects, whereas those external to the IT team simply needed to know when they would be delivered.

347. The claimant emailed in response on the same day. That initial response was polite, thanking Mr Cornwell for his time in carrying out the appraisal. He confirmed he would input his self-assessment scores, saying he would "score himself adaptively". He referred to the challenges for him as an Autistic person, saying that he may never be able to meet everyone's communication and reassurance needs 100% on his own but would "take pointers and keep trying". (p.444)

348. The following day. The claimant sent the form to Mr Cornwell and Mr Bose, having added his self-assessment scores and comments. He scored himself 4/5 or 5/5 for the criteria on the form. The tone of his covering email was markedly different to that of the previous day. He said he would "write honestly rather than supress" because that would be damaging to him. He said he felt "patronised, devalued and demoralised" by the scores Mr Cornwell had given him which were the lowest he had ever seen. He said he had not been "scored adaptively", the scoring not having considered his disability on social and communication topics. He felt he had been penalised for those topics whereas otherwise there was excellent performance.

349. He also said that "there was historical management dysfunction in process in the UK in the unregulated demand process placed upon the IT team". He said that had continued in 2019, resulting in conflicting priorities and "free for all escalation to the MD" which as an Autistic person he had managed as best as possible with an "effort-based project system that could adapt to this chaos". He referred to his health issues which he linked to "stress related to lack of adaption to disability in UK". He said that had not been a problem since his new management (i.e. Mr Bose) and since he had been able to distance himself from "such dysfunctional process in UK demand to some extent and feel more respected personally". He made clear that he would not be able to sign off the Development Dialogue document since he did not agree with the scoring and comments in it.

350. Mr Cornwell and the claimant met to discuss on 30 April 2020. The evidence from both was that the meeting was a helpful, constructive dialogue. They explored their different perspectives on the claimant's performance. Mr Cornwell increased the claimant's Role Model score from 2/5 to 3/5.

351. Mr Cornwell agreed that if the claimant did not want to sign the form, that was his prerogative. Instead, he summarised their discussion in an email to the claimant later that day. The intention was that the email would serve as evidence of that agreement. Mr Cornwell took the opportunity to respond to the points made by the claimant in his email of 28 April. in summary, he noted that he and the claimant disagreed about the notion of "adaptive scoring". The respondent's position was that the tasks should be adapted to the claimant's needs, but the scoring need not be adapted. He confirmed that communication was the area where he offered the claimant constant feedback. He set out the areas he said they had worked on with regards to communication in light of the claimant's autism. That included reducing ad hoc meetings, giving the claimant time to prepare where the needs of the business allowed and communicating by email as the claimant's preferred method of communication. He said they had worked on a process of task prioritisation with the management team to help manage IT team workload and a weekly update of progress as a means of driving communication. He and the claimant had had various conversations over the year for Mr Cornwell to understand the claimant's barriers to communication and for Mr Cornwell to help the claimant understand what the claimant's "audience" expected in terms of adequate communication. Mr Cornwell pointed out that other members of the UK team who feel "under communicated" with had no knowledge of the claimant's Autism so could not adapt their expectations of his communication style to take that into account. Mr Cornwell noted that he had on several occasions asked the claimant to consider limited disclosure of his Autism to colleagues.

352. Mr Cornwell said the claimant's reference to "management dysfunction" in the UK was the claimant's perspective. Mr Cornwell identified a deep-seated mismatch in how the UK team saw the need to set deadlines and agree timelines as opposed to the claimant's 'effort based' forecasting. When communicating with the internal or external customer, the effort invested was not as important to them as knowing the timeline for a project and, when any slippage occurred, feeling adequately communicated with.

353. The email was cordial in tone as was the claimant's reply of the same day. The claimant's only concern, he said in that reply, was that the scores would not hamper future development or negatively affect decision making. Mr Cornwell had assured him that those decisions were for his future management to make based on their evaluation.

June 2020 - The claimant's concerns about exclusion from UK IT team matters

354. In early June 2020 the claimant had an email exchange with Mr Al-Qasmi. The claimant was unhappy that he had not been copied into communications confirming the promotion of one of his UK IT line reports, Tom Pope ("Mr Pope") We find that was a genuine oversight. Mr Al-Qasmi responded to explain that the offer had been made by OneIT and Group HR. The claimant responded to suggest there was "no logical reason you would have specifically not informed me of this development." He went on

to ask that Mr Al-Qasmi please bear in mind the need to include him in communications in future. He said that "if I find out I am being systematically or even inadvertently excluded from information important to my role for whatever reason but that is shared with another, I will raise this as a formal complaint".

355. Mr Al-Qasmi forwarded the email exchange to Mr Cornwell saying "another email from Chris". He suggested that in future they copy the claimant into any relevant people communication for IT as the legal manager to avoid a future complaint. Mr Cornwell agreed, noting on 4 June 2020 there was no reason not to have copied him in on this occasion. He said that "As ever, [the claimant] Is going on the attack and making threats, but that's OK. Let's just copy him in future".

356. On 5 June the claimant followed up his emails to Mr Al-Qasmi by emailing Mr Cornwell and Mr Al-Qasmi, copying in Mr Bose. He expressed concern that he was not being kept in the loop on matters relating to the UK IT Team despite his being their legal/HR line report. He suggested that other UK managers were given preference over him when it came to updates. He ended his email (in bold italics):

357. ***"Leaving me out of the loop of key information and/or supplying more influence effectively to another manager in the UK over key decisions or developments on UK IT staff would be a reneging of the agreements in place and the negotiated transition into OneIT since Oct 2019."***

358. Mr Cornwell replied to reassure the claimant that not copying him in had been an oversight. He pointed said that everyone working remotely (due to COVID) may be part of the reason but that there was no excuse for the oversight. He committed to copying the claimant into future communications.

359. The claimant replied to raise another concern. He understood that there had been meetings with IT involving Mr Coupe and IT staff which had excluded him. The specific example he gave related to the future of the UK phone system. That was copied to other UK IT team members but not the claimant. He confirmed he had no issue with Mr Coupe being involved as director but saw no reason why he would not be copied in. He asked (in bold italics) that he be kept informed as suitable to his role about UK technology discussions and "not be excluded".

360. Mr Cornwell responded to explain that it was he, not Mr Coupe, who had sent an exploratory email about the phone system. He had sent it to Mr Pope, who looked after that area. He suggested the claimant would be overwhelmed if every email about exploratory IT issues were copied to him but was happy to do so if the claimant preferred. The claimant replied to say that he thought his email was "quite clear" that if Mr Cornwell was copying Mr Coupe or any IT staff who reported to the claimant about an important future UK IT technology exploration or architectural topic it was best if he copied in the claimant as he had now confirmed he would do.

361. The claimant was copied in by Mr Al-Qasmi to the email exchanges about a pay rise for another of his line reports, Simon Young ("Mr Young") in June and July 2020 (pp.459-460).

The claimant's request for continued adaptations and home working agreement

362. On 19 July 2020 the claimant sent Mr Bose, Mr Cornwell and Mr Al-Qasmi a 4 page document by email headed "OneIT transition, continued support for [the claimant]". It reviewed progress to date and was overwhelmingly positive when it came to the claimant's transition to OneIT and his working relationship with Mr Bose. Mr Cornwell referred to the document as coming "out of the blue". The claimant's document also referred to less positive issues such as the 2019 bonus, pay review and the Development Dialogue. He pointed out that he had been seeking promotion since December 2015. He understood that Mr Bose was working on a role for him which would be a promotion.

363. The claimant set out a number of adaptations that he required in light of his Autism, focussing on understanding communication issues, e.g. how much detail to provide, international social politics, formality v informality. He proposed a quarterly discussion with Mr Bose and Mr Al-Qasmi to explore such topics, minute and take forward any agreed actions. In his response on 30 July, Mr Cornwell confirmed that though such meetings were not usual they were happy to put them in place as an adaptation to address the claimant's needs.

364. In his document the claimant also requested to work full time from home. He pointed out that the impact of the pandemic had made home working the norm for far more people. He noted that Mr Pope was officially a home worker in his new role. Mr Cornwell said he was willing to agree to the claimant increasing his working from home but not to his being 100% home working. He agreed to the claimant increasing his home working subject to his working at least 2 days a month from the office in Heywood. That requirement to attend the office reflected the fact that the claimant retained legal management of the UK It team so needed to come into the office to interact with his team as well as for group IT meetings. Mr Cornwell noted that the claimant had recently asked to come into the office as a break from home working. He said Mr Pope was in a different position, having no line management responsibility.

365. Mr Cornwell sent the claimant a letter dated 31 July 2020 to confirm that the claimant could work from home on a full-time basis, subject to the requirement to attend the office on 2 days per month. The letter set out an expectation that the claimant would also attend the office on an ad hoc basis as required, e.g. where his presence was required at work meetings, or to attend training. There was an expectation for some international travel aligned with his role and at the request of his functional line manager.

366. The letter confirmed that the respondent reserved the right to review all flexible working patterns over time in light of any changes to operational requirements subject to consultation if there were any proposed changes.

<u>The claimant's direct communications with Ms Fuenfstueck in 2019-2020</u>

367. The claimant wrote or emailed Ms Fuenfstueck direct on a small number of occasions in 2019-2020 in addition to the 14 April 2019 when he sent her and Dr Heinen his letter about the 2018 Tribunal claim.

368. On the 26th of September 2019 the claimant sent Ms Fuenfstueck a one line e-mail timed at 3:09 a.m. asking what her position was on climate change, She responded with a brief e-mail to confirm that the Group had decided to define a

sustainability strategy and thanking the claimant for his concern. The claimant thanked her for her personal prompt response (page 405).

369. On Sunday the 23rd of February 2020 at around 11:00 p.m. the claimant emailed Ms Fuenfstueck to express an interest in moving to America if there were any plans for a digital task force based there. He opened his e-mail by saying “eccentric e-mail as usual but one might try”. Ms Fuenfstueck asked for time to reply because of other matters she had to deal with. The claimant explained that his e-mail was more of an update of his position because he had reached out in the previous year and was now more settled.

370. On Sunday 6 September 2020 at 6:30 a.m. the claimant emailed Ms Fuenfstueck asking for a “review of the management performance of the UK”. He said that he had found matrix management within OneIT refreshing and found “further purpose and freedom from petty UK politics”. He referred to the fact that a large part of his bonus was still tied to UK sales and EBIT. He expressed “genuine concern” that, having seen various management changes over the years “never have I seen such underperformance versus opportunities”.

371. Ms Fuenfstueck did not respond to that e-mail. On Sunday 1 November 2020 at 2:02 a.m. the claimant emailed her again. He noted the lack of response and said “It is clear we must support UK, troubled times, what is your offer?”. He went on to say that he was aware of the huge power imbalance in their communications but “I'm autistic but not stupid, I want environmentally and ethically creative ways to reach profit and comfort!!!”.

372. Later that same afternoon the claimant emailed to say that having reviewed his previous emails he thought his frustration with this and other issues had affected his communication style. He apologised for his bluntness if perceived that way. He said he would endeavour to limit his communication with Ms Fuenfstueck as much as possible and would leave any topics raised now and do what he could himself. He said that this was a “self review, I have to manage my condition where I can and while not being too self critical, be prepared to see where I could have worded things better”. Ms Fuenfstueck thanked him for his note and said that she would reflect on the current and desired support of the UK.

373. There was no evidence that the claimant had been told that it was inappropriate for him to contact Ms Fuenfstueck direct either by her or by Mr Cornwell or Mr Bose.

<u>Events from January 2021 to May 2021 – change of role, bonus for 2020 and the claimant’s pay review request and Mercer data</u>

374. Mrs Deakin was appointed as a statutory director of the respondent in January 2021. The claimant emailed her to congratulate her and wish her every success in her extended role (p.484).

375. The claimant started a new role in OneIT in early 2021 but he continued to report to Mr Cornwell for Legal/HR purposes. Mr Bose was his functional line manager at the start of 2021. Mr Bose left the Group at the end of March 2021. His replacement as the claimant’s matrix manager in OneIT was Amir Fattah (“Mr Fattah”).

376. The COVID pandemic had impacted on the respondent's business in 2020. Its sales and EBIT were below what they were anticipated to be. That impacted on the respondent's ability to award pay rises in 2021 beyond basic, inflation linked pay rises (p.488).

377. In March 2021 the Group decided not to award its managing directors salary increases for 2021. Ms Fuenfstueck explained the rationale for that decision in an email dated 25 March 2021. She referred to the impact of the COVID-19 pandemic which had led to very good sales and profits in certain business segments but had had a negative commercial impact on others. Given the ongoing challenges posed by the pandemic, increasing cost and competitive pressure the Group was planning for a decline in revenue and a "strong" decline in profits. That meant being cautious and keeping a particularly close eye on personnel costs. She asked the management in the regions to apply the same caution when discussing salary adjustment for their teams in the upcoming month. She went on to say that starting from the planning process in 2021 for 2022, the Group would need to get into a much closer global alignment for planned salary increases based on external benchmark data, performance and business outlook.

The claimant's change of role in OneIT

378. At the beginning of 2021 Mr Bose identified a new role in OneIT for the claimant. In an email on 2 February 2021, Mr Al-Qasmi told Mr Cornwell that the new role was then still being finalised. Mr Bose had confirmed that it was not a promotion, but potentially a slight drop in grade but Mr Bose was going to ensure that the claimant remained at the same grade. Mr Al-Qasmi said that his understanding was that "this new potential role does not warrant a salary increase".

379. On 25 February 2021 Mr Bose wrote to Mr Cornwell (copying to Mr Al-Qasmi and the claimant) to confirm that the claimant was taking up a new role in his team as Senior Manager Digital Platforms. In that role the claimant would be expected to develop expertise on Hybris, a niche and business critical area for the respondent. He would also be responsible for managing a cost centre in Paul Hartmann AG and lead two people in Germany remotely. Mr Bose described this as adding new dimensions to the claimant's current role profile. As a result, Mr Bose recommended that when the claimant had fully taken up the new role (expected to be the end of May 2021) a formal pay review should be conducted and actioned. The new role did not result in a change of line manager for the claimant.

The claimant's bonus for 2020

380. On 17 and 18 March 2021 there was an exchange of emails between the claimant and Mr Cornwell about the claimant's bonus for 2020. The claimant was concerned because he hadn't been informed of his bonus in the way he had been in previous years. He had been told by an UK IT colleague that Mr Coupe had rung the members of the UK IT team individually to tell them their bonus. However, Mr Coupe had not contacted the claimant. The claimant was concerned that he was being left out of key communications and that his role as line manager of the UKIT team wasn't being respected. He said that he felt undermined and "hope[d] there is no motivation". We find that to be another suggestion by the claimant that he was being treated differently because of disability. It seems to us that the claimant was at this point ascribing any differential treatment which he saw as disadvantageous to him to his

disability. That applied particularly to the actions of Mr Coupe but also to those of Mr Cornwell.

381. Mr Cornwell clarified matters the following day, apologising for the "poor way we have executed this this year". He explained that there was an issue in that the Group worked to an April timeline but in the UK bonuses had traditionally paid in March. He then confirmed that the claimant's bonus amount was correct. Because the business had not met sales and EBIT targets in 2020 the bonus for that element would be £0. The bonus the claimant received reflected the claimant's performance against his individual targets as scored by Mr Bose. The claimant found that response "helpful and responsive".

The claimant's pay and request for pay review for his new role

382. The claimant's new role took effect from 1 March 2021. The claimant 's salary was increased to £75,024 with effect from 1 January 2021. However, there had been no pay rise linked to the claimant's new role.

383. The claimant's new role was confirmed in a variation of contract letter from Mr Cornwell and Mr Al-Qasmi dated 4 March 2021. The letter confirmed that once he had fully transitioned into the role a pay review would take place. On 5 March 2021 the claimant countersigned that letter to indicate that he had read and accepted the changes to his terms and conditions (p.503).

384. The claimant's evidence at the Tribunal hearing was that he and Mr Bose had agreed a pay rise (rather than a pay review) when he accepted the new role. We do not accept that.

385. We had no witness evidence from Mr Bose but his e-mail of the 25 February 2021 recommends a pay review rather than a pay rise. That is also what the contract variation letter of 4 March 2021 said. The claimant counter-signed that letter, signifying his agreement with its contents. Mr Boyd submitted that given the claimant's approach to previous such letters during the transition to OneIT, the claimant would have had no hesitation in challenging its contents if he thought they did not accurately record what he and Mr Bose had agreed. We accept that submission.

386. We also find that subsequent events contradict the claimant's evidence. In May 2021 he asked for a pay review not a pay rise. In the claimant's 2021 formal grievance, he only went to far as far as suggesting that the failure to give a pay rise was against the "spirit and intent" of Mr Bose's recommendation rather than any express agreement. We accept the claimant's firm belief was that the pay review would inevitably result in a pay rise. We do not accept Mr Bose had said that was the case. Had he done so, we find the claimant would have quoted or at least referred to any such statement in his communications with the respondent and, in particular, in his 2021 grievance.

387. On 25 May 2021 the claimant emailed Mr Cornwell (copying Mr Al-Qasmi and Mr Fattah) formally requesting the pay review recommended by Mr Bose.

388. Mr Cornwell's immediate e-mailed response to Mr Al-Qasmi and Mr Fattah was that in the current financial climate approving any pay rise would be quite difficult. However, he said that if there was a genuine need to award an increase because

someone was underpaid for the role they were performing then they should address that. He asked Mr. Al-Qasmi to do 2 things. The first was to work with Mr Leiske to benchmark IT positions within the Group at the claimant's level. That was to determine how the claimant's current salary level and package stacked up against those positions. The second was to do some work locally in the northwest of the UK to determine what the claimant could earn in a similar role on the open market. That would enable them to make a decision based on Group's average and the local UK average for a person with the claimant skills and experience.

389. Mr Leiske's advice was that it was not possible to benchmark positions across the Group because living standards and rates of pay in each Group country differed so much. Instead, it was agreed that Group HR that would purchase salary benchmarking data for the claimant's role from Mercer for a fee of £700.

390. It was part of the claimant's case at the Tribunal that the process applied to him had been "atypical". Mr Marquard was asked in cross-examination about pay review practice across the Group. His evidence, which we accept, was that the Group did obtain global pay data to share with those making pay decisions.

391. Mr Al-Qasmi contacted national recruiters in the UK to see whether they had any IT salary guides. He also forwarded Mr Cornwell and Mr Fattah an e-mail which he'd received from an IT recruiter in January 2021. It set out the recruiter's latest IT salary and contract rate guide for roles specifically based in the north-west UK area. The guide suggested a Head of IT/IT Director or Chief Technology Officer would be on a salary of £75,000, a Chief Information Officer on £98,750 and a Software Architect on £70,000 (p.550).

392. The discussion was complicated by the fact that, following a Group IT decision in March 2021, the claimant's line management responsibilities were due to change again. Starting from July 2021, 3 members of the UK IT Team were due to transition wholly or partly from that team to OneIT. The claimant would remain as their "legal" manager (in the same way as Mr Cornwell was his "legal manager"). However, their day-to day work and performance would be managed by matrix managers within One IT. There was a discussion with Group HR about whether the pay review should be paused pending confirmation of the claimant's new job description. Mr Cornwell's view was that they should obtain the Mercer data in any event so they had it if it was needed.

393. On 15 June 2021 Mr Cornwell emailed the claimant by way of an update. He confirmed that they were working with the Compensation and Benefits Team in Germany. He said they would revert to the claimant as soon as they were able.

394. The Mercer data was sent to Mr Al-Qasmi by Ramona Häck ("Ms Häck") of the Group's Compensation and Benefits team on the 23rd of June 2021.

The Mercer data and "comparators"

395. The claimant's total package (with full bonus) as at the time of the pay review request was £90,028 with a base salary of £75,024. He was the fourth highest paid of the respondent's employees after the 3 statutory directors.

396. The Mercer data report was dated 21 June 2021. It provided an analysis of market data based on the role of "senior manager digital platforms" in the UK. It did not differentiate between compensation packages for different regions within the UK. In summary it showed the median total compensation package (including bonuses) of £90,912 with a median base salary of £76,153. The equivalent figures for the 75th percentile were £108,948 total cash compensation and annual base salary of £95,997. The equivalent average figures were £91,152 for total cash compensation and £81,170 for annual base salary.

397. It was the claimant's case that pay rises were always given on a change of role. For the respondent, Mr Cornwell's evidence was that there no rule across the business that pay rises were automatically given on promotion or when an individual changed their roles. We find that Mr Cornwell would be better placed to know the position across the business given his role. It was also the case that the claimant was not given a salary rise when he transitioned to OneIT in 2019 nor, by definition, was he given one in 2021 when he transitioned to the role for which he was now seeking a pay rise. We prefer Mr Cornwell's evidence on this point and find that pay rises were not automatically given when there was a change in role.

398. The claimant compared his position with that of Mr Pope and Mr Young.

399. It was not disputed that Mr Pope's salary increased by around 12% when he was promoted to the role of Cloud Security Expert within OneIT with effect from 15 July 2020. His bonus also increased to 15% of his salary (if he achieved 100% of targets). No salary benchmarking data was purchased in advance of the pay rise. The new role involved Mr Pope taking on a global role reporting to a matrix manager in Group. We find that Mr Pope lost the ability to earn overtime when he was promoted. He specifically raised that issue in discussions about that new role and Mr Al-Qasmi advised that his salary should be increased to offset that (p.605). Group HR accepted that recommendation.

400. Mr Young transitioned to a role in OneIT with effect from 1 August 2020. He received a pay rise of around 6.5% with effect from 20 August 2020. No salary benchmarking data was purchased in advance of the pay rise. Mr Cornwell's evidence, which we accept, was that although the role was not a promotion it included additional responsibilities. We also accept Mr Cornwell's evidence that at that time the respondent believed that Mr Young was a "flight risk". We find that the respondent decided to award him a salary increase to keep him engaged as well as to reflect the additional responsibilities of his role.

The decision on the claimant's pay

401. In her email, Ms Häck advised Mr Al-Qasmi that the claimant's current total yearly pay (i.e. salary plus bonus) of £90,028 was very much in line with the median in the Mercer data of £90,912 (p.560). on 23 June Mr Al-Qasmi forwarded her email and the Mercer data to Mr Cornwell, Mr Fattah and Group colleagues. He advised that based on the market data it looked like at the claimant was paid at the right level.

402. Mr Cornwell was satisfied that the respondent was already paying the claimant a very fair salary for the role he was performing. However, he said he was unaware what had been promised by Mr Bose before he left the business. He asked colleagues in the Group whether they were aware of what Mr Bose had promised. They responded

to say that they did not have any information about it. All they had to go on was Mr Bose's email of 25 February 2021. We accept Mr Cornwell's evidence that Mr Bose had not communicated to him that the claimant's new role merited a pay rise or that that would be the inevitable outcome of the recommended pay review. We also accept that Mr Bose had not communicated with Mr Fattah or other colleagues about the issue.

403. It was agreed that the next step was for Mr Cornwell and Mr Al-Qasmi to write to the claimant confirming the decision not to award a pay increase and explaining the rationale for that decision. The claimant would then be given an opportunity to discuss the decision with them via Teams. Mr Cornwell agreed that was a better approach than meeting the claimant first and following up with a written e-mail.

404. At Mr Cornwell's request, Mr Al-Qasmi prepared a draft email to the claimant from them both with Mr Cornwell tweaked. Mr Cornwell sent it to the claimant on 28 June 2021 (p.565). It confirmed the decision not to increase the claimant's salary. It explained that in reaching that decision that they had sought internal expertise from the Group's Compensation and Benefits team and that they had in turn sought external expertise from Mercer. It explained that based on the Mercer data, the claimant was paid very much in line with the benchmark for the role he undertook. They acknowledged that the claimant would be disappointed but said that they also had to bear in mind the ongoing challenges to the business. They repeated the explanation in the final paragraph of Ms Fuenfstueck's email of 25 March 2021 to explain the need keep a particularly close eye on personnel costs. They thanked the claimant for reaching out to them and confirmed they were happy to set up a Teams (or face to face) meeting if the claimant wished to talk to them.

The data protection issue and the claimant's July 2021 grievance

The data protection issue

405. The claimant replied on the same day to say he was disappointed by the decision and would like to understand the reasons further. He asked for access to the Mercer data and the analysis that led to the decision. He said the data was requested informally rather than as a Data Subject Access Request.

406. Mr Cornwell agreed to look into the claimant's request for the Mercer data. Mr Al-Qasmi asked Mr Leiske and Ms Häck how they would approach such a request from a Group employee. Mr Leiske's view was that it was not helpful to share too much data with the claimant. He asked Mr Al-Qasmi whether there was any legal reason requiring the respondent to share the data. Mr Al-Qasmi took legal advice on that point. Having done so, the respondent's view was that the Mercer data was not personal data and there was no requirement to share it with the claimant. It was decided that the explanation provided already was adequate and reasonable.

407. On 5 July OK Mr Cornwell wrote to the claimant to set out the respondent's position. He reiterated the difficult business conditions the respondent was operating in and explained that the decision they had made was based on the respondent's overall ability to pay. The Mercer data was just a benchmark for guidance purposes, and they did not see the need to scrutinise it further. They did not believe the data was personal data and were not willing to share it with the claimant. The email confirmed

Mr Cornwell and Mr Al-Qasmi's willingness to meet with the claimant but confirmed the decision was final and they did not intend to change it.

The July 2021 formal grievance

408. The claimant's response was to raise a formal grievance on 6 July 2021 (pp.572-574). He emailed it to Mr Al-Qasmi, copying it to Mr Fattah, Mr Cornwell and other colleagues in OneIT management. We find the claimant believed that Mr Cornwell and Mr Al-Qasmi had made their decision because he had in the past challenged them in relation to pay and career progression and did not want to "give in" to him. He found the obtaining of benchmarking data "atypical" and believed it was done merely to back up a decision Mr Cornwell and Mr Al-Qasmi already wanted to make.

409. The grievance alleged that the denial of a salary increase was against the spirit and intent of Mr Bose's recommendation of a formal salary review. It complained about the denial of access to the Mercer data. The claimant asserted that there was precedent for salary increases being awarded to IT staff taking on wider responsibilities in OneIT since October 2019 but that had not been applied to him. We find that referred to Mr Young and Mr Pope although the grievance did not refer to them by name.

410. The claimant alleged he had been subjected to disability discrimination. and victimisation. The victimisation was because of his previous disability discrimination claim. The claimant expressed concern that Mr Cornwell had not advocated in a balanced way for a pay rise but had instead selected the least favourable option to the claimant from the options available. The claimant asserted there was a continuous problem with Mr Cornwell in terms of how he viewed the claimant, the nature of his disability and how he treated the claimant.

411. He set out some of the evidence for that allegation in 4 bullet points:

- What he called "the denial and then backtrack" by Mr Cornwell over his bonus for 2020 when it was "clear a normalisation of high performance had not been applied equally in the UK management team".

- His "imbalanced" 2020 development document by Mr Cornwell which the claimant alleged was so bad the claimant asked permission not to sign. He considered it discriminatory because it referred to aspects of his disability as voluntary factors he could always compensate for, showing a complete and continued lack of understanding of his disability.

- A spontaneous comment by Mr Cornwell in a meeting with the claimant and Mr Fattah that it was "no secret" that there have been differences between them. The claimant said that he had previously kept the interactions with Mr Cornwell around his disability from Mr Fattah in the hope of putting old matters behind him. He said Mr Cornwell's comment in a meeting with Mr Fattah that they were "no secret" caused him grave concerns that Mr Cornwell was continuing to "paint [him] in a negative light" with other senior staff.

- That before leaving for his new role Mr Bose informed the claimant that he had "observed discrimination towards [the claimant]".

412. The claimant asked to be informed early if there was categorically no chance of a change of outcome or even a detailed and balanced consideration so that he could "proceed with reaching out to ACAS as the next stage". His final paragraph asserted his commitment to his role and career and the Group companies and how much he enjoyed working with OneIT colleagues.

413. Mr Cornwell emailed Mr. Al-Qasmi to say he was "lost for words". Given that the grievance made significant accusations against him, he asked Mr. Al-Qasmi to deal with it. We find Mr Cornwell had anticipated a challenge to the refusal of a pay rise but felt that they had robust data from Mercer to back up that decision. We find he was genuinely bemused about the allegations of discrimination and victimisation. We find that he thought the 2019 bonus and 2020 Development Dialogue issues had been resolved to the claimant's satisfaction and he genuinely did not understand the allegation of ongoing victimisation.

The grievance process and outcome

414. Mr Al-Qasmi asked Mrs Deakin to hear the grievance. He considered her impartial because she had not been involved in managing the claimant and had had no involvement in the matters referred to in the grievance. By the time she heard the grievance Mrs Deakin was aware of the claimant's Autism diagnosis.

415. A grievance meeting was set up all for 19 July 2021.Mr. Al-Qasmi asked the claimant to complete a spreadsheet to provide more information about the matters in his grievance. He did so on 15 July, sending the spreadsheet and supporting documents.

416. The grievance meeting on 19 July 2021 was chaired by Mrs Deakin with Mr Al-Qasmi providing HR support. The claimant was accompanied by Mr Collin, Head of Marketing. Mrs Deakin had a pack of relevant documents for the meeting which included the 2020 Dialogue Decision and the salary decision letter from 28 June 2021.

417. The start of the meeting was delayed because the claimant had not asked his companion to attend. By way of small talk during that delay, Mr Al-Qasmi asked the claimant whether he had had the Covid vaccine. We accept Mr Al-Qasmi's evidence that he felt his exchange was a standard exchange that people up and down the country were having at the time. The claimant took offence at the question and said that it was inappropriate to ask him that. He did so in direct terms which made Mr Al-Qasmi uncomfortable. Mr Al-Qasmi apologised to him. Afterwards, Mr Al-Qasmi prepared a note of this conversation (p.593) because he was fearful that the claimant might try to use the conversation against him. He accepted that on reflection he should not have asked the claimant the question.

418. Ms Johnson of the respondent's HR Team attended as note taker. Her notes of the meeting were in the Bundle (pp.590-592). Their accuracy was not disputed.

419. We find that at the meeting:

- Mrs Deakin asked the claimant for details of the IT staff who had been given pay rises on a change of role. He said he couldn't tell her who those people were because it was their personal data. However, he believed that Mrs Deakin would have access to the details.

- The claimant made the point that his salary was not paid by the UK (being recharged to OneIT). (We found that the position was that the majority, but not all, claimant's full salary and benefits was recoverable from the Group).

- The claimant said he taken his new role on the understanding there would be a salary increase.

- The claimant asserted that he was entitled to the Mercer data because it was personal data. He could ask for it by way of a DSAR. He produced examples given by the Information Commissioner's Office ("the ICO") on its website to support that.

- The claimant repeated his firmly-held conviction that Mr Cornwell's decisions in relation to him were influenced by discrimination. He said Mr Cornwell was unwilling to let go of past events. He referred to Mr Cornwell's actions as retaliation.

- The claimant said the 2020 Development Dialogue was discriminatory because Mr Cornwell had not scored "adaptively". He explained what he meant by that. He referred to his exchange of views with Mr Cornwell about that which he characterised as "civil". He had been happy to let matters lie on the basis that the outcome would not impact on future salary or progression. However, he said, Mr Cornwell was not willing to "let go" of past disagreements. He contrasted that with Mr Bose's approach. He said that Mr Bose had listened to the claimant's challenges to his performance scores and they had agreed on the final appraisal.

- When it came to the allegation that Mr Bose had told the claimant that he had observed discrimination towards him, the claimant confirmed that Mr Bose did not share any examples of when that discrimination had taken place or what had taken place. He said Mr Bose had made the comment during their final 1:1 meeting on 15 March 2021.

- The claimant suggested to Mrs Deakin that it was challenging for her to navigate through the process. He told her he was aware that she and Mr Cornwell had a long working relationship and said he needed to have faith in the impartiality of the process.

420. After the meeting Mrs Deakin asked Mr Al-Qasmi to gather information about the claimant's past pay rises and about those members of the IT team who had been given pay rises on a change of role. We have set out our findings in relation to those "comparators" (Mr Pope and Mr Young) above.

421. Mrs Deakin also proposed to contact Mr Bose and Mr Fattah who had both by then left the Group. She particularly wanted to contact Mr Bose so that she could investigate the allegation about his comment at the 1:1 on 15 March 2021. The claimant strongly objected. He asserted that any such approach would be a breach of his personal data and that he would report it to the ICO. During further exchanges the claimant laid out stringent conditions as the only basis on which he would accept Mr Bose being contacted. He said that they were necessary to protect his personal data. Mrs Deakin was frustrated by what she saw as the claimant hampering her ability to

investigate a serious allegation about discrimination which the claimant had himself raised. The claimant responded to say that the allegation was a background matter on which he did not require a finding as part of the grievance outcome. He said that any attempt to reach out to Mr Bose without his consent would be considered a data breach and would invalidate the grievance. The Group Data Protection officer advised that under German data protection law, the Group would not provide Mrs Deakin with the contact details for Mr Bose and Mr Fattah.

422. Mrs Deakin interviewed Mr Cornwell by Teams on 20 July 2021 (pp.596-598). In summary:

- He explained the decision not to increase the claimant's salary on review, adding detail not included in the decision letter. He accepted the claimant currently earned £884 less than the median point in the Mercer data. However, that median figure was for the UK as a whole not for the NorthWest. Mr Cornwell's view was that when higher wages in London and the South-East were factored out, the gap between the claimant's pay and the median would reduce significantly. He pointed out that the decision was made in the context of Ms Fuenfstueck's direction to control personnel costs in 2021.

- He accepted that he had said something to the claimant in the meeting with Mr Fattah like "we've not always seen eye to eye". That had been in the context of praising the claimant's work and contribution. Although he accepted, on reflection, perhaps he shouldn't have said it, there was no harm intended and he felt the claimant had cherry-picked it for the grievance, taking it out of context. He said the claimant had not challenged him or raised any concerns about the comment at the time.

- He confirmed he and the claimant had had some battles on work topics in the past but felt that they were able to understand each other's positions. He confirmed he had discussed some development areas with the claimant. He had reviewed to the 2020 Development Dialogue and thought it was quite balanced. If anything, he felt he had positively discriminated in favour of the claimant by scoring him higher in some areas to support him.

- While he respected the claimant's disability, sometimes communication wasn't always as it should be. He referred to the concerns raised by colleagues about communication of deadlines on IT projects or tasks. As an organisation they needed to find a way around that. They could not damage the business because of poor communication and the IT department was damaged by poor communication.

- Mr Cornwell said he respected the fact that communication was probably not the claimant's strong point and that may be hampered by his Autism. He had worked with the claimant on how he could improve communication and tried as a manager to support the claimant to the best of his ability. Mr Cornwell accepted that at times he did get "tripped up".

- He said the claimant constantly demanded better bonuses, constantly demanded better pay rises and Mr Cornwell needed to be mindful of everyone else in the organisation. He firmly believed that over the years they had

probably been “almost a little bit too soft” with the claimant due to some of his limitations and had positively discriminated in the claimant's favour. He accepted that he had found the claimant’s constant challenge difficult at times but tried to deal with that challenge positively and appropriately, the approach to the pay review being an example of that.

423. Mrs Deakin did not uphold the grievance. She set out her reasons in her outcome letter dated 29 July 2021 (pp.617-624). She said in her investigation she had found no evidence or discrimination or victimisation towards the claimant. She also considered that the claimant’s pay was fair and in line with the market. In summary, her reasons were as follows:

- Mr Cornwell’s decision on the pay review was reasonable and there was no bias on his part. He had considered various factors including what Mr Bose had proposed, what the Mercer benchmarking data indicated and the performance of the business. She set out the additional detail about his decision which Mr Cornwell had provided in his interview. She noted that during the period since Mr Cornwell had been managing director the claimant’s salary increases amounted to 18% compared to an average salary increase for the respondent of 8.3%.

- The decision to award a pay rise to other IT staff on transition to OneIT was decision of the Group not the respondent. She concluded that the comparators referred to were not in the same position as the claimant.

- The respondent’s position remained that the Mercer data was not personal data. It had been used as a benchmark for guidance purposes only and there was no need to scrutinise the data any further.

- Mr Cornwell accepted making the comment in the meeting with Mr Fattah. On reflection Mr Cornwell accepted he should not have said made it but the comment had been taken out of context. In context (Mr Cornwell praising the claimant’s work and contribution) it was appropriate.

- In relation to the 2020 Development Dialogue, she reported Mr Cornwell's comments from his interview. She acknowledged the need for an employer to make reasonable adjustments when someone has a disability. That did not mean overlooking matters when an employee was not able to perform the task at hand to the required standard. It was a manager’s role to give feedback and an employee should listen, reflect and take on board feedback. She did not uphold the allegation that Mr Cornwell had treated the claimant in an unreasonable or unfair way or had victimised the claimant.

- She had not been able to investigate Mr Bose’s alleged comment despite it being in her view, a very serious allegation. She had wanted to investigate further but could not. That was because the claimant would not agree to her doing so without imposing onerous and unreasonable conditions. It was also because Group Data Protection could not share Mr Bose and Mr Fattah’s contact details with her for data protection reasons.

424. Mrs Deakin confirmed that the claimant had a right of appeal within 5 days of receiving her letter. Any appeal should be sent in writing to Mr Al-Qasmi, explaining the grounds for it. He would then assign an appropriate Appeal Officer.

Events from 29 July 2021 to 2 September 2021 – the Grievance Appeal and the claimant's cancer diagnosis

The 2021 Grievance appeal

425. On 29h July 2021 the claimant emailed Mr. Al-Qasmi to indicate his intention to appeal. He said that before appealing he needed to know who would conduct the appeal and the timescale for it. He sought reassurance that it would be dealt with by a senior impartial third party not under the management or influence of the UK directors. He asked Mr Al-Qasmi to be as discrete as possible. He told him there was no need to name the claimant until the proposed appeal officer had confirmed their willingness and availability to conduct an appeal and the claimant had confirmed that the "candidate" to hear the appeal would be someone he would be happy to take his appeal to.

426. On the same day the claimant made a DSAR for the Mercer data and any communications between Mr Cornwell, Mr Coupe, Mrs Deakin and Mr Al-Qasmi about his salary review since 25 February 2021. The respondent responded on 27 August 2021. It did not include the Mercer data. It explained that was in accordance with guidance both from the Group Data Protection team and the ICO that it was not deemed personal data. The claimant challenged that, asking for evidence of correspondence with the ICO. On 3 September 2021 the respondent confirmed they had evidence in the form of a live chat with the ICO (p.682).

427. Mr. Al-Qasmi emailed the claimant on the 2 August 2021 proposing that the Group's HR director for Russia deal with his appeal. The claimant asked whether there was somebody who could conduct it who was employed in a company under EU jurisdiction. He explained he was familiar with GDPR and more confident in the protection of such legislation. As a result. the respondent agreed to change the appeal officer and Mr Marquard was appointed to chair the appeal.

The claimant's cancer diagnosis

428. On the 3rd of August 2021 the claimant was diagnosed as having mouth cancer. He emailed Mr Al-Qasmi. He copied the email to Mr Cornwell and Saikat Sen ("Mr Sen") his OneIT matrix manager to confirm that the long term prognosis was good but that treatment involved major surgery. He explained the current recommendation was to operate in about 6 weeks' time. There would be a recovery period of 3-6 months with some initial weeks recovering in hospital. He asked for confirmation about his sick pay position. He also asked for discretion about his diagnosis where possible until he had worked out with whom and how he would like to share it (pp.639-640).

429. Mr Al-Qasmi emailed back to say how sorry he was and that he would do everything he could to support the claimant. He confirmed he would check with Mr Coupe in relation to company sick pay but that the claimant's contract entitled him to 26 weeks full pay in any 12 months. He told the claimant that if he needed time off to process the news then he should please take it. Whenever the claimant was ready

and wanted to speak he should contact Mr Al-Qasmi. Mr Cornwell was on leave but emailed later that day in similar terms as did Mr Sen.

430. A couple of days later Mr Coupe spoke to the claimant to confirm the position on sick pay and under the respondent's private heath insurance. He also confirmed that he had spoken to Mr Sen and they were working on the assumption that the claimant would be out of the workplace for 6 months while he recovered. He had explained that Mr Sen would be speaking to the IT team about the claimant's illness and how to cover his absence.

431. The claimant was signed off work for 6 weeks from 16 August 2021 while he was awaiting surgery.

The Grievance appeal process

432. Mr Al-Qasmi was conscious that the claimant's grievance appeal was still "live". On 10 August 2021 he wrote to the claimant about it. He apologised for doing so in such difficult circumstances. He confirmed that Mr Marquard had agreed to chair the appeal and was available to do so on 18 or 31 August. Assuming the claimant still wanted to appeal he asked him to let him know his preference. He said he appreciated that under the current circumstances the claimant might need more time to decide what he wanted to do and confirmed that was OK.

433. The claimant responded on 16 August to confirm he would take the offer of an appeal hearing on 31 August. He made it clear that he felt obliged to do so because of internal and external timelines. He had been in discussion with ACAS about the matter and we find the "external" timeline was the time limit for initiating Tribunal proceedings. He made it clear that in his current circumstances he would prefer conciliation on the respondent's part rather than being forced to proceed with his appeal. In the absence of such flexibility he felt compelled to appeal. That was, he said, because as an autistic person he must see things done correctly. It was also to deal with what he referred to as the "entrenched matters" that he felt would affect his long-term employment and career on his return to work.

434. In light of the claimant's circumstances, Mr Al-Qasmi suggested to Mr Cornwell that they modify the respondent's grievance appeal process. He proposed that could either be by the appeal being dealt with in writing rather than at a meeting or by deferring the appeal until the claimant returned from sickness absence. Mr Cornwell agreed. He noted that the claimant's email of 16 August appeared to suggest that it would help to alleviate the stress he was under if the respondent were to reverse the grievance outcome. While expressing sympathy for the claimant's situation, Mr Cornwell said the claimant's illness could not be grounds to reverse what he regarded as the correctly made decision.

435. Mr Al-Qasmi was on leave so on 18 August 2021 Ms Johnson of the respondent's HR team emailed the claimant on his behalf setting out the proposals for a modified appeal process.

436. The claimant responded that day. He made it clear that the offer of not having a face to face appeal meeting did nothing to alleviate the stress of carrying forward his grievance. If an appeal was the only route, he preferred to go ahead with a face to face meeting on the 31 August. We find he was concerned that any delay would affect

his ability to comply with ACAS Early Conciliation and Tribunal time limits. He went on to say that not offering "early conciliation" at this stage would be interpreted as the respondent having little regard for his circumstances and compromising his health. He said "speaking frankly" it was shameful and hurtful that he had to raise the grievance at all and had been subjected to what he referred to as a "whitewash of a grievance outcome" by Mrs Deakin who was a personal longstanding friend of Mr Cornwell. He said that was hurtful given his long years of service to the respondent and the Group. He said that he was utterly confused why matters had come to this. He said victimisation "was the only logical explanation".

437. Ms Johnson replied on 19 August reiterating the offer to modify the appeal process. The claimant responded the same day making it clear that the only way to reduce the stress of the process on him was for the respondent to make a "reasonable early offer of internal conciliation". Failing that, his final decision was to attend the grievance appeal hearing on 31 August 2021. He would then "under the advice of ACAS" see the appeal process to completion "within timescales conducive to externally moderated conciliation routes, should they become necessary". He said that was his final decision and he would provide his written grounds for appeal by 25 August.

438. As agreed, the claimant provided his Grounds of Appeal by 25 August. It was a comprehensive 10 page document. In summary the grounds were:

- The grievance investigation was biased due to Mrs Deakin's long standing professional and personal relationship with Mr Cornwell. She had a conflict of interest which led to her accepting everything Mr Cornwell said unquestioningly.

- The Mercer data should be disclosed. It was personal data under GDPR and the ICO definition because of the purpose for which it was processed.

- The comparison with the average salary progression of other UK employees (18% versus 8.3%) wasn't valid. It was skewed by the claimant's long service and did not recognise the claimant's unique position in a Global role.

- The decision to give pay rises to other IT staff had been made by the respondent in the UK not the Group.

- There was no consideration of the specific intent of Mr Bose's email of 25 February 2021 which referred to the new aspects and seniority of the claimant's new role and said that a pay review should be "conducted and actioned".

- The outcome ignored the fact that the claimant had accepted his new role with increased remit on the basis of there being an increased salary.

- There was no consideration of the unique salary recharge for the claimant's salary from the respondent to OneIT.

- There was evidence of a predisposed mindset in relation to the salary review on the part of Mr Cornwell. That evidence was not considered or followed up in the investigation in terms of its potential impact on his decision making.

- There was evidence of a mindset on Mr Cornwell's part inclined towards victimisation and towards correcting so called "positive discrimination" or "too soft" treatment of the claimant by Mr Cornwell in the past. That evidence was not considered or followed up in the investigation in terms of its potential impact on his decision making.

439. In addition to the allegations against Mr Cornwell, the claimant's Grounds were highly critical of Mr Al-Qasmi and Mrs Deakin. He accused the former of acting in an ill-judged and ill-advised way in deciding to appoint Mrs Deakin to hear the grievance. He characterised it as a serious matter and a failing of UK HR process. which had caused an unnecessary delay and stress and, in his view, invalidated the whole outcome. The claimant cast doubt on Mrs Deakin's integrity by asserting that she had "made her personal and professional allegiance with Mr Cornwell the primary motivating factor in her outcome". He also alleged she had put pressure on him to share his personal data with Mr Bose and Mr Fattah. He criticised her for not understanding what personal data was and for failing to accept that the Mercer data was personal data.

440. The claimant also alleged that Mrs Deakin had sought to "intimidate him" by making a false allegation that he had shared details of Mr Bose and Mr Fattah without their consent. We find that was a reference to Mrs Deakin having said in an e-mail on 21 of July 2021 when discussing approaching them as part of the investigation that she was "mindful of the fact that the claimant had shared their details apparently without their consent".

441. The hearing on 31 August had to be postponed due to Mr Marquard's travel arrangements being changed unexpectedly. Mr Al-Qasmi emailed the claimant late in the evening of 29 August to propose meeting on 3 September instead. Because he was off work the claimant did not pick up that email until the day the hearing was due to take place. He explained that he was not able to meet on 3 September because of his cancer and schedule of treatment (the claimant's first surgery was on 1 September 2021). His mouth cancer was a progressive condition and his speech was and would be affected. As a result, the 31 August had been the last opportunity to have his appeal heard but that, he said, now "been cancelled". He confirmed that the grounds of appeal were fully documented and could represent his appeal in writing. There was no need to meet if the document was considered fully. He repeated that there was still the opportunity for the respondent to offer a "flexible written position of conciliation". He concluded by saying that in light of the circumstances, he could not risk a claim of victimisation timing out because of delay so he must now "act accordingly."

442. On 31 August Mr Al-Qasmi confirmed by email that the appeal would be dealt with in writing rather than face to face. He explained it would be a re-hearing rather than review, with Mr Marquard considering all the evidence afresh and reaching his own decision. He asked the claimant whether he had an indication of the pay increase which he believed he should have been awarded by Mr Cornwell.

443. The claimant confirmed that the best method of communication was by e-mail and that he was due to have surgery in the next few days. Because speaking was increasingly painful for him, he confirmed that his wife was authorised to speak on his behalf if he was unable to and was present. He confirmed that he would write separately regarding Mr Al-Qasmi's query about the desired outcome.

444. On 31 August 2021 the claimant initiated ACAS Early Conciliation.

The 3 September 2021 email to Ms Fuenfstueck and the immediate response to it

445. At 23:24 on the night of Friday 3 September 2021 the claimant sent an e-mail to Ms Fuenfstueck (pp.697-698). He did not copy it to anybody else. He attached his grievance, the outcome, his appeal and other documents. The email was headed "De-escalation of a matter and unfortunate events".

446. The claimant began his email by saying that he had "carefully considered this before reaching out [to Ms Fuenfstueck]". He told Ms Fuenfstueck about his life-threatening cancer diagnosis and the background to his grievance. He said that in summary his claim was that Mr Cornwell blocked a salary rise for his new role because of "bias and victimisation and he cannot let go of previous events".

447. He explained he was writing to Ms Fuenfstueck because she might be able to "deescalate this before all internal avenues are exhausted" and he would really appreciate that for the sake of his health and recovery and the overall financial, ethical, and reputational position of the Group.

448. We quote the rest of the email in full because of its importance to the case:

> "**The root of this problem once more are the interactions from Richard Cornwell with regards to me and their effect even though we should in theory rarely interact under the matrix model. I have never since 1998 experienced such health detriment under any other manager while working with HARTMANN and Richards position is forcing his UK colleagues into a defence. I have never raised a formal grievance before Richard's arrival at the company. I have had positive experiences since with Matrix managers. He has a problem with me.**
>
> **The appeal is to be handled by Jens Marquard based on my appeal document as I cannot now attend a hearing due to upcoming surgery as it was delayed by Jen's travel plans. I fear it will be once again a hard-line position without balanced consideration.**
>
> **This is not a matter I can just drop and there is a 3-month limit in UK law to bring a claim if this ends up external so it cannot be postponed.**
>
> **UK HR under Abid AI-Qasmi does not seem to be capable of preventing escalation or negotiating a path of compromise. I fear more wasted time, resources, expense (from UK budget), and damage to health and reputation because of fear of listening to an employee and insisting on the same conclusions right through the internal process rather than looking for the solution.**
>
> **Please help if you can. I wish I did not have to write about this right now and it would have been sorted weeks ago as I have requested, but I must try every internal channel in the hope I can just concentrate on recovery.**"

449. We accept the claimant's evidence that he was under extreme stress at the time he wrote the e-mail and that he was desperate to resolve matters so he could focus on his health. However, we also note that he had "carefully considered" before writing the email. It was not an email sent without thought. We find that the email was

not a wholly accurate record of events. For example, the claimant made no mention of falling out with Mr Coupe or the fact that Mr Cornwell was his line manager because the claimant had refused to be manged by Mr Coupe.

450. Ms Fuenfstueck responded on the 10th of September to acknowledge the e-mail. She confirmed she had read it and the attachments and that she would discuss next steps with Mr Marquard. She forwarded the claimant's email to Mr Marquard and to Till Hoffmann (the Group's Senior VP of IT). Her view (in German so we are reliant on the translation at p.700) was that the UK team had acted professionally and in accordance with employment law. She said the claimant's "personal conditions….motivate them to support them" which she understood had been done again and again. She wondered whether the claimant should be involved more in global issues and less in the UK projects.

451. Mr Marquard forwarded the claimant's email to Mr Cornwell on the 10 September (p.703). The covering email simply said "fyi". We find that as far as the Group management was concerned, the claimant was an UK employee from a Legal/HR perspective, so it was for the UK management to deal with him.

452. Having considered the claimant's email overnight, Mr Cornwell felt compelled to write to Mr Al-Qasmi. In his email on 11 September he said that:

> "**In short, I do feel [the claimant's] actions are unreasonable. We are undergoing a process whereby [the claimant] has raised a grievance (which is absolutely his right), it has been heard and he has appealed its findings. The appeal process is underway and he must give it time to run its course. By emailing the CEO of our organisation bypassing both my boss (the appeal officer) and my boss' boss he has blatantly undermined you and I and indeed Jens [Marquard], quite clearly bringing into disrepute my abilities as a leader and if I may say your abilities as a HR head (you know I have never doubted your obvious significant capabilities in this area). I guess his actions ahead of an appeal outcome also show a blatant disregard for Jens to arrive at an informed, fair and professional conclusion despite his many years of leadership experience."**

453. Mr Cornwell noted the claimant had raised a grievance against him, previously against Mr Coupe and had expressed displeasure at Mrs Deakin. They constituted the statutory board of the respondent and if the claimant had such disregard for each of them it felt to him that the relationship had broken down. He "really [didn't] know where we can go with this". He acknowledged they just needed the grievance process to take its course, but he wanted his displeasure at the claimant's unreasonable actions noted.

454. Mr Al-Qasmi responded on 14 September 2021. He agreed with the contents of Mr Cornwell's email. He said the claimant should have allowed the appeal process to conclude before escalating further. He told Mr Cornwell that Mrs Deakin was really upset because she felt the claimant was questioning her professionalism and that she was considering taking a grievance against the claimant. We find that accurately reflected how Mrs Deakin felt at the time.

455. We accept Mr Al-Qasmi's evidence that he was also upset by the claimant's email to Ms Fuenfstueck. He viewed it as an allegation of incompetence against him made in an email to the Group CEO. He found that humiliating. In his response to Mr Cornwell, he said that he "fear[ed] the working relationship [with the claimant] was

breaking down beyond repair". We find that view was shared by Mr Cornwell. It was agreed that Mr Al-Qasmi would seek legal advice on the best course of action (p.704).

The Grievance Appeal and its outcome

456. In the meantime, having reviewed the grievance appeal documents, Mr Marquard emailed each of Mr Cornwell, Mrs Deakin, Mr Coupe, Mr Al-Qasmi and Mr d'Huc asking them questions arising from the claimant' grounds of appeal. Mr Al-Qasmi was copied into all the emails. Mr Marquard's email to Mr d'Huc was to check whether there were any Standard Operating Procedures ("SOPs") in place to explain the relevant roles between UK line manager and matrix line manager, when it came to salary reviews. He asked who was responsible for actioning any salary increases specifically in OneIT?

457. Mr Marquard sent his emails on 6 September 2021. He asked for a response in writing or, if they preferred, via a Teams meeting to be arranged the following week. All the recipients responded by separate emails on the 7 September. That was after the claimant had sent his e-mail to Ms Fuenfstueck but, we find, before anyone other than Ms Fuenfstueck was aware of it or its contents.

458. We accept Mr Marquard's evidence that in reaching his decision on the grievance appeal, Mr Marquard took into account those emails responses alongside the Mercer data and the claimant's grievance documentation and grievance appeal. He also had the grievance meeting notes and the notes of Mrs Deakin's interview with Mr Cornwell.

459. Mr Marquard dismissed the grievance appeal. He explained his findings and conclusions in his outcome letter dated 17 September 2021 (pp.715-724). In summary, he concluded that:

- It was appropriate for Mr Al-Qasmi to appoint Mrs Deakin to hear the grievance. Of the respondent's 3 statutory directors, the claimant had previously had a grievance against Mr Coupe and the current grievance was against Mr Cornwell. Mrs Deakin was the remaining statutory director and was the appropriate person to hear the grievance. The claimant had raised no objection to her hearing it.

- Mrs Deakin was not biased. Although she had known Mr Cornwell professionally for around 15 years, they did not have a personal relationship. There was no evidence she had dealt with the grievance in a biased or unfair way.

- Mr Cornwell had made enquiries to check what Mr Bose had recommended. The evidence showed that Mr Bose had recommended a pay review rather than a pay rise.

- Mr Cornwell had carried out the pay review in a fair and reasonable way. He had consulted the claimant's matrix manager, One IT, HR and obtained benchmarking data. Comparison with UK employment averages was valid given that the claimant was employed in and based in the UK. There was no evidence to suggest that Mr Cornwell was biased.

- Most of the claimant's salary was paid centrally by OneIT. However, the respondent was charged back for work done by the claimant for the respondent on UK IT matters. In 2020 that chargeback was £13,750. In addition, the amount paid by OneIT was set during the budget process. It was not adjusted at end of year to take into account the difference between actual and budgeted costs. That meant any mid-year pay rise would not be covered by OneIT but would be padi by the respondent.

- There was no evidence that Mr Cornwell had a negative predisposition towards the claimant or that he had victimised the claimant. On the contrary, there was evidence of the respondent and Mr Cornwell having made adjustments to support the claimant. He referred specifically to those matters set out in Mr Cornwell's email of 30 April 2020. Mr Marquard accepted Mr Cornwell's evidence that the claimant should have had lower scores in some areas within his 2020 Development Dialogue but the scores were adjusted upward in order to support the claimant. Mr Marquard noted that the claimant did not dispute those adjustments had been made at the time - the only concern the claimant voiced was that the scores did not hamper his future development or negatively affect decision making.

- The refusal to share the Mercer data had not in any way affected the fairness of the pay review process. It was the Group's decision not to share, not Mr Cornwell's alone.

- Having reviewed the data himself, Mr Marquard was satisfied that Mr Cornwell's interpretation of the data was reasonable. The claimant was paid very much in line with the median. There was a small gap between the median for the UK in the Mercer data and the claimant's current compensation package but it seemed reasonable to Mr Marquard for that small gap to be considered at the claimant's next annual salary review.

- There was no evidence to support a finding that Mrs Deakin had intimidated the claimant or applied pressure to him. She acted on the advice of external lawyers in seeking to obtain the claimant's consent to contact Mr Bose and Mr Fattah because they were relevant to the investigation. Her conclusion that the claimant had involved Mr Bose and Mr Fattah in his grievance without their consent was not an unreasonable conclusion to draw.

460. ACAS issued an Early Conciliation Certificate on 6 September 2021. On 22 September 2021 the claimant issued the first of the 2 Tribunal claims in this case (2411199/2021). It alleged that the refusal of a pay rise was an act of disability discrimination and victimisation by the respondent.

<u>The email exchanges on 24-30 September 2021</u>

461. On the 24 September 2021 the claimant was signed off work for a further six weeks due to allow him to recover from head and neck surgery. The same day he emailed an update to colleagues in the IT team confirming that he was making steady recovery from his surgery and expected to be back working in November. He also emailed Mr Cornwell and Mr Sen to say he would like to return to work on 8 November 2021.

462. Mr Cornwell responded the same day to thank the claimant for his note and express relief that the outcome thus far sounded promising. He said "please let us know how we can support you over the coming weeks-[Mr Al-Qasmi] will reach out separately in terms of next steps of your returning to work and your welfare etc" (p.726).

463. The claimant responded that evening. He said:

> **"As you ask and reading your wording 'thus far' and 'next steps' for 'my welfare', I will say how you can help.**
>
> **As I have been doing, I will provide clear feedback on my health and position. There is no need to think for me or consider what might be best for 'my welfare', I will be explicit.**
>
> **Therefore, if you read my last mail to Saikat and that I am already feeling the desire to work, I intend to return on the 8th of Nov to my role as before on a full-time basis.**
>
> **Cancer as you are aware is covered by the Equality Act 2010. I would not expect unfair treatment in denying a choice of date of return or reduction in remit because of my disabilities unless agreed, although I will of course need to be brought up to date."**

464. We find Mr Cornwell was genuinely gobsmacked by the response. He forwarded the claimant's email to Mr Al-Qasmi saying:

> **"Good lord!!**
>
> **How the heck has my well meaning email asking if he is ok been turned into something so apparently forthright at best and downright negative at worst. I cannot see how my email elicited subsequent guidance on the equality act. My email made no reference at all as to any unfair treatment, nothing could be further from my mind.**
>
> **I won't respond to Chris as it seems my attempts to be kind [and] supportive are being met with complete aggression."**

465. We accept Mr Cornwell's characterisation of the exchange in that email. We find his email to the claimant was supportive. It made no reference to anything which, viewed objectively, could be seen as suggesting unfair treatment.

466. Mr Cornwell took a few days before replying. He did so on 28 September, expressing concern that the claimant seemed to have misunderstood his intentions which were meant to be positive and supportive. He denied that anything in his e-mail was unfair or discriminatory and said that was never his intention. The respondent was not seeking to deny the claimant the right to choose a suitable return date but wanted to ensure that it understood his needs, supporting him back into work and offering any adaptations that might be required. He offered the claimant a welfare meeting with himself and Mr Al-Qasmi when he was ready to return so they could understand how they could best support him. As an alternative, they could offer an OH appointment. Another alternative was to write, with the claimant's consent, to his GP or consultant

to better understand how they could support and adjust to the claimant's needs should he feel that was helpful or beneficial (pp.736-737).

467. The claimant responded on 30 September, saying there was no misunderstanding or accusation and that he was "laying out expectations to avoid any future misunderstanding". He suggested setting up a meeting on or soon after 8 November. He suggested Mr Sen be included so that it could then serve both as the return to work meeting and a discussion of any potential adaptations. He proposed a follow up meeting be organised 2 weeks afterwards to check all was well. He made it clear that permission was not and would not be granted to write to his GP. If anything medical beyond fit notes was required Mr Cornwell should "let me know exactly what and why and I will consider and if appropriate request myself". He did not think that an OH assessment would be required but that could be confirmed when they met. He closed his e-mail by saying that he did not imagine they would need to have much if any dialogue until he returned but wished all copied good health (page 736).

November 2021 - Ms Jones's appointment and the start of the investigation

468. We accept Mr Al-Qasmi's evidence that based on the legal advice received, he decided that the appropriate approach was to treat Mr Cornwell's email of 11 September 2021 as a grievance and investigate whether the working relationship had broken down. We accept Mr Al-Qasmi's evidence that mediation was not considered appropriate at that stage given the degree of upset felt by Mr Cornwell and himself. We also accept his evidence that he envisaged mediation as one possible outcome of Ms Jones's report.

469. Mr Al-Qasmi and Mr Coupe decided that an external third party should be engaged to carry out the investigation. We accept the situation was unusual, involving a Managing Director bringing a grievance against one of his line reports. We accept their rationale was that it was not appropriate for any of the 3 UK Statutory Directors to carry out the investigation. The claimant had previously raised a grievance against Mr Coupe, had alleged that Mrs Deakin was not impartial when she considered his grievance and Mr Cornwell was the person who had raised a grievance against the claimant. For the same reason, we find Mr Cornwell then played no part in deciding how matters should be investigated beyond countersigning the contract with Ms Jones on 5 November 2021.

470. We accept Mr Al-Qasmi's evidence that Ms Jones was not the only external third-party considered. She was appointed because they were impressed by her CV. It demonstrated experience of carrying out investigations and of conflict resolution. She was preferred to another candidate who lived abroad because it was seen as important that whoever carried out the investigation would be able to meet with the claimant. There was no suggestion that Ms Jones had previously worked for or with the respondent or any of its directors.

471. Mr Al-Qasmi was on leave for 2 weeks in October. He had an initial call with Ms Jones on 2 November 2021. She emailed setting out her proposed approach and proposed timeline. She envisaged reviewing the 3 September 2021 email then interviewing Mr Al-Qasmi, Mr Cornwell, Mr Coupe and Mrs Deakin. If she identified any other individuals she needed to talk to during the investigation she would confirm with Mr Al-Qasmi before interviewing them. She would then prepare a report which she anticipated submitting by Monday 22 November 2021.

472. On 3 November 2021 Mr Al-Qasmi emailed Ms Jones to confirm that they had the "green light" to work with her (p.742). The next step was for her to sign a non-disclosure agreement to ensure protection of the claimant's personal data. Mr Al-Qasmi explained that Ms Miller of Analysis Legal was looking at the GDPR aspects of sharing employee data with her. He said that the UK IT employee (unnamed at this point) "likes to mention/ complain to the ICO". He suggested setting up an initial briefing call on 5 November with Ms Miller. The intention was that Ms Jones would then interview each of the UK SMT members on 9 November. Mr Al-Qasmi suggested 1 hour with Mr Cornwell and 30 minutes with each of Mr Coupe, himself and Mrs Deakin.

473. On 5 November, after the briefing meeting, Mr Al-Qasmi emailed Ms Jones formally confirming the instructions to proceed with "an investigation into the alleged breakdown of working relationship between a UK IT employee and the UK SMT." He said the investigation "had been triggered by the 3 September 2021 email [to Ms Fuenfstueck]". He explained that the employee would be informed of Ms Jones's role and the rationale for her investigation at a meeting on 8 November. He suggested that Ms Jones interview the UK SMT. He confirmed they would like Ms Jones to speak to the employee concerned as part of the investigation. Mr Al-Qasmi stressed the need for an impartial report. Because he was a proposed witness in the investigation, he confirmed that Ms Johnson of the HR team would act as the contact point for Ms Jones.

3-5 November 2021 - the car repair and Tax Code exchanges with Mr Coupe

474. Prior to the claimant's return to work on 8 November 2021 the claimant had email exchanges with Mr Coupe about 2 matters. We accept Mr Coupe's evidence that he viewed the matters discussed as purely routine matters. The email exchanges happened despite the claimant being signed off sick. We accept that was because the claimant had been actively dealing with the matters raised while he was off sick. In those circumstances, Mr Coupe saw no reason to delay emailing until the claimant had returned to work. Mr Coupe did not in any of the emails demand a response before the claimant returned to work.

475. The first exchange (Pages 786 to 790) was about repairing some minor scratches and dents to the claimant's company car. The claimant had reported them and was dealing with the claims before he returned to work. In his email on 3 November 2021 Mr Coupe explained that because of the very high excess on the respondent's insurance policy, the respondent had decided to allow such minor scratches and dents to accumulate rather than repairing each as they arose. He also clarified that where there was a third-party insurer covering the claim, a like for like courtesy car was allowed but otherwise it would be whatever car was available. Lastly, he said the respondent's fleet risk managers had pointed out the claimant had now reported 17 incidents of damage and had suggested that some driver training may be helpful to try to reduce claims going forward. Therefore, Mr Coupe said, when the claimant was back to work, they would arrange a convenient time for that to be carried out.

476. The claimant felt compelled to respond to the final point. He said there was no connection between the recent scratches and his driving ability. He had to park his car on the road and most of the scratches had accumulated while the car was parked and wasn't a result of his driving. He also felt that he was being compared to drivers who'd

only been employed by the respondent for a matter of months and so would not have accumulated the number of incidents that he had with his long service for the respondent. The claimant's view was that he was being singled out and suggested this could be considered an act of victimisation related to his 2021 grievance and the Tribunal claim he had issued. He asked for the relevant, validated statistics (p.787).

477. The claimant followed up with another email to Mr Coupe on 4 November. He said:

> **"In addition to my comments below, if comparisons are to be made over years of service with other staff, I have never been disqualified for any period because of a conviction for reckless driving, I do not teeter on the edge with speed or traffic offense to losing my license. I have solid history of legal driving over decades, which earlier in my career involved extensive site visits to customers up and down the country while other company car owners mostly made trips back and forth to the office.**
>
> **The context is the 'barrel is being dragged' once again over my long career to justify a position because of me exercising my legal employment rights. I am offended and feel harassed and victimised as this was copied to my line manager without even discussing with me. I would like a measured, careful, considerate response from you before the end of the week to bring my stress levels down before the weekend."**

478. We accept Mr Coupe's evidence that he saw that as a clear dig at him. We also find it was. He was the only employee of the respondent's to have lost his licence in the past, something of which we find the claimant was aware. We also accept Mr Coupe's evidence that he found the claimant's response defensive, confrontational and inappropriate and found his approach threatening and very unprofessional. The claimant in his evidence denied that he was specifically referring to Mr Coupe in his email. He said he was aware of 2 senior managers in the respondent in the past who had been within points of losing their licence. He conceded in cross-examination that his email was an over-reaction. He attributed that to the situation he was in at the time - under stress recovering from cancer. He said he would not have written that same email now, i.e. at the date of the Tribunal hearing. On balance we find the claimant was referring to Mr Coupe-there was no evidence of anyone else having been disqualified from driving who the claimant could be referring to.

479. The second e-mail exchange was triggered by the claimant being notified by HMRC that his tax code was incorrect and that he had underpaid tax. He had emailed Mr Coupe in mid-October 2021 to try and understand why that was the case. Further investigation by the claimant suggested that the issue came about because his yearly car benefit and car fuel benefit had been reported at lower than it was. That meant not enough tax had been deducted through PAYE. It left the claimant with around additional £800 tax to pay in 2020-2021 and potentially 2021-2022. In an email on 4 November 2021 to Mr Coupe he pointed out that it was the respondent, rather than he himself, who reported matters to HMRC (the claimant did not complete a tax return). He said he was:

> **"..concerned that an error has taken place on the company's part in 2020-2021 and that if this is the case, has it been made in good faith? and the reason clearly explained to me? or should I make an written 'Employer Error' enquiry with HMRC.**

> **I must have reassurance it will not happen again. I am reaching out to you again in the first instance for a transparent explanation."**

The claimant in cross examination evidence said that the reference to "good faith" came from HMRC guidance he had read using that term. We accept that evidence. We accept Mr Coupe's evidence that he took the reference to "good faith" as a suggestion that the respondent had in some way purposefully been remiss in its reporting to the HMRC or of wilfully making errors. We accept his evidence that he thought the accusation was both unfounded and inappropriate, amounting to an allegation of fraud. Mr Coupe accepted in his email response to the claimant on 5 November that he had not included the claimant's private fuel benefit in the P46 form. We accept his evidence that that was a genuine error on his part. In that email he set out the steps taken to report the benefits the claimant received from the respondent to HMRC. He pointed out that the claimant was no worse off due HMRC miscalculating his benefit in that only the timing of the payment of the tax due had changed. He also assured the claimant that the respondent would "continue to report all benefit changes at the times required by the Inland Revenue" (p.791).

8 November 2021 - the claimant's return to work

480. On 8 November 2021 the claimant returned to work. A return to work meeting took place at 9 a.m. attended by the claimant, Mr Cornwell, Mr Al-Qasmi and Mr Sen. The claimant and Mr Sen attended virtually. The claimant confirmed that there were some residual effects of his treatment such as it being tiring to speak. He confirmed that he wanted to return to work full time rather than on a phased basis and that no adjustments were currently needed. He said that if he did need any further support he would reach out and ask for it. A further meeting with Mr Sen was to be arranged later in the week to bring the claimant up to date with work issues.

481. At the end of the meeting Mr Al-Qasmi told the claimant that Mr Cornwell felt that his 3 September email to Ms Fuenfstueck completely undermined him and that their working relationship had broken down. He explained that the respondent had decided to appoint an independent external investigator who would contact the claimant in due course. Depending on the outcome of the investigation the claimant might be invited to a hearing. We accept Mr Al-Qasmi's evidence that he felt it was appropriate to tell the claimant about the investigation because the claimant had confirmed he was fully fit to return to work. We find that if the claimant had said he wasn't fully fit, Mr Al-Qasmi would have delayed telling him about the investigation.

482. We find the claimant was shocked. We find he said in response that he believed the investigation was an illegal act and that he alleged that he was being victimised for exercising his rights to raise complaints against the respondent. We find he also tried to explain that he wrote the 3 September email at a time of great strain given the health issues he was facing. Mr Al-Qasmi confirmed that he would follow up with a letter and the meeting ended.

483. At 11:52 on the same day the claimant e-mailed Mr Al-Qasmi, copying in Mr Cornwell, Ms Fuenfstueck and Mr Marquard (p.772-773). He explained the 3 September e-mail was written as a request to see if Ms Fuenfstueck could de-escalate the matter of the disputed pay review. It was written, he said, in an emotional and life changing context. He explained that he copied Ms Fuenfstueck into his current email in a constructive sense and an open way. He said that there continued to be 100%

commitment on his part to a good working relationship with Mr Cornwell. His Tribunal claim was a challenge of actions rather than a personal view of Mr Cornwell and his capacity to modify his approach if needed. He said bringing the claim was consistent with respect for Mr Cornwell's position as MD. He confirmed that he was open to mediation and that the Tribunal claim could be resolved before it was publicly heard.

484. He said that it would be an illegal act for the respondent to unfairly dismiss him because of "a breakdown in relationship" because he had legitimately exercised protected rights and used internal procedures. He said his Autism and cancer diagnosis were protected characteristics. He made clear he would add any such illegal acts to his ongoing Tribunal claim. He closed by saying:

> **"Compassion is important, it is fundamental part of functional relationships for a manager. Respecting another's right to point out when they think something is not right is also a part. The ability to compartmentalise is also important which I have and believe needs to be a skill of a business leader. I would ask that Richard and you do not try to use inappropriate routes here and let us find a way."**

485. Later that afternoon the claimant emailed Mr Al-Qasmi and Mr Cornwell again. He confirmed that as a demonstration of his willingness to enter conciliatory discussions he had instructed ACAS to reach out to the respondent in relation to the Tribunal claim.

486. Later still that afternoon, Mr Al-Qasmi emailed the claimant a letter confirming that Ms Jones had been appointed to carry out an investigation into the claimant's working relationship with the respondent (p.771). It said the reason for that was because Mr Cornwell felt that by sending the 3 September email while the grievance appeal process was still ongoing, the claimant had "blatantly undermined" Mr Cornwell, Mr Al-Qasmi and the grievance process. It said that "due to this and other matters" Mr Cornwell felt the working relationship between the claimant and him had broken down. The final paragraph stressed that "this matter is still under investigation and no decision has yet been taken as to whether this matter will progress to a hearing". It stressed the matter was confidential and should not be discussed with anyone within the respondent.

487. On 9 November, the claimant emailed Mr Al-Qasmi to say he was open to discussion or mediation with him and Mr Cornwell "if the [3 September] email has caused unintended offense". He asked if they had considered that option and, if not, why not. If the respondent insisted on the third-party investigation, he said he had several important questions and concerns, including questions relating to the Equality Act 2010, his disabilities and reasonable adaptations. Those questions should be answered before the investigation began for it to be fair and impartial. He explained that the timing of the proposed investigation was causing him immense stress in the context of his cancer diagnosis and treatment, Autism and his return to work after a long absence. He confirmed he would formalise a reply to Mr. Al-Qasmi's letter in the next few days.

488. Mr Al-Qasmi responded later that day to confirm he had not wished to cause the claimant any stress by telling him about the investigation. He confirmed that Ms Jones had been instructed to start her investigation and that she would be in touch with the claimant in due course. Mr Al-Qasmi said that on reflection it would be appropriate for him to step away because Ms Jones might wish to speak to him as part

of the investigation so he would hand over the claimant's e-mail to Ms Johnson who would then liaise with the claimant as appropriate.

489. On 10 November 2021 the claimant emailed Mr Cornwell and Mr Sen to say he was unwell and unable to work. We accept the claimant's evidence that the news of the investigation had a considerable impact on him. He saw his GP that day who provided a fit note confirming he was unfit to work for 4 weeks. The reason given was "squamous cell carcinoma of tongue". Neither the fit note nor the claimant's email referred to the impact of the investigation as a cause for his absence.

Ms Jones's investigation

490. On 8 November Ms Johnson sent Ms Jones 3 emails. The first email included a chronology of events and a background summary. We find both were factually accurate "high level" summaries of the key events since 2018. The chronology began with the claimant's Autism diagnosis in October 2015. It and the background summary set out the issues the claimant had raised in his 2018 Grievance, 2018 Tribunal claim and 2021 Grievance and Tribunal claim. In addition, the chronology included the Aspiedent report, the claimant challenging his 2020 pay review and bonus for 2019 and his emails to Ms Fuenfstueck on 14 April 2019 and 3 September 2021.

491. Ms Johnson attached the 2018 Tribunal claim form, amendment and the respondent's Tribunal response form with her first email. The documents attached to her second email included the Aspiedent report, documents relating to the 2021 Grievance and email exchanges relating to a number of the incidents we have covered in our findings above, including the 2019 DSAR, the York incident and the claimant's challenges relating to bonuses and pay. The third email attached the 2021 Grievance Appeal Outcome, the claimant's 2021 Tribunal Claim (2411199/2021) and the response.

492. Ms Jones interviewed Mr Cornwell on 9 November. She interviewed Mr Al-Qasmi and Mr Coupe separately on 10 November and Mrs Deakin on 12 November. She took a structured approach to each interview, which covered 4 core areas and themes. They were:

- the management and support given to the claimant
- Examples of CT's communication and approach.
- Illustrations of the impact caused by CT's engagement
- Views on the future working relationship

493. Ms Jones produced full (but not verbatim) written notes of each interview (pp.1008-1035). It was not suggested they were anything other than an accurate record of those interviews.

Mr Cornwell's evidence to Ms Jones

494. Mr Cornwell's view was that the claimant's email on 3 September 2021 was unreasonable, totally undermined him and painted his abilities as managing director and those of Mr Al-Qasmi in a very negative light. Mr Cornwell read the request that

Ms Fuenfstueck “de-escalate” matters as being the claimant urging her to bow to the claimant’s request for a significant pay increase, failing which he threatened legal action. Mr Cornwell said it was the level of disregard shown by the claimant in his email which had caused Mr Cornwell to send his email of 11 September expressing the view that the relationship between the claimant and the business had broken down.

495. Mr Cornwell explained the difficult business context resulting from Brexit, COVID and pressure from the NHS to reduce prices. The respondent’s margins were below those of the Group and there was significant pressure on it to improve profitability through increased revenues or by controlling costs. Tough decision had to be made for the good of the business, e.g. the respondent had had to make redundancies in 2020. He said that as a reasonable employer he would expect staff to understand those financial pressures when requesting any extraordinary pay increase as the claimant had done. Mr Cornwell felt strongly that internal matters (especially what he regarded as unnecessary ones) which diverted his energies away from the customer and external matters had the potential to damage the business further.

496. Ms Jones asked Mr Cornwell for a summary of his working relationship with the claimant and the chronology of his reporting to him. Mr Cornwell said that from the outset he had shown the claimant a high level of support and understanding. He had learned how the claimant like to work and had made adaptations in the way he worked with him. He confirmed that when the claimant was engaged in his work he was “delightful and a clear expert in his field” but that he became “aggressive in tone and approach when presented with feedback or challenge”. Mr Cornwell's firm view was that the claimant had not suffered any detriment under his leadership. He felt it was quite the opposite, e.g. his decision to “abolish” the second tier of management and include the claimant in SMT, reporting directly to him.

497. Mr Cornwell said the claimant’s ambition in wanting to be appointed UK IT Director was a positive. However, Mr Cornwell had to assess business need in deciding whether such a role was justifiable. His assessment was that the UK business did not warrant an IT Director post. That decision had led to the 2018 Grievance which Mr Cornwell felt had been dealt with fairly. He made it clear the claimant had right to raise a grievance but Mr Cornwell needed to make the decision for the business.

498. Mr Cornwell said that the decision to change the claimant’s reporting line from Mr Coupe to himself, had been made as a concession to the claimant’s demands. Mr Cornwell accepted the claimant had lost trust in Mr Coupe but said he believed Mr Coupe had not done anything to lose the claimant’s trust. In his view, the claimant’s dissatisfaction was more to do with Mr Coupe’s having refused the claimant’s demands for a promotion to IT Director.

499. Mr Cornwell said his management style was different to Mr Coupe’s. He characterised it as a demanding but fair style whereby he expected people to meet their commitments and regularly communicate progress (or lack of it) against a project. He did not believe that as a managing director that style was in any way unusual.

500. Ms Jones asked about the support the respondent had given the claimant. Mr Cornwell said there had been several adaptations since 2018:

- Formally agreeing that the claimant could work from home subject to his being in the office 2 days a month (an extension of the previous agreement which allowed the claimant to work 2 days from home).

- Mr Cornwell holding planned and unplanned 1:1s with the claimant to support him in areas such as his communication style. He explained that the claimant's communication style could be perceived by those working with him as brusque or abrupt. That was especially the case for colleagues to whom the claimant had not disclosed that he was an autistic person, having made it clear he did not want his Autism to be disclosed beyond a limited group of managers. Mr Cornwell said he worked with the claimant to help adapt his e-mail communication style in particular and offered coaching on how better to deal with colleagues in Germany.

- Mr Cornwell defusing situations with senior members of the Group's leadership team as a result of the claimant's communication style. Asked for a specific example Mr Cornell referred to the incident raised with him by the Sales Director in September 2019 about the claimant being uncooperative and disrespectful to his peer in front of junior staff (the incident in para 309 above). In hindsight, Mr Cornwell said he did not think the incident had been appropriately dealt with because Mr Cornwell had been nervous about giving the claimant feedback. That was because he was certain that it would result in a claim of victimisation or discrimination neither of which would have been true. Managing the claimant, he said, took a significant amount of time and effort

- Wherever practically possible Mr Cornwell and other members of SMT communicated with the claimant by email. The claimant had informed them that that was his preferred means of communication because it gave him more time to provide a considered response.

501. Mr Cornwell said that managing and supporting the claimant took a considerable amount of time and effort. Asked by Ms Jones about how the claimant worked and Mr Cornwell's approach to managing him, Mr Cornwell said that providing feedback to the claimant was challenging. He said the claimant did not accept feedback easily and seemed unable to accept company decisions. Mr Cornwell cited as examples:

- The issue of communication over project progress. Mr Cornwell said he had attempted to resolve that during the 2018 end of year management meeting without success. The claimant had asserted that his approach of reporting was the standard IT approach. Mr Cornwell had invited the global head of IT to discuss this. That was to support the claimant to understand his workload and lack of communication regarding project and end points which would become a significant issue. The global Head of IT had agreed with Mr Cornwell's interpretation of matters. Mr Cornwell's said he had adapted his approach rather than simply giving the feedback and expecting the claimant to accept it Mr Caldwell had gone to the expense and time of arranging the meeting so that the claimant could have a clear explanation of why Mr Cornwell's approach was the appropriate one.

- The claimant's approach to the transition to OneIT.

- The December 2018 Expenses incident. Mr Cornwell said that was an example of an extreme reaction a simple challenge could cause.

- The claimant challenging the reduction in his 2018 bonus because his sickness absence was disability related despite none of his fit notes referring to the claimant's disability. Mr Cornwell explained that he had reversed the decision to make an absence-related reduction because they feared the claimant was likely to raise a grievance seeking to link his absence to his disability.

- The claimant's challenge to his 2019 bonus award in early 2020. Mr Cornwell explained that the claimant had pushed back and said he had taken the matter to ACAS. Mr Cornwell worked with Mr Bose and decided to increase the bonus as a means to defuse the situation. That had taken a considerable amount of his time and defocused him from the core business. Mr Cornwell told Ms Jones he thought that the original bonus was fair. They had backed down for fear of a grievance claim and accepted that was not the way to manage staff.

- The Car repair exchange with Mr Coupe in November 2021. Mr Cornwell said the claimant had reacted to the Insurers' suggestion that the claimant may benefit from driver awareness training in a "challenging and disproportionate way and would not take the feedback or advice on board."

502. Ms Jones asked for specific examples of when Mr Cornell felt that no matter what he did to try and support the claimant, it was challenged. Mr Cornwell referred to the 24 September 2021 e-mail exchange (paras 461-463 above) quoting the claimant's email. Asked by Ms Jones how he felt about that e-mail, Mr Cornwell said that the claimant's response to a simple welfare e-mail was "aggressive in its style" and that the claimant's approach made "it impossible to work with him".

503. Ms Jones asked about steps to better understand the claimant's disability. Mr Cornwell explained the attempts to arrange the workplace assessment in 2017 which had culminated in the Aspiedent report. He said that the claimant had rejected 4 suggested providers because they would not understand his complex neurological condition. Mr Cornwell said Medigold had been rejected in "quite and aggressive fashion" because the claimant did not like how they dealt with him and that the claimant's complaint direct to its CEO had resulted in a verbal complaint about his attitude from Medigold to the respondent. He went on to explain that the claimant had rejected the Aspiedent report after initially seeming positive about his engagement with Dr Guest, having himself suggested Aspiedent to the respondent. Mr Cornwell said his view was that that the Aspiedent Report was very balanced, suggesting ways in which the respondent could adapt to the claimant's needs but also clear in recommending ways in which the claimant could change his ways of working in order to drive a better working relationship.

504. Ms Jones asked where the claimant's refusal to engage further with any recommendations or suggestions in the Aspiedent report left the respondent. Mr Cornwell's response was that the respondent would take the advice and guidance set out for them to support and work with the claimant.

505. Ms Jones asked Mr Cornwell about the impact of the 2021 Tribunal claim on him, noting it was the second pursued by the claimant in 3 years. Mr Cornwell said the claimant's immediate response to being denied his requested pay rise was to raise a

grievance and, when that was not upheld, to immediately submit a Tribunal claim. He said it become “an impossible position to be in”. Whenever the claimant was given feedback he did not like, he would “instantly become threatening and aggressive.” The threats “related to raising a grievance, pursuing a claim in the Tribunal or making a complaint to the ICO”. As the Managing Director, Mr Cornwell said he was left fearful in his management of the claimant. his feeling was that if he challenged the claimant, offered developmental feedback or concern and welfare support it would be quickly followed by a form of written threat. There were a few occasions where the dialogue from the claimant was positive or thankful. Because of his fear of the fallout if he gave the claimant feedback and suggested corrective action, matters which required correction were often left uncorrected. That led to projects being delayed and customers being let down. He said it was the first time he'd faced a situation such as this whereby any attempts to manage an employee resulted in a threat, grievance and in a Tribunal claim. He also said that not having those conversation with the claimant created the perception by other employees that he was adopting a more lenient approach when dealing with the claimant.

506. Asked to reflect on the impact that the claimant’s disability had on the claimant and on him, Mr Cornwell said he accepted the claimants disability could tend towards a forthright communication style. The Aspiedent report shared some valuable information about that, as a result of which Mr Cornwell had adapted his approach. However, Mr Cornwell did not feel that the claimant’s disability gave him a free reign to challenge aggressively and constantly in the way that he did. Mr Cornwell referred to the very high level of stress and negative impact on his own mental health of always having to think “if I push back or say no to the claimant what level of response will I get and what subsequent threat will I receive”. That was not an acceptable way to be a leader and manager.

507. In answer to Ms Jones’s question, Mr Cornwell said that given the escalation of matters involving other employees such as the regional director, Group HR and even Ms Fuenfstueck, the respondent conservatively estimated the resource used in dealing with the claimant's latest grievance as the equivalent of 44 individual days. Mr Cornwell's view was that the claimant appeared to have no regard for how his actions impacted individuals and the organisation.

508. Asked about his views about the relationship going forward Mr Cornwell confirmed he felt he'd reached a point where there was a total inability to manage the claimant. The claimant’s refusal to accept what he perceived as negative response to any of his requests (e.g. for a pay rise) had led Mr Cornwell to conclude the relationship had completely broken down. Furthermore, Mr Cornwell commented that following the grievances and tribunal claims pursued by the claimant (which he acknowledged was his right) Mr Cornwell felt the relationship between the senior management of the respondent including himself and the claimant had deteriorated significantly and that it was at the point of being irreconcilable.

509. Asked for his final comments and observations Mr Cornwell added that if each time the claimant disagreed with a decision he felt compelled to complain directly to the Group CEO then Mr Cornwall's ability to manage him was effectively eliminated. The 3 September e-mail had evidenced a lack of respect for UK management which was a strong indication of the relationships having broken down. That, combined with an easy willingness to complain to the very top of the organisation each time they

refused to bow to his demands made it difficult to see how they could continue working with the claimant in a mutually trustful and respectful working relationship.

510. Mr Cornwell accepted it was every employee's right to make a complaint if they felt something was wrong. It was also their right to seek a pay increase or more role responsibility. They had a right to have those concerns and request and heard fairly. However, the way the claimant approached those situations was wrong as he used threatening behaviour. In Mr Cornwell's view his leadership was being discredited adding an elevated level of workload and a high degree of stress and to some extent fear in him. Mr Cornwell strongly refuted the allegations of discrimination and victimisation. He said that to be consistently accused was highly upsetting and brought into disrepute his ethics and his abilities as a manager and a leader, abilities he took pride in and would ordinarily receive high praise for.

511. Finally, Ms Jones asked whether the claimant could report into any other part of the business. Mr Cornwell's view was that he could not. The accepted Group process was that all in-country employees should legally report into that country's management structure. That made sense from the perspective of those managers dealing with practice and process, taxation and local employment law. That applied to all IT members despite the fact that they reported on a matrix basis into OneIT. Mr Cornwell said it was unreasonable to expect any manager to be subjected to the behaviour and conduct displayed by the claimant. All three UK statutory directors had been subject to it either through direct line management (i.e. himself and Mr Coupe) or as part of a process (Mrs Deakin dealing with the claimant's grievance). As managing director Mr Cornell said he could not allow that to continue. There was the ongoing threat that the claimant would pursue another Tribunal claim at some point in the future when he disagreed with feedback or management instruction. Unfortunately, he said "the claimant was perceived as a troublemaker which was a difficult statement to share on a senior employee in the organisation."

512. We find that Mr Cornwell's evidence to Ms Jones accurately reflected his genuine view of the situation as at November 2021.

Mr Coupe's evidence to Ms Jones

513. Mr Coupe's outlined the background to the claimant's employment with the respondent and his Autism diagnosis. He said that his working relationship with the claimant was fine until the claimant raised his 2018 complaint about not being appointed as IT director. Mr Coupe said there was a tension point around money despite the claimant being highly paid. Mr Coupe said that he was "blissfully unaware" that the claimant had lost all trust and confidence in him, as the claimant had asserted in his 2018 Grievance. The claimant had never raised any issues with him.

514. Mr Coupe was upset by the claimant's allegations but was happy with the decision to move the claimant's line management to Mr Cornwell. He said managing the claimant had been challenging. Whenever an opinion was expressed, it would become an altercation for what should have been run-of-the-mill things. So long as there was agreement with the claimant there was no problem. Since the change of line management his contact with the claimant was minimal.

515. Ms Jones asked about examples of the impact of the claimant's approach.

516. Mr Coupe gave the November 2021 car repair issue as an example. He said the claimant's engagement with the insurers had been confrontational despite their request being a perfectly reasonable one given the number of claims made by the claimant. He quoted the claimant's emails of 3 and 4 November 2021. Mr Coupe commented that the claimant's response was defensive, confrontational and inappropriate. Ms Jones asked him to clarify that and Mr Coupe said he was clear that the comment about disqualification in the claimant's email was aimed at him as he was the only employee to lose his licence in the past. He said it was threatening and unnecessary and very unprofessional.

517. The second example was the tax code issue. He explained the background and quoted the claimant's email of 4 November 2021. Mr Coupe told Ms Jones that to insinuate that the respondent had purposefully been remiss in its statutory reporting and wilfully made errors was unfounded and inappropriate. Dealing with matters which should have been routine took an excessive amount of time. Mr Coupe estimated that it had taken him to 3-4 hours to deal with the car repair issue.

518. The third example was of the claimant not disclosing the type of cancer he had been diagnosed with to the respondent. Mr Coupe said he acknowledged the claimant's right to privacy and confidentiality. However, his unwillingness to positively engage around the diagnosis made it difficult for Mr Coupe, who needed to share details of long-term sickness absences with the respondent's benefits provider. Mr Coupe said he'd decided not to ask the claimant the specifics of his illness because he felt it was likely to result in a negative reaction similar to the car repair issue or the tax code issue. He had tried to satisfy the insurance company's questions without all the details.

519. Mr Coupe's view was that the claimant had been extremely supportive of the claimant with Mr Cornwell being one of the best managing directors he'd worked under when it came to supporting staff.

520. When asked whether he had had awareness training in understanding Autism, Mr Coupe said there had been no specific training but he had had access to the Aspiedent report which he found insightful. Its recommendations had helped him with how to communicate. However, he said the report did not provide advice or support in how to manage disagreeing with the claimant. That was the ultimate challenge. He explained that he had talked to Mr Cornwell about his responses to the car repair and tax code emails and had also run his drafts by external solicitors. He said he would not ordinarily do so but due to "the claimant's litigious approach" it "had to be done".

521. Ms Jones asked Mr Coupe what his approach was to dealing with challenging staff. He said he was seen as approachable and maintained an open door policy. He would usually assess situations to identify and understand the issues before acting. He said he had never had to manage such challenges in an employee as he had faced with the claimant. He said he was sympathetic to the claimant's diagnosis and did all he could to support him. However, it was extremely difficult and stressful "never knowing what would set [the claimant] off".

522. Ms Jones asked about his view on the working relationship going forward. She asked when the point was reached when the management of an individual was no longer proportionate. Mr Coupe's view was that a considerable amount of time and effort had been applied by the SMT in smoothing the waters and he felt that this was

unjustifiable and "to some extent ludicrous". He estimated it took up about 25% of Mr Al-Qasmi's time, which was distracting him away from other HR critical activities. He felt that the claimant that the support and accommodation provided to the claimant had gone beyond a reasonable point.

523. Mr Coupe's view that the claimant did not have any respect for the UK leadership team. His clear view was the relationship had broken down. Although he was sorry about that, he said that it was not possible to compromise with the claimant - it was "his way or the highway to a tribunal". The claimant had fallen out in essence with all 3 of the statutory directors and there was really nowhere else for him to report to unless he was moved to a different role level which would not make any business sense.

524. We find that Mr Coupe's evidence to Ms Jones accurately reflected his genuine view of the situation as at November 2021.

Mr Al-Qasmi's evidence to Ms Jones

525. Mr Al-Qasmi first summarised his role in the respondent and within the Group. Ms Jones then asked about the impact of the claimant's approach/communication on Mr Al-Qasmi's work. He explained that he had previously been successfully involved in global HR projects. However, in 2021 he had to step out of a global HR project halfway. He said that was "solely because of" the demands the claimant was placing on the UK HR function. He explained that when the claimant did not accept advice or decisions made by management it resulted in an "immense burden of additional HR work" which put a high degree of stress on Mr Al-Qasmi and his team (at that time 2 full time equivalent staff including Mr Al-Qasmi). He said that the fear of litigation meant that there was a disproportionate emphasis on ensuring that any correspondence with the claimant was correct. That involved regular dialogue with the external solicitor but also a significant amount of management time providing second opinions on decisions and on draft emails to the claimant from colleagues. He said no other employee in the organisation generated such effort and time commitment. He described the claimant's emails as "challenging and at times threatening".

526. Asked to quantify the time HR spent dealing with the claimant, Mr Al-Qasmi said he estimated that in 2021 the UK HR team had spent around 21.5 days supporting the claimant's grievance "for fear of a possible employment tribunal". Mr Al-Qasmi said he fully understood and accepted that the claimant was entitled to raise a grievance. However, the claimant would challenge any outcome which meant that Mr Al-Qasmi had to move other HR tasks and commitments giving priority to the claimant's case. There was a constant fear that the claimant might escalate matters further, with the claimant's approach to the respondent being "adversarial".

527. Asked for specific examples, Mr Al-Qasmi referred to the 2019 DSAR request. Mr Al-Qasmi said he felt the claimant's allegations that he was attempting to "victimise, intimidate resist or harass" him were "strong and unwarranted" given that he was just doing his job in line with employment law, advice received and procedure. Mr. Al-Qasmi explained that after that exchange he was no longer comfortable meeting the claimant on a one to one basis and so had asked Mr Cornwell to join their meeting.

528. Mr Al-Qasmi said he felt that at times the claimant took a disrespectful tone with him. That was something Mr Cornwell had commented on in relation to the claimant's

email about the 2018 Grievance (para 136). Mr Al-Qasmi said this caused him a lot of anxiety and led him to constantly second guessing himself to try and work out how the claimant would react to anything he wrote to him. Colleagues had approached him to make sure he was ok following communications from the claimant.

529. Mr Al-Qasmi said the e-mail of the 3 September affected and hurt him. Ms Jones asked him to explain why. He said it was wrong for the claimant to write to Ms Fuenfstueck whatever his rationale was given that the grievance appeal process had not been completed. Doing so had a significant impact, leading Mr Al-Qasmi to question himself and making him anxious about what Ms Fuenfstueck and senior colleagues in the Group HR would think of him.

530. He told Ms Jones that once a management decision had been made which the claimant disagreed with he would adopt a “threatening tone and show little respect to senior leaders of the organisation”. He said he also felt that the claimant would seek to use future line management decisions regarding him as ammunition to use against Mr Cornwell and the respondent.

531. Ms Jones asked how the respondent had managed the claimant’s disability and how the outcomes from the OH report process had been actioned. Mr Al-Qasmi explained how the Aspiedent report had come about, with the claimant rejecting other suggested providers and sourcing his own. He said that the respondent was open and prepared to engage further with Aspiedent based on the recommendations for training but the claimant had refused to engage further with Aspiedent. However, the report had still been helpful in understanding the claimant’s communication style, social interaction and in creating a better understanding of neurodiversity. Mr Al-Qasmi had discussed with the claimant how he could support him. He had adjusted his communication style with the claimant, using email as the primary means of communication and trying where possible to give advance notice of agenda items. He also confirmed that all staff had received equality and diversity training including unconscious bias training.

532. Ms Jones asked how the claimant was supported following his diagnosis. Mr Al Qasmi explained about the claimant’s unwillingness to share his diagnosis widely. That posed some challenges where the claimant’s engagement with colleagues was challenging but those on the receiving end were unaware of the potential impact of his Autism on his communication. While acknowledging that the claimant's privacy was very important, Mr Al-Qasmi said that if he had chosen to be more open and transparent about his diagnosis that might have aided greater support and understanding.

533. Ms Jones asked about the approach to managing the claimant’s request to be appointed as IT director. Mr Al-Qasmi confirmed that was an ongoing issue but that there was no such role. He discussed the challenges the respondent had faced in negotiating the claimant’s transition into OneIT in 2019. He said they had eventually to explain to the claimant that if he did not accept that role then he would potentially be redundant. Mr Al-Qasmi acknowledged it was fair enough for the claimant to take time to decide what role would be right for him but his approach in constantly challenging and delaying matters affected other UK IT colleagues. Mr Al-Qasmi quoted the claimant’s e-mail of 26 June 2019 where the claimant referred to a “perceived heavy-handed move to get me away from UK responsibilities” and said that if that

approach continued it would amount to victimisation or discrimination. Mr Al-Qasmi said that it had somewhat become the norm for the claimant to adopt a threatening attitude until he got what he wanted, causing significant and unnecessary stress to those that had to deal with it.

534. Asked for examples of support or adjustments for the claimant, Mr Al-Qasmi referred to the regular meetings with Mr Bose following the claimant's move into OneIT to make sure that the claimant was appropriately supported. Mr Al-Qasmi explained those meetings were cancelled at the claimant's request because he felt they were no longer required and he felt no further adaptations were needed. When it came to adaptations he had made personally, Mr Al-Qasmi said he did adapt his approach when dealing with the claimant. He had dealt with many challenging employees during his career, but the claimant's did not have the ability to understand the impact of his actions and communication style on others.

535. Ms Jones asked how Mr Al-Qasmi saw the relationship going forward. He said he felt the working relationship had broken down with the UK leadership team particularly following the 3 September e-mail. Regardless of the claimant's role in OneIT, he was still an UK employee and it was of paramount importance that the person filling the role of UK IT manager had a good working relationship with the UK SMT and be able to effectively engage with them. That required mutual respect and "not working under fear of threats of discrimination, victimisation and potential litigation resulting in an employment tribunal". Mr. Al-Qasmi suggested that it seemed the claimant also felt the relationship had broken down. He said that in the 2021 claim form (case 2411199/2021) at paragraph 14 the claimant had said that there "was a lack of trust on his part with regards to Mr Cornwell conducting the pay review fairly or at all due to his experience with the bonus payment in 2020."

536. We find that Mr Al-Qasmi's evidence to Ms Jones accurately reflected his genuine view of the situation as at November 2021.

Mrs Deakin's evidence to Ms Jones

537. Mrs Deakin's evidence was that the claimant did not respond well to feedback or being challenged. She gave as an example the incident with the external GDPR consultant (para 302). That was one of her first interactions with the claimant after joining the business. She was not aware of his Autism diagnosis. Mrs Deakin explained that she had expressed how uncomfortable she felt that the claimant was working whilst in a meeting. She felt it was rude and disrespectful. She said that his response was along the lines of "do you not realise how important I am in the business and that I have work to do". She said she had reported the conversation to HR. She also gave the example of miscommunication over IT project deadlines. When the claimant was challenged, he got annoyed.

538. Ms Jones asked for examples of how the claimant had responded to Mrs Deakin and the impact on her. She gave as an example the claimant's challenge to her impartiality in dealing with the 2021 Grievance. He had raised no issue in advance but had commented during the meeting and then raised her previous working relationship with Mr Cornwell in his grievance appeal. She also referred to the exchanges she had had with the claimant about contacting Mr Bose and Mr Fattah during the investigation. She said she felt that the claimant had put every obstacle in her way to prevent her from investigating that part of his grievance. In her view, it highlighted that the claimant

took an “unnecessarily defensive and challenging if somewhat threatening approach” to matters. She suggested a reasoned response would have been to say that the claimant would check whether it was OK with those individuals for them to be contacted. Mrs Deakin said the impact of the claimant’s approach was quite profound and it made her feel very uncomfortable. She said she had momentarily considered raising a grievance against him but didn't as it would be seen as “tit for tat”.

539. When asked whether the claimant’s conduct had affected her conclusions on the grievance, Mrs Deakin she said there was a trepidation in the conclusions because of the claimant’s potential reaction. She said that she had made sure that everything was looked at and uncovered before reaching the decision. The external solicitor reviewed the decision letter to make sure it was sufficiently robust which she felt should be unnecessary for a normal internal HR process.

540. Mrs Deakin confirmed she had not received specific training about Autism but had undergone the respondent’s equality and diversity and unconscious bias training.

541. Mrs Deakin confirmed she had little involvement with claimant. She had not, for example, sent an e-mail to the claimant on his return to work because she was scared of his reaction. Asked about her view of the working relationship going forward, Mrs Deakin said that she was clear the respondent had been far too tolerant. As an example, the claimant had not set up an out of office while on his period of sick leave. That would normally be followed up with the individual but engagement with the claimant in this case was avoided for fear of how he would react and to avoid “riling him”. That was not the way to manage employees and the his approach prevented effective management and leadership.

542. Mrs Deakin felt that the claimant’s working relationship had broken down with everyone and she couldn't see him reporting to anyone else following the recent grievance against Mr Cornwell. She confirmed that the that she would not be happy with the claimant reporting to her, and she felt that it was unlikely the claimant would want to report to her.

543. Asked for any final comments, Mrs Deakin said that the claimant’s disability didn't excuse his behaviour and he made it exceptionally hard to communicate with him. The fact that he did not want colleagues to know about him being an autistic person did cause issues and prevented open communication with him. She referred to the significant personal impact and extra work the claimant created. She said that she was “completely astounded” in how the claimant made something out of nothing. Despite sharing with the management team that he preferred to communicate by e-mail and that he reflected before responding this was not the case from what she saw. She said that what he did and what he said didn't feel as if it added up.

544. Mrs Deakin concluded by saying that the claimant's conduct and approach had a huge impact on her fellow directors. Mr Coupe was a balanced and caring person and she saw that the claimant had caused upset and frustration for him which was not in his nature. Mr Al-Qasmi felt that the claimant’s approach to him was a professional slur whereas she felt that Mr Al-Qasmi was a total professional. She said that Mr Cornwell felt helpless and was constantly questioning himself. From a personal perspective, she said, the business had suffered in that new people in her team had not had the time commitment from her because she had been so distracted when dealing with the 2021 grievance and supporting her fellow directors.

545. We find that Mrs Deakin's evidence to Ms Jones accurately reflected her genuine view of the situation as at November 2021.

The continuation of the investigation process and the claimant's involvement in it

546. Following the interviews Ms Johnson continued to liaise with Ms Jones. She forwarded relevant emails and documents sent to her by Mr Coupe and Mr Al-Qasmi after their interviews. They included the emails relating to the car repair, tax and benefits issues which Mr Coupe had referred to in his interview. Ms Jones had already been provided with the Aspiedent report. We accept her evidence that she took it into account in terms of the adjustments that were proposed in it and in considering what the respondent had done to consider and implement them.

547. On 12 November 2021 Ms Johnson wrote to the claimant. Both Ms Jones and the respondent's external solicitor had provided input into the letter. Her letter acknowledged the claimant's fit note of 10 November. She explained that Ms Jones would like to have the claimant's comments on her investigation report. That was so that she could consider his feedback when making her findings and recommendations. Ms Johnson said she appreciated the claimant was signed off work for 4 weeks. However, she acknowledged it may be a stressful time for the claimant and in order not to unnecessarily delay the investigation she proposed 2 options which she asked the claimant to consider. The first was to arrange a remote meeting between the claimant and Ms Jones on either the 23 or 24 November. It was anticipated the call would take up to one hour. The second was for Ms Jones to provide the claimant with some general questions in writing to which he could respond in writing. Ms Johnson confirmed that prior to either of the options Ms Jones would share her preliminary report with the claimant. She asked him to confirm his preferred option by Friday 19 November 2021.

548. On 17 November 2021 the claimant responded to say he did not feel well enough to be able to fully process the investigation, ask questions and represent himself fairly. He said that the combined effect of Autism and cancer on his communications "should be assessed if they have unintentionally found fault with others". He said that needed to be done on his return to work before any investigation took place and as a separate exercise relating to reasonable adaptations. He attached a "to whom it may concern" GP letter which confirmed that the claimant was off work because of his cancer. He was also "suffering significant stress following his cancer treatment made worse by his Autistic Spectrum diagnosis" and that had required him to start on anti-depressants. The GP said that the claimant had informed them that he was not in a strong enough psychological state to take part in the investigation. The GP asked the respondent to respect that and hoped the claimant would be stronger in due course..

549. Ms Johnson responded the following day. Her letter said the respondent was somewhat confused that the claimant was unfit for work. That was because he had returned to work on 8 November 2021 and said that he was fully fit to do so. The respondent's understanding was that the claimant had fully recovered from his surgery, She stressed the importance of the claimant taking part in Ms Jones's investigation. To facilitate that, she explained the respondent was exercising its right in the claimant's employment contract to refer him for an OH examination. The purpose of the OH appointment was:

> **"to confirm the reason for your absence and to ascertain if you will be fit to return to work when your current Statement of Fitness to Work expires on 8 December 2021. We will also seek to establish if, at that time you will be fit enough to participate in the investigation either by attending a meeting by MS Teams or by providing written representations and if not, when you are likely to be fit enough. Finally, we will seek to establish whether you are fit enough to take part in any further meetings. This will obviously be subject to the findings and recommendations detailed in the final investigation report."**

550. On 23 November, Ms Johnson wrote to confirm the OH appointment would be a telephone appointment on the claimant's work mobile. It was due to take place with Dr Gupta of Medigold at 9 a.m. on 7 December 2021.

551. The management OH referral (pp.823-826) asked for answers to a list of questions which included confirmation of the claimant's treatment plan and prognosis, when he was expected to return to work and what adjustments were needed to facilitate that. It asked about his ability to attend a formal HR hearing, either by MS Teams or in writing and what adjustments might be needed to facilitate that. We find the questions were relatively standard questions which an employer would ask in these circumstances. The exception was question 4:

> **4. Why did Mr Turner confirm he was fit for work on 08.11.21 in his return to work meeting and then say he was unfit for work on 10.11.21?**

552. Although we accept the claimant's evidence that he was in principle open to the idea of an OH assessment we also find that the claimant was only happy to undergo such an assessment on his own terms. In particular, he had to be satisfied that that the person carrying it out had what the claimant deemed to be sufficient understanding of Autism. That is apparent from the letters he sent to Medigold on 1 December.

553. On that date, the claimant sent 2 letters to Medigold. Both were marked "Strictly private and confidential" and specified that they were not to be shared with any third party or the claimant's employer.

554. The first letter authorised the claimant's wife to correspond with Medigold on his behalf to try and keep his stress to a minimum. He included email addresses for the claimant and his wife but said there was no consent to use them to book or facilitate an OH appointment "if I agree and there is a suitable specialist". Any appointment details were to be sent by post.

555. The second letter was from the claimant's wife. The letter summarised the claimant's current situation. It said the claimant had not had any direct contact with Medigold about the upcoming appointment and it had not been discussed or agreed with him. It said the claimant had been signed off until mid-January 2022 and would not be in a fit state to engage with the investigation at that time. In addition to stressing the need for the claimant to be in a good mental state to deal with the investigation the letter said that he would need to "cross check if the actual instigation of the investigation is not unlawful victimisation or discrimination for exercising protected acts. This is a formidable task against the seemingly pressured approach of his employer since his cancer diagnosis and one the claimant could not

rise to at this time because of his very low stress threshold". In those circumstances the letter suggested that any occupational health assessment "incorrectly carried out by an under qualified and untrained practitioner" thereby "misinforming my husband's employer" may have severe consequences on the claimant's future health career. It said that "this would leave both his employer and [Medigold] open to legal challenge with regards to the Equality Act 2010 and negligence due to his dual disabilities of cancer and Autism".

556. The letter then set out in specific, prescriptive terms the steps which Medigold was required to take to satisfy the claimant that it had the necessary expertise to carry out the proposed OH Assessment. It asked for specific details of Dr Gupta's qualifications and experience and proof of the same. That included relevant experience with Autism "especially high functioning Autism, the complexities of such in professional role and psychological interactions with stress. The experience with psychological effects of cancer and life threatening conditions." The letter required "direct written confirmation from the doctor that they're qualified to carry out the specialist assessment and why". If that information was provided "the claimant will consider Dr Gupta's suitability to assess him at a future date. We will also reach out on requested adaptations for the assessment".

557. If Dr Gupta was not a specialist and there were no other suitable practitioners at Medigold the claimant suggested that Medigold contact the respondent to inform it that they couldn't offer the expertise. The letter reiterated that the claimant did not consent to sharing any information with the respondent unless he had approved doing so specifically in writing and warned that at some future point the claimant might issue a DSAR to Medigold to review all personal information and correspondence regarding him including the referral.

558. On 1 December 2021 the claimant's GP provided a further fit note which signed him off work until the 16th of January 2022. The reasons given were "Squamous cell carcinoma of tongue, autistic spectrum disorder, anxiety". The claimant's wife sent that to Ms Johnson on 4 December 2021. It was sent with a letter from the claimant authorising Mrs Turner to communicate with the respondent on his behalf and a second, longer, letter setting out the claimant's position.

559. In summary, that was that:

- The claimant was not well enough to take part in the investigation or return to work. He had tried to return to work on 8 November 2021 but after 2 days of increasing anxiety and lack of sleep had taken medical advice and was signed off again.

- A major cause of the claimant's stress was his being "ambushed" by being told about the investigation at the return to work meeting. There was no mention of the investigation prior to the meeting. As an autistic person the claimant should have been given time to prepare for discussion of the investigation rather than having it sprung on him.

- The claimant believed that "a truly consultative, ethical and adequately qualified approach" to an OH health assessment would be beneficial to all but he

expected to be fully consulted before any such referral in advance, and subject to his explicit approval and consent.

- The claimant had asked for but not received confirmation from Medigold that Dr Gupta had the specialisms in Autism, cancer and resultant psychological factors which the claimant deemed necessary to carry out an OH Assessment. As a result, the OH appointment on 7 December should be cancelled.

- Medigold had been asked to demonstrate Dr Gupta's specialism to "avoid the possibility of negligence and discrimination". If a specialist was identified the claimant would then request some adaptations in line with the Equality Act 2010. The correspondence with Medigold was confidential (so was not shared with the respondent).

- The respondent's approach of continuing with the process during his ill- health was a "pressurised approach" rather than the caring approach to be expected towards a long-serving employee.

- Although the claimant was open to an OH approach that was not because of anything in a signed contract in 2006. The letter said "that contract was signed by my husband in difficult circumstances for him with little choice at the time, and is itself subject to English law, advances in legislation, for example GDPR and consent, Equality act 2010 and developments in case law in the 15 years since."

560. Sarah Colwill ("Ms Colwill") from Medigold responded to Mrs Turner on 7 December. She explained that since the claimant was saying he did not consent to the OH appointment it could not proceed. She would need to contact the respondent to explain that was the position. She stressed that the OH clinician's role was to provide advice where appropriate to enable a safe and timely return to work including on functional capability to perform a role. In contrast, the referral in 2017 required an Occupational Psychologist trained in neurodiversity so the advice given by Ms Packer in 2017 that Medigold did not have the required specialist was correct. She confirmed that although they did not necessarily have specialists in Autism, Medigold's OH physicians were experienced in advising employers on the support required for employees including autistic employees. She said she was confident that Medigold's OH Consultants would be able to offer a holistic approach to the claimant's health conditions and the impact on his work. If and when the claimant was happy to proceed Medigold would select one of their directly employed physicians with sufficiently broad experience in the various conditions the claimant had. Medigold suggested a double appointment length to allow for a full and thorough consultation.

Events leading up to the draft report

561. Between 9-13 December Ms Johnson and Mr Al-Qasmi chased Medigold for a new OH appointment date. We find Mr Al-Qasmi was involved because Ms Johnson was on leave for part of the time. On 13 December he asked for a new date and further details of the OH physician being suitably qualified. He said the appointment "needed to take place in the next 5 days". (We find it is not clear why). On 14 December Medigold's Director of Client services responded to explain that they could not provide an appointment date because they did not have the claimant's informed consent.

562. On 14 December Medigold confirmed that Dr Rooms was available to carry out the OH assessment either on 16 or 22 December. Mr Al-Qasmi suggested 22 December because 16 December would be too short notice. He asked for confirmation that Dr Rooms was suitably qualified. Medigold replied the same day to confirm that while its OH Consultants did not have a specific qualification in the various health conditions mentioned, Dr Rooms has vast experience in providing an holistic approach where multiple conditions were referred. It said he had experience of the conditions mentioned and was very familiar in advising organisations on the necessary support employers may need to consider when supporting and managing individuals with those conditions in the workplace. Medigold also confirmed that Dr Rooms was one of its senior OH Physicians.

563. We find that Mr Al-Qasmi was involved in liaising with Ms Jones. He and Ms Jones had a catch up call on 15 December 2021 (p.855). Ms Jones was keen to ensure that the investigation be concluded in a reasonable timeframe. She proposed that to move the investigation on, the claimant would be sent Ms Jones's draft report (but without the appendices which included the supporting evidential documents which would be shared with the final report). She proposed that the claimant be given until 24 December to respond to written questions. Ms Jones sent a draft of her letter with questions to the claimant to Ms Johnson on 15 December. Ms Johnson did not at that point send the letter out because she had written that day to the claimant about the rearranged OH appointment on 22 December. She confirmed to Ms Jones she would let her know the response to that invitation and send Ms Jones's letter to the claimant once she had the response.

564. Ms Johnson's letter to Mrs Turner on 15 December confirmed a telephone OH assessment on 22 December 2021. Ms Johnson explained that having considered the points made in Mrs Turner's letter of the 4 December she did not accept that a specialist in Autism, cancer and resulting psychological factors in a senior role was required in this case. That was because what the respondent was seeking was a report from an OH specialist in order to understand the claimant's fitness to take part in the investigation process. By way of reassurance, she set out the information Medigold had provided about Dr Rooms's experience. She explained that once the OH appointment had taken place and depending on the resulting report, the claimant would be given an opportunity to meet with Ms Jones to comment on the investigation report. Alternatively, as a further adaptation the claimant could provide written representations. The letter made clear that if the claimant did not attend the OH appointment the respondent would have to decide how to progress the investigation report and any follow up meetings without the benefits of OH input. It therefore strongly encouraged the claimant to attend the OH appointment. (p.858).

565. It appears from subsequent correspondence that the letter was not received by the claimant or his wife because there was no one in to sign for it when it was delivered. It had not been collected when Mrs Turner wrote her next letter to Medigold so she was not aware of the appointment.

566. Mrs Turner wrote on 19 December to Ms Colwill in response to Medigold's letter of 7 December. In summary, Mrs Turner:

- repeated the demand for specific evidence that whichever practitioner carried out the OH assessment had the specialism in Autism the claimant required.

- said the claimant queried the reference to a "holistic" approach with some concern stressing that any approach must be "robust", constitute a nationally recognisable and defined occupational health assessment and stand up to expert scrutiny.

- queried the distinction drawn between the current assessment and that made in 2017 and the suggestion that it required more expertise because it was a diagnosis. Mrs Turner pointed out (correctly we find) that the claimant had already been diagnosed when Medigold was approached. As a result, Mrs Turner said the claimant was concerned about what had been communicated previously by the respondent and to obtain transparency he asked for the referrals made by the respondent in 2017 and in 2021 together with any supplementary information.

- said that while she realised that Medigold medical was trying to provide suitable services in good faith to an ethical standard if it could not or would not demonstrate the specialism required it should avoid unnecessary delay by telling the claimant and the respondent so. They could then agree on an alternative appropriate provider.

- asked that no assessment invites be sent to the claimant until it was clear that his consent had been gained as that would be considered "unnecessary disturbance of his recovery".

567. We find that although the tone of the letter was more conciliatory than the letter of the 1 December 2021, the substance of the demands made of Medigold remained the same.

568. On 20 December, Medigold's Client Relationship Manager contacted Ms Johnson to recommend the OH appointment be cancelled. In the follow up email Medigold explained that was because it had been in discussions with the claimant and his wife about the need for the assessment to be carried out by an OH clinician with Autism specialism. That was not something Medigold could facilitate across its clinical team.

569. Rather than delay the investigation process further waiting for the OH Assessment issue to be resolved, the respondent decided to adopt Ms Jones's proposed approach of sending the claimant her draft report and asking for his written comments. On 22 December Ms Johnson sent him the draft report without appendices. Noting that the claimant had refused to consent to the OH assessment she explained in her covering letter that a decision had had to be made as to how to progress the investigation without the benefit of OH input. Ms Jones was keen to get the claimant's input but due to the reason for his absence did not feel that a meeting was the appropriate way to do that. Instead, she had decided that the claimant should be given the opportunity to provide his comments in writing. Ms Johnson confirmed that the respondent agreed with Ms Jones's approach.

570. The letter asked the claimant to review the report and provide his views and comments. It also asked for his response to specific questions:

> **"• Why did you decide to email Britta Fuenfstueck whilst the grievance appeal process was still taking place?**
>
> **• What outcome did you expect from Britta?**
>
> **• Can you provide a summary of how you see the relationship between you and the senior leadership team now and going forward?**
>
> **• In reflecting on the report, are you able to share your thoughts and views on the impact caused by your correspondence and approach particularly towards Richard and Abid (as they are the ones you name in your email to Britta)?"**

571. The claimant was given until the 3rd of January 2022 to provide his comments. The letter confirmed that If the respondent did not hear back by then Ms Jones might choose to finalise her report without the claimant's input. Ms Johnson confirmed that depending on the outcome of the report the potential next step was for the claimant to be invited to a hearing to consider the report and its findings and recommendations.

The Draft Report and the claimant's response to it

The draft report

572. Ms Jones's 7 page draft report was clearly structured and, we find, accurately reported the evidence from her investigation interviews. She included, for example, Mr Cornwell's positive evidence about the claimant being "delightful" when engaged and happy in his work (para 16).at She identified the purpose of the investigation as being to look into whether the relationship between the claimant and the respondent's 3 statutory directors and Mr Al-Qasmi had irretrievably broken down. She referred to Mr Cornwell having formally logged a grievance as a result of the 3 September 2021 email because it undermined the ongoing grievance appeal process and the senior management team.

573. Ms Jones made it clear in her report that the conclusions in her draft were provisional. However, in places she expressed what appear to be concluded views, e.g. that Mr Cornwell's grievance "was upheld". Ms Jones made clear that the aim was to share it with the claimant and seek his views so that his views could be taken on board before the final recommendations or actions were finalised.

574. Ms Jones set out her overall conclusion in an executive summary:

> **"My conclusion is that the working relationship between [the claimant] and the statutory board has broken down irretrievably. [the claimant's] approach and conduct towards decisions and reasonable challenges of his work or actions is not in my view acceptable . His personal conduct towards others has caused stress and significant impact on the individuals concerned. There is acknowledgement and clear support of his disability, which I have found to be considerable amongst the directors and [Mr Al-Qasmi]. I would also expect greater respect**

and professionalism from [the claimant] in his dealings with colleagues, managers and the organisation as a whole."

575. Ms Jones confirmed that she had worked with colleagues with Autism and so had some knowledge and understanding in how to engage and adapt her own style and approach as necessary. She acknowledged that was important. Everybody was different and a single approach would not work with everyone.

576. Ms Jones set out her conclusions at paragraphs 29-34 of the draft. In summary:

- All 4 interviewees had provided a significant amount of support to the claimant. Ms Jones's view they had gone beyond what was reasonable.

- All 4 had been supportive of the claimant's diagnosis. The only frustration was his reluctance to share his diagnosis more widely. That was the claimant's right but meant that there were limits on what could be done to enable colleagues unaware of it to better understand how to work with him.

- Each time an issue was raised by the claimant, time was taken to understand what the issue was, identify the underlying concerns and navigate carefully through difficulties to get a resolution. Significant time was spent in pondering over communications to the claimant to make sure it was received correctly.

- Resolution of some of the issues compromised business decisions. The need to prevent and limit the claimant's threats to raise grievances, go to ACAS or raise Tribunal claims had resulted in senior leaders "giving in" to the claimant, compromising their own judgement and decision making. All recognised the rights of employees to disagree with decisions being taken but in the claimant's case it was "the tone and approach that had become increasingly difficult".

- The respondent had attempted to create a positive working environment by arranging for the workplace assessment by Aspiedent. The fact the claimant didn't engage with the recommendations was disappointing.

- There was sufficient evidence that's the working relationships had broken down. The claimant's conduct and behaviour throughout the examples given indicating a lack of respect and trust. His conduct had also had a significant personal and professionally impact, causing stress and compromising the senior leaders' ability to carry out the work they were employed to do.

- Corresponding directly with Ms Fuenfstueck during an ongoing process indicated the claimant did not place any value in the employment process he had started. He had issues with Mr Coupe and Mr Cornwell and had also questioned the credibility and approach of Mrs Deakin and Mr Al-Qasmi. The respondent's statutory management structure and level of the claimant's role in the business meant there was no one else he could now report into. Mr Al-Qasmi's evidence was clear that the claimant needed to have a good working relationship within the UK team and Ms Jones's view was the claimant had damaged those relationships.

577. In her report, Ms Jones referred to the examples of challenges cited by the interviewees. That included the recent car repair and tax code issues with Mr Coupe, the 2018 and 2019 bonus issues, transition to One IT and the email exchange with Mr Cornwell on 24 September 2021. The report said it was apparent from all 4 interviewees that the claimant would "become aggressive in both tone, language and approach when presented with any feedback or challenge that he did not like". Ms Jones referred to the claimant's response to the car repair issue as "somewhat confrontational". Mr Cornwell was recorded as referring to the claimant's "aggressive style (in the context of his response to Mr Cornwell's 24 September email). Mrs Deakin was reported as referring to the claimant's response to her challenge to him about the GDPR meeting as "confrontational".
578. We find those provisional conclusions (including her overall conclusion) were reasonable conclusions for Ms Jones to draw based on the evidence before her at that point.

579. In light of her conclusions, Ms Jones's draft said she upheld Mr Cornwell's grievance. She stressed the need for the claimant to provide his view on the report. However, unless there was substantial evidence to counter the evidence shared, Ms Jones could not see how the relationship could be repaired. She did not believe any action such as mediation would assist either party. She recommended that consideration be given to ending the employment relationship. To do that the claimant must be invited to a meeting where dismissal on the basis of some other substantial reason could be a potential outcome. At that meeting the claimant would have the opportunity to make representations before a final decision was made.

The claimant's response

580. Mrs Turner responded in writing on 31 December 2021 (p.876). It was sent by post only. Mrs Turner explained that that was by way of an "adaptation" to avoid stress and "emotional communications in a compromised state". The letter was said to be in the spirit of helping the respondent to "avoid potential unlawful activity based on incorrect advice, misinformation or misunderstanding" and confirmed the claimant desired the best working relationship possible. She referred to the claimant's emails on 8 and 9 November 2021 in which he had explained the context for the 3 September email and proposed mediation. She confirmed the claimant's continued openness to an OH assessment. She said that she was in dialogue with Medigold to seek to facilitate such an assessment by a suitably qualified medical practitioner (a reference, we find, to her letter of 19 December 2021 to Medigold).

581. Mrs Turner explained the claimant was not fit enough to engage with the investigation but noted that the timeline covered by the investigation had "spiralled beyond" that referred to in Mr Al Qasmi's letter of 8 November 2021. She stressed the impact of the claimant's Autism on his behaviour and denied that he rejected the Aspiedent report (only disagreed with some sections). He pointed out that his OneIT role meant there was limited day to day contact with the UK SMT and that meant there was limited ability to compensate and create understanding within the UK management team.

582. Mrs Turner summarised the claimant's position as being that he had sent an email while he had cancer which unintentionally offended his line manager. He understood there would need to be a discussion on his return to work but could not

understand the justification for the events that were happening. She set out the devastating impact on the claimant and his family were he to be dismissed. She said that every advice she had received so far indicated that dismissal was not the right course of action given the circumstances and the constructive attitude of the claimant toward greater understanding. She made it clear that a dismissal would result in a Tribunal claim and implored the respondent to think carefully and act with compassion and understanding.

Events in January 2022 - the final report, hearing and ongoing attempt to set up an OH Assessment

583. Because Mrs Turner's letter was sent by post only it was not received by the 3 January deadline. On 4 January 2022 Ms Johnson wrote to the claimant extending the deadline for comments to the 7 January. She stressed again that if no response was received Ms Jones may decide to finalise her report without the claimant's input. She sent the letter by post addressed to the claimant with a covering letter to Mrs Turner asking her to pass it on. She also emailed it to the claimant's work email.

584. Ms Johnson had received Mrs Turner's letter by the 6 January 2022. We find she was confused by the reference to there being an ongoing dialogue with Medigold. She had understood from the e-mail on the 20 December 2021 that Medigold could not facilitate the proposed occupational health assessment.

585. Ms Johnson spoke to Ms Colwill at Medigold on the 6 January. She confirmed that having shared the referral with Medigold's Medical Director and Chief Medical Officer, Doctor Williams, he was comfortable that one of their senior consultants (Dr Rooms) would be happy to undertake the referral. Ms Colwill confirmed she would e-mail Mrs Turner on the 7 January 2022 to confirm that was the case.

586. On 11 January, Mrs Turner sent Ms Johnson a fit note signing the claimant off work for a further 7 weeks from that date because of "Squamous cell carcinoma of tongue. Autistic spectrum disorder. Anxiety."

Finalising the Report

587. Ms Jones worked with Ms Johnson to finalise her report. Ms Johnson sent her the emails on the 8th and 9th of November referred to in Mrs Turner's letter of the 31st of December. The final report was dated 13 January 2022.

588. Ms Jones added an addendum to her report at paragraphs 38-43. In that section she considered the points made in Mrs Turner's letter of 31 December. In summary, she concluded that:

- On the suggestion that the scope of the investigation had "spiralled", the investigation was to consider the working relationship which meant that events leading up to the 3 September 2021 e-mail had been considered

- On the suggestion that the claimant was not fit to engage and was therefore unable to feedback on the report's legitimacy, validity or accuracy: options had been given to the claimant to enable him to engage with the process. In

addition, correspondence was still ongoing with Medigold regarding an OH appointment with Dr Rooms

- The fact that the claimant's disability affected the claimant's communication style and that that could be exacerbated by stress and anxiety was something which had been recognised, understood and actively supported by the leadership team.

- The claimant suggestion that although he did not agree with all parts of the Aspiedent report he did not reject it was not easy to square that with the evidence about the claimant's engagement with Aspiedent. That indicated the claimant did not agree with report's outcome and did not wish to engage in the recommendations made.

- The limited nature of the claimant's contact with the UK management team was not something which could be given significant weight. Even allowing for the matrix management arrangement the claimant still had regular engagement with the UK leadership team.

- On the claimant suggestion that he was 100% committed to a good working relationship and offered mediation: that offer was made in the context of an e-mail where the claimant had made a tribunal claim, accused Mr Cornwell of using inappropriate routes to deal with the issue and of carrying out an illegal act in considering dismissing him. Ms Jones's view was that did not illustrate a conciliatory and positive approach to potential mediation or resolution.

589. Having taken into account the claimant's response Ms Jones confirmed that her view that the working relationship had broken down and that it was not retrievable. Her finding remained the same as in the draft report, i.e. that the grievance by Mr Cornwell was upheld and that a meeting should be held to consider whether the claimant should be dismissed on the basis of SOSR.

590. The final report included 49 appendices. They included copies of the claimant's 2018 and 2021 Tribunal claims and responses, email exchanges relevant to the examples discussed in the investigation interviews and report and the correspondence about the investigation emails in November and December 2021. The email exchanges relating to the Aspiedent report were also included.

The hearing invite and response

591. Ms Johnson wrote to the claimant on 13 January 2022 to invite him to a hearing on 26 January 2022 to be chaired by Mr Marquard. She explained that in the absence of comments on the report by the extended deadline of the 7 January 2025 a decision had been made to finalise the investigation report. She explained that at the hearing Ms Jones would present the report findings and recommendations. The claimant would then have an opportunity to respond. She enclosed a copy of the report, witness statements/interview notes and the appendices to the report.

592. The letter proposed 3 "options and adaptations" to enable the claimant to participate in the hearing. They were (i) that the claimant attend via MS Teams with a workplace colleague or trade union representative as his companion (ii) that he

attend the hearing via MS Teams with Mrs Turner as his companion (iii) that the claimant provide written representations to Mr Marquard prior to the meeting for his consideration. The letter made clear that the respondent would consider any other suggestions the claimant wished to make.

593. Ms Johnson noted that the claimant had so far refused the respondents request to engage with the senior physician appointed by Medigold to carry out an OH assessment. She confirmed the purpose of the assessment would be to provide the respondent with advice on the claimant's capability to participate in the hearing and to suggest any adjustments that should be made to support that participation. She encouraged the claimant to reconsider his refusal.

594. The letter confirmed that if the claimant was prepared to agree to attend an appointment with Medigold the respondent would postpone the hearing until it had considered the resulting OH report. Ms Johnson asked the claimant to confirm by 18 January 2022 if he agreed to attend an OH assessment. If he did not do so then she asked him to confirm by the 19 January which of the 3 options proposed he would prefer.

595. The letter warned the claimant that if he did not respond to the letter, failed to provide written representations or attend the hearing it might go ahead in his absence. It also confirmed that due to the nature of the allegations the hearing could result in the claimant's dismissal on the grounds of some other substantial reason.

596. On the 18 January 2022 Ms Johnson wrote to the claimant to notify him that his entitlement to company sick pay would no longer be payable from 4 March 2022. She explained he may be entitled to payments under the Group Income Protection scheme and sent him the relevant claim form to complete (pp.906-913).

597. The claimant responded to the invitation letter on 19 January 2022. In a letter received by Ms Johnson on the 20 January he explained that he was overwhelmed by the paperwork sent to him and not currently in a fit state to process and respond to it. He said he would be able to do so given time after his health had recovered. He also informed Ms Johnson that he and his wife had received news that their son had passed away the previous week. He asked for compassion and explained there would be a at least a two week delay before he could correspond again. That was to give him time to deal with family circumstances and to try and take the rest he'd been advised to take.

598. In his letter, the claimant expressed the view that the proportionate way to proceed would be to explore the influence of his disabilities on the 3 September 2021 e-mail stressing that it was sent while he was ill with cancer and immediately before his operation. He proposed that where his previous communications had been “misinterpreted or incorrectly ascribed a malicious intent by others” they could be explained in context both by himself and medical expert if required.

599. The claimant confirmed he remained open to a telephone assessment by a senior OH practitioner who could demonstrate in advance their expertise in Autism. He asked Ms Johnson to prompt Ms Colwill at Medigold to respond to his wife's letter of 19 December.

600. The claimant suggested it was not too late to step back from what would be "an unfair outcome" and that with "education, medical expertise and dialogue, it is possible for my colleagues and I to understand each other better in trust and confidence". He suggested that his ongoing medication would also serve a role in future by hopefully lowing his lowering his stress levels which might assist in his communications. He stressed the impact on his family if he were dismissed and said that given the many other options available and his constructive attitude it would effectively be a dismissal because he was ill and disabled or had carried out protected act linked to those disabilities. He asked respondent to find "another reasonable way".

Postponement of the hearing and attempts to arrange the OH appointment

601. Having taken legal advice, Ms Johnson proposed to Mr Marquard that the hearing be postponed to the end of February. That was to enable an OH appointment with an independent doctor to take place in the first week of February with the report to be prepared by mid-February. She suggested the hearing would ideally take place in the week of the 21 February 2022. Mr Marquard agreed.

602. Ms Johnson then got back in touch with Ms Colwill at Medigold confirming the claimant had agreed to an OH appointment and asking her to set it up. She explained that due to the claimant's personal circumstances that could not take place before 31 January but asked that it take place by 4 February. She noted that the claimant was still saying he wanted the practitioner to demonstrate their expertise in Autism but explained that the respondent would like to give him one final opportunity to attend a Medigold OH appointment.

603. Ms Colwill proposed a 90 minute telephone consultation with Dr Rooms on 1 or 8 of February. Ms Johnson asked that both slots be held. On 21 January she emailed the claimant and Mrs Turner to confirm the telephone appointment with Dr Rooms on 1 February. She said she understood the claimant was now happy to progress with the offer of an appointment and asked for various details so that copies of the referral documents could be sent to the claimant as previously requested.

604. On 25 January 2022 Ms Johnson wrote to the claimant in response to his letter of the 19 January. We find she had not received it when she wrote on 21 January. She expressed her sincere condolences on the death of his son. She confirmed the hearing on 26 January would be postponed and noted the 2-week delay for any further response requested by the claimant. She confirmed that because the claimant said in his letter that he was open to attending an OH appointment one had been set up for the 1 February with Dr Rooms. Given it was a difficult time for the claimant she confirmed she had also asked Medigold to also hold 8 February as an alternative appointment date. She asked the claimant to confirm as soon as possible which of those dates he would prefer. She checked that the claimant had no objection to Dr Rooms being sent the Aspiedent report. She confirmed she would send it to Medigold unless she heard to the contrary from the claimant by the end of the week. She confirmed that, subject to the OH report, they had rearranged the hearing with Mr Marquard for 17 February 2022. She provided details of the employee assistance programme.

605. The claimant did not respond to either Medigold or Ms Johnson so the proposed OH appointment on 1 February 2022 did not take place.

8 February 2022 - the claimant's solicitor's letter and subsequent events leading to the hearing

606. The next communication from the claimant was a solicitor's letter on 8 Feb. It was emailed to Mr Cornwell, Mr Coupe, Mrs Deakin, Mr Al-Qasmi, Ms Johnson, Mr Marquard and Ms Fuenfstueck.

607. Having set out a narrative of events the letter highlighted 3 "areas of concern". In summary:

- The launching of an investigation: the claimant's 3 September e-mail was entirely appropriate and understandable in the circumstances. The reaction of Mr Cornwell and Mr Al-Qasmi in "deciding to take legal advice with a view to removing [the claimant] from his role" was disproportionate and showed a complete disregard for the nature of the claimant's condition. It was clearly inappropriate for Mr Cornwell and Mr Al-Qasmi to lead an investigation into the claimant following the e-mail

- The nature of investigation: the investigation was characterised as a "fishing expedition" searching for evidence that the claimant had been a difficult employee. Ms Jones was said to have no real expertise or knowledge of Autism and so to be unqualified to assess whether adequate support had been provided to the claimant. There had been no regard to the welfare of the claimant from the way he was told about the investigation at his return to work, repeatedly contacting him about the investigation when off sick and only postponing the hearing with Mr Marquard for 3 weeks when informed of the death of the claimant's son.

- The outcome of the investigation: the investigation listed a series of vague criticisms of the claimant's conduct. In summary the report's conclusion was that the working relationship had broken down as a result of the claimant raising his concerns about discrimination by his managers and as a result of his manner of communication (which resulted from his Autism). A dismissal in those circumstances would be unfair. Contrary to Ms Jones's view, the fact that the claimant did not work with the UK directors day-to-day was a significant factor. He had a good working relationship with the global team and recommendation for dismissal because the working relationship with the UK statutory board had broken down made no sense.

608. The letter asserted that the events described were clear acts of discrimination in breach of sections 15,20, 26 and 27 of the Equality Act 2010. It said that if the claimant was dismissed that would also be an unfair dismissal. The claimant reserved his right to bring additional claims against the respondent.

609. The letter made a DSAR for any documents or communications relating to the claimant's pay, communications with Ms Jones relating to the investigation and communications relating to training the respondent's managers about Autism in order to better manage support and understand the claimant.

610. In a final section headed “Current Position” the letter asserted that it appeared the claimant was being managed out of the business because of the way he expressed himself and his previous complaints of discrimination. It said the claimant’s priority was to reach agreement on a number of matters to help the working relationship move forward. It set out a list of formal requests. They were:

> **a) The hearing of 17 February 2022 must be immediately and permanently suspended. The threat of an SOSR dismissal must be retracted.**
>
> **b) The retraction of the Report and an apology for the impact the investigation process has had on our client's mental health.**
>
> **c) An assurance that our client will be supported in returning to his role when his fit note runs out on 1 March 2022 and then be appropriately supported in his role.**
>
> **d) An assurance that Mr AI-Qasmi and the statutory board will undergo training relating to managing and working with individuals with autism within the next three months.**
>
> **e) An OH assessment to be set up with a practitioner with a demonstrated understanding of autism, who is able to provide a short personal statement and a list of training to evidence this understanding.**
>
> **f) If it is the view of the statutory board of PH that there are serious issues with the way in which our client expresses himself in writing, an assurance that this will be formally raised with our client and different forms of support be explored. For example, a support worker could be engaged to review our client's emails and work with him on his tone.**
>
> **g) An internal investigation to be conducted into the disproportionate and harmful reaction of PH to the Email, to prevent these mistakes ever happening again.**

611. In a letter to the claimant on 9 February Ms Johnson confirmed the hearing on 17 February would proceed. She noted that it was clear from the claimant’s solicitor’s letter that the claimant would not attend an OH appointment without additional assurances about the qualifications and experience of the OH physician. The respondent considered those requirements unreasonable in light of the assurances already provided by Medigold. She repeated the offer of adaptations made in the letter of 13 January 2022. She confirmed any written representation should be made by 15 February. She confirmed that Mr Marquard would consider the claimant’s solicitor’s letter as part of the process. The respondent's solicitors wrote to the claimant’s solicitor in similar terms on 10 February.

612. Ms Jones provided her general comments on the claimant’s solicitor’s letter on 10 February 2022 (p.937). She said that since the 3 September email was not an isolated incident it was appropriate to look at previous incidents, given that Mr Cornwell’s grievance was that the working relationship with the claimant had broken down. She said the claimant was entitled to form a view about her experience in

being able to understand Autism but she believed she had given careful consideration to the information (as set out in the appendix to her Report) to make a reasoned outcome for next steps. She addressed the allegations of discrimination and victimisation in her final para:

> **"It is important to be clear that no conclusions have been made to consider the dismissal of CT because he has raised concerns about discrimination. The conclusions reached are about the way CT engages and communicates with the senior leadership team and Board. It is also important to clarify that due to the statutory management structure CT must report to a Board member. Whether this is on a day to day basis or not - any form of engagement must be constructive and positive, evidence has shown that this invariably is not the case."**

613. There was a further exchange of letters between the parties' solicitors on the 11 and 15 of February. The claimant's solicitor requested that the respondent write to them rather than direct to the claimant because of his ill health. The respondent's solicitor confirmed the respondent agreed to do so while noting that it was entitled to correspond directly with its employee.

614. In its letter on 11 February, the claimant's solicitor asserted that it would be a reasonable adjustment for the claimant to undergo an OH assessment with a practitioner with a demonstrated understanding of Autism who was able to provide a short personal statement about their relevant experience and list their training and qualifications. It suggested the respondent obtain that information from Medigold or alternatively engage a different OH provider. It suggested Fusion Occupational Health as an alternative provider.

615. The respondent's solicitor set out the steps the respondent had taken to try and arrange an OH assessment and reassure the claimant about the expertise of the OH physician. It said that despite those attempts the claimant was not willing to commit to attend the appointment without placing "unreasonable and onerous obstacles in the way". In those circumstances, they confirmed the respondent had decided it was reasonable for the hearing on the 17 February to proceed. The deadline for any written representations was extended from noon on the 15 February to 10:00 on the following day. Included with that letter was Ms Jones's note 10 February 2022 in response to the 8 February letter. They were shared so that the claimant could comment on them.

616. Ms Johnson had since 14 February been chasing Medigold for details of Dr Rooms's qualifications and experience. Ms Colwill emailed her on 17 February (after the hearing with Mr Marquard had taken place) to confirm he was a senior Member of the Faculty of Occupational Medicine, a qualified OH Physician ad recognised by the GMC as an Accredited Specialist in OH. She confirmed that although Medigold's consultants were not specialists in Autism, they had considerable experience in understanding Autism and the impact it may have on an individual's work.

The hearing on 17 February 2022 and the decision to dismiss

The hearing on 17 February

617. The 17 February hearing took place by Teams. Mr Marquard, Ms Jones and Ms Johnson attended separately. The claimant had been sent the link to the meeting.

618. The meeting was due to start by 1 p.m. The claimant had not attended by 1:06 p.m. Mr Marquard decided to continue with the meeting in his absence. His view was that the respondent had given the claimant every opportunity to participate. He was aware of and had supported the approach taken by Ms Johnson to obtain an OH report on the claimant's ability to take part in the process. He shared the view that the claimant's preconditions for undertaking such an assessment were unreasonable.

619. Ms Jones presented her report and explained her conclusion that the working relationship had broken down. We find Mr Marquard questioned her on a number of points. We find that questioning took into account points raised in the claimant's solicitor's letter of 8 February:

- Mr Marquard asked whether it was normal practice in the UK to appoint an independent consultant to conduct an investigation Ms Jones confirmed it was.

- The scope of the investigation was raised. Ms Jones explained that in order to assess whether the relationship had broken down she had to consider the 3 September email in context to understand whether it was a one-off or part of a pattern.

- Mr Marquard asked whether it was normal or considered acceptable in the UK for people to reach out to a higher level whilst a grievance process was running. Ms Jones confirmed it was not wrong for the claimant to seek advice. He could have reached out to Mr Marquard as Mr Cornwell's line manager if he had concerns. Had he done so he would have been advised to await the outcome of the process. Ms Jones's view was that the claimant had undermined the process by sending the 3 September email to Ms Fuenfstueck.

- Ms Jones said that there was a pattern of behaviour of the claimant being very defensive when challenged. Even recognising and acknowledging his disability her view was that did not excuse the behaviour displayed by the claimant. Her view was that the feedback given to the claimant was not unreasonable and that there had been positive engagement with him. She cited the claimant's response to the respondent's attempts to arrange an OH assessment issue as an example of the claimant being unreasonable and unprofessional.

- Mr Marquard asked Ms Jones in her experience of Autism what steps the UK senior management team had taken to adapt to the claimant and how that compared to other companies. Ms Jones's view was that all the senior management team had been exceptional with regards to their adaptability, patience and understanding. They had gone beyond what she saw as best practice in terms of adjustments and how they worked with the claimant. In some cases, objective business decisions were being changed. Ms Jones

expressed shock that when the claimant challenged his 2019 bonus payment the only way Mr Cornwell felt able to placate him was to give in.

- Mr Marquard asked whether Ms Jones believed that the tone and language of the claimant's communications was a result of Autism or some other issues, e.g. a lack of confidence. Ms Jones suggested that is something which the claimant could have been asked had he chosen to attend. She suggested that the claimant had been more conciliatory in his response to the Report which to her mind suggested that he was able to communicate "appropriately".

- Ms Jones expressed the view that mediation did not appear to be possibility because both parties had to be open to it. From her review of the information, her view was that the claimant had shown distrust of the senior management team and was not in a positive frame of mind in relation to them.

620. Mr Marquard told Ms Jones for the first time during the meeting that Mr Cornwell was leaving the business. He asked if that changed the situation. Ms Jones agreed that added a new dimension to matters. Her overall view was that the claimant had shown little respect and judgement towards the company as a whole and the same issues would persist unless there was a change in the claimant's conduct. Ms Jones said she believed that this would be difficult to impose on a new Managing Director, but it would need to be considered. The claimant might well report into that new Managing Director, but he would need to engage with the whole of the senior management team. The new Managing Director would need to focus on the business as a whole, not on one individual.

621. The meeting finished at 1:49 p.m. Mr Marquard decided he needed further time to consider his decision.

Mr Marquard's decision and the outcome letter of 24 February 2022 (pp.959 – 965)

622. Mr Marquard decided to dismiss the claimant. He set out his decision and the reasons for it in a letter to the claimant dated 24 February 2022. The claimant was dismissed with effect from the date of that letter with 3 months' pay in lieu of notice. The ground for the dismissal was that the working relationship between him and the UK Senior Management Team had broken down irretrievably and that that amounted to some other substantial reason justifying his dismissal.

623. We find that Ms Johnson may have helped with the wording of the letter (it used the phrase "reached the end of the road" which Mr Marquard confirmed in evidence he was not familiar with). However, we accept his evidence that it was his decision to dismiss and that the letter accurately recorded the reasons for that decision.

624. We find that in reaching his decision Mr Marquard relied heavily on Ms Jones's Report and her presentation of it at the hearing. To some extent, that was inevitable. The claimant was not present. She was the person who had investigated matters and she had greater knowledge of UK employment law and HR practice than Mr Marquard. Although he had access to the Appendices to the Report, including the witness statements/notes from the interviews Ms Jones conducted and various emails we find on balance that he did not read those Appendices in great detail. It is clear from his questions to Ms Jones that he did take into account the points made in the claimant's

solicitor's letter dated 8 February 2022. He took into account the answers Ms Jones gave to his questions arising from the points in that letter. We find that Mr Marquard had read the Aspiedent report prior to the hearing. We accept his evidence that he did not weigh the contents of the Aspiedent report very heavily. We find that was because the claimant himself had raised concerns about it. Without the claimant being present to explain his concerns, we find Mr Marquard was not clear which aspects of the report could be relied on. We find he did take into account of the claimant's diagnosis but he was clear in his cross-examination evidence that he did not have a detailed knowledge of Autism and its effects.

625. In the letter, Mr Marquard explained his decision to proceed in the absence of the claimant. He noted that the respondent had wanted to obtain professional OH advice about the claimant's ability to participate and to recommend reasonable adjustments to facilitate that participation. The respondent's view was that the claimant's refusal to do attend an OH appointment was unreasonable given the assurances he was provided with. Mr Marquard's view was that the claimant had been given every opportunity to provide his input into the process.

626. In summary, Mr Marquard's findings were that:

- the UK senior management team members had gone beyond what would normally be expected in the steps they took to understand the claimant's diagnosis and to support him. He accepted Ms Jones's characterisation of it as a "gold plated" standard of support.

- the more the management team had tried to adapt the more negative the claimant's interactions had become evidenced by his "aggressive and threatening tone and approach in his communications" which Mr Marquard found to be "unreasonable, even taking into account [the claimant's disability] disability".

- by emailing Ms Fuenfstueck on 3 September using the terms he did, bypassing Mr Marquard and Mr Marquard's line manager, Mr Georgelin, the claimant had undermined the grievance appeal process and those involved in it.

- the claimant had made serious allegations about Mr Cornwell and Mr. Al-Qasmi which Mr Marquard considered to be extremely undermining. The claimant had also lost trust in Mr Coupe and questioned Mrs Deakin's professionalism and integrity. The relationship with the whole UK management team was damaged beyond repair.

- Mr Marquard had taken into account that Mr Cornwell was leaving the company shortly. He took the view that while the claimant might not report into the new MD he would still need to engage positively with the UK senior management team. It was not reasonable to expect a new MD to "have to focus on resolving historical issues".

- Mr Marquard had considered whether the claimant could report into someone outside the UK senior management team. His view was that it was not. The

way OneIT was set up all country IT employees had legally to report to their country's management structure, Even with Mr Cornwell's departure that was not a feasible option given the claimant's previous interactions and communications with Mr Coupe and Ms Deakin.

- The claimant's actions and the tone of his communications demonstrated a total lack of respect towards the UK Senior Management Team, with no understanding of how his communications made others feel. They often carried with them an underlying threat that matters would be escalated if they were not resolved in the claimant's favour. That did not create a healthy work environment.

- Mr Marquard had not been able to identify any signs within the report and the claimant's communications that his interactions with the UK Senior Management Team were likely to change. (We find that this was the basis on which Mr Marquard had decided that mediation was not a viable alternative although he did not spell that out in the letter).

627. Mr Marquard's overall conclusions was that:

> **"It is important that both sides have to have mutual respect and must not have to work in fear of threats of discrimination, victimisation and potential litigation. In reaching my decision, I have also considered your health and wellbeing and have come to the conclusion that we have reached the end of the road. I do not consider that there are any means of remedying the breakdown in the working relationship and it is therefore irremediable."**

628. Mr Marquard's letter confirmed the claimant had a right of appeal. Any appeal had to be made in writing within 5 working days to Ms Johnson who would then appoint an Appeal Officer.

Events from 24 February 2022 - 13 May 2022 the Appeal against dismissal

629. On 25 February 2022 the claims was signed off work until 25 April 2022 because of "Squamous cell carcinoma of tongue. Autistic spectrum disorder. Anxiety."

630. On 1 March the claimant's solicitor wrote to confirm he intended to appeal but requesting an extension of time to 11 March to do so. Ms Johnson replied the same day to confirm an extension until noon of that date.

631. On 1 March the respondent sent the claimant its response to the DSAR made in his solicitor's letter on the 8 February.

The claimant's grounds of appeal

632. The claimant submitted his appeal on the 8th of March 2022. His grounds for doing so were that the dismissal was an act of discrimination, victimisation. was too severe in the circumstances and was based on incorrect assertions and an unfair procedure. His central point was that the UK senior management team had demonstrated a fundamental lack of understanding about Autism. The key points made were that:

- The procedure followed was not fair – the respondent should not have proceeded with the investigation and dismissal hearing while the claimant was off sick. Instead, the process should have been suspended until the claimant was well enough to return to work so he could participate. The failure to do so indicated the process was a foregone conclusion.

- Ms Jones's finding that the relationship had broken down was a foregone conclusion given that she was instructed by the UK senior management team because of their belief it had broken down.

- Ms Jones had no professional experience or knowledge of Autism and so was not in a position to make the value judgement about the claimant's Autism and its impact which were central to her conclusions.

- The extent of to which the claimant's "directness" and communication had caused offence and personal resentment had been exaggerated in Ms Jones's report and had never been raised with the claimant.

- The e-mail of the 3 September 2021 in particular had been sent at a period of great stress for the claimant which made it more difficult for the claimant to mask his condition. That was not taken into account.

- The reasons given for the breakdown in the relationship derived from the claimant's disability and his having previously raised grievances and brought Tribunal claims alleging disability discrimination. Neither was a legitimate basis for dismissal.

- The investigation and dismissal disregarded the recommendations in the Aspiedent report, specifically to be lenient when the claimant said something which could be construed as offensive, try to explain everything in a logical way and give warning and explain the reasons for change.

633. The claimant asserted that the respondent should have:

- Raised any communication issues with him formally as a performance/conduct issue;

- Explored the possibility of engaging a support worker to review the claimant's e-mails and work with him on his tone;

- Arranged training on working with autistic individuals for the UK senior management team;

- Undertaken mediation between the claimant and the UK senior management team; and

- Waited until Mr Cornwell's replacement as MD was in place to see whether the issues persisted once Mr Cornwell had left the business.

634. In addition to reinstatement, the outcomes sought were the same as those set out at (c) to (f) in the solicitor's letter of 8 February.

The appeal hearing and outcome

635. Mr d'Huc was appointed to hear the appeal. He had had next to no prior involvement with the matters in the case. He had provided Ms Fuenfstueck with some feedback on the response to the claimant's email of 1 November 2020 agreeing with her suggestion of sending a short answer and not getting involved in a discussion about country performance management. He had, at Mr Marquard's request, provided information about the relevant roles of the matrix manager and UK line manager in the context of the 2021 grievance. We accept his evidence that other than that he had not come across the claimant in the course of carrying out his duties and had never met him.

636. A virtual appeal hearing by Teams was scheduled for the 23 March 2022. In the invitation letter dated 16 March 2022 Ms Johnson offered the claimant the same 3 adaptations proposed for the dismissal hearing. The deadline for any written representations was 21 March. Alternatively, Ms Johnson confirmed the claimant's grounds of appeal would be taken as his written representations. The claimant was warned the hearing might proceed in his absence if he did not respond. The letter also gave the claimant the option to attend an OH assessment with Dr Rooms to enable the respondent to better understand any reasonable adjustments it could make to the appeal process to support the claimant's participation in it. Ms Johnson repeated the assurance that Dr Rooms was suitably qualified and experienced to conduct such an assessment. She confirmed that if the claimant chose to attend an OH appointment the respondent would postpone the appeal meeting by 2-3 weeks until they had the report from Medigold.

637. The claimant's solicitors responded on the 16 March to say the claimant was unable to attend the meeting as proposed because of his health and the need to consult Ms Dinnes, who was then on leave. The respondent agreed to extend the deadline for response to 25 March. Ms Dinnes wrote on 25 March (p.991) to confirm that the claimant was not well enough to attend the appeal hearing and would like the grounds of appeal and the letter of 8 February to be carefully considered by Mr d'Huc alongside Ms Jones's report and Mr Marquard's outcome letter.

638. On 31 March 2022 Ms Johnson forwarded the Grounds of Appeal to Ms Jones. She explained that the claimant would not be attending the appeal due to his health. She asked for Ms Jones's comments on Grounds 1 to 4, which made reference to her Investigation Report. Ms Johnson asked for a response by 12 on Monday 4 April because she was due to meet Mr d'Huc then.

639. Ms Jones provided those comments on 1 April 2022 (pp.995-999). She strongly refuted the suggestion that the conclusion of the Investigation was a foregone conclusion. She rejected the claimant's criticism that she had no professional experience or knowledge of his Autism and had made a "number of value judgments" about it. She said the claimant was not informed to make an assessment of her professional experience or knowledge of Autism. She said she had made conclusions on behaviours based on her experience and view of what is acceptable behaviour in the workplace and towards colleagues. Ms Jones also rejected the suggestion that she had focussed on "negative" emails, ignoring positive interactions and focussing on emails sent when the claimant was under pressure. She said she had noted positive

interactions but the majority of the claimant's communications were negative. Many were sent when he was not managing serious medical conditions.

640. Ms Jones rejected the assertion that the reason the relationship had broken down was because of his communication style and the fact he had raised issues with disability discrimination previously. She pointed out it was not her decision to dismiss but said there was no evidence to support the claim that the dismissal was because the claimant had raised issues of disability discrimination. Nor did she accept that the decision to dismiss was made because of matters arising from the claimant's disability such as communication issues. Her view was that any issues that were raised by were given due consideration and time and that Mr Cornwell, Mr Coupe, and Mr Al-Qasmi ensured that their approach, responses and information provided were appropriate to how the claimant would process information. She described their level of commitment and professionalism in dealing with formal grievances or concerns raised by the claimant as being of a very high standard. There were times where business decisions were compromised or delayed as a result. We find that was the case, the 2019 bonus issue being a prime example.

641. Addressing the steps short of dismissal which the claimant set out in his Grounds of appeal, Ms Jones said that her understanding was that the respondent had arranged an OH assessment but the claimant had refused to engage with it, that mediation was not appropriate given the extent to which the relationship had broken down and that there was evidence of Mr Cornwell having worked with the claimant to support him in his communication with others.

642. When it came to the impact of Mr Cornwell's resignation, Ms Jones said had it come to light before the report was finalised, she may have considered it as part of her recommendations. She said it was important to note that the relationship had broken down with the entire board and UK SLT and careful consideration would need to be given to how appropriate it would be to give a new MD (with a significant remit to lead the business) the reporting line for the claimant.

643. We find Mr d'Huc reviewed Ms Jones's Report, including its appendices and Ms Jones's responses to the Grounds of Appeal. He also reviewed the letter from the claimant's solicitors of 8 February 2022, Mr Marquard's hearing outcome letter and the claimant's Grounds of Appeal. He also asked Ms Johnson to provide him with additional emails referred to in the documentation. Mr d'Huc decided to reject the appeal. He set out his reasons in the outcome letter dated 12 April 2022. We accept his evidence that the letter accurately set out the reasons for his decision.

644. In summary:

- Mr d'Huc was satisfied there was no evidence that the investigation by Ms Jones was a foregone conclusion. She had conducted the investigation professionally and without bias. Mr Marquard gave careful consideration to the facts set out in Ms Jones's Report before reaching the decision to dismiss.

- Had the claimant engaged with Ms Jones during the investigation, the claimant could have sought to question her to ascertain her knowledge and experience of Autism. In any event Mr d'Huc did not accept this as an argument against the validity of the report. It was unreasonable to expect that everyone who has to make decisions in relation to an employee with a disability will have vast

experience of each and every type of disability. That did not prevent them from applying their skills, objectivity, critical thinking and sensitivity to a particular set of circumstances, in order to make a recommendation as in Ms Jones's Report.

- Mr d'Huc rejected the claimant's claim that the extent of his directness in communication had been exaggerated because the investigation was so wide and general in scope. In his view, Ms Jones had taken the correct approach by considering whether there was a pattern to the claimant's communications with the SMT and determine whether they were reasonable in the circumstances. That broader view was required to assess whether the relationship had broken down irretrievably.

- Mr d'Huc then addressed the claimant's point that no formal process was instigated and no warning given about the tone of his emails before the 3 September email. No formal process was appropriate. His view was that the claimant's conduct could have been called into question based on his email communications but instead Mr Cornwell had tried to work with him informally on his communication.

- Mr d'Huc also concluded that it had become an impossible position because whenever feedback was given which the claimant did not like he would become threatening or aggressive in tone, e.g. the 2018 and 2019 bonus issues. When Mr Cornwell had tried to give the claimant feedback on his communication in the 2020 Development Dialogue, the claimant had refused to sign it. Mr d'Huc said that demonstrated the claimant did not accept feedback that was meant to assist him.

- When it came to positive examples not having been shared, the claimant had not provided any. In any event, even if there were positive examples that did not alter the fact of the many negative communications he had sent.

- He could find no evidence to support the claim that the decision to dismiss was based on the claimant having exercised his employment rights.

- The respondent had attempted to arrange an OH appointment on many occasions. Mr d'Huc found the claimant's reasons for refusing to do so and the pre-conditions imposed to be unreasonable. The claimant's contract entitled the respondent to nominate a medical practitioner and Medigold had confirmed their appointed physician was suitably qualified.

- When it came to the suggestion that the respondent should carry out training for its senior management in Autism, Mr d'Huc pointed out that the claimant had said in an email that he would not regard any training offered by Aspiedent (the provider he himself had suggested) as suitable. As a result, Dr Guest's offer of training was not taken up. However, the SMT had received equality and diversity training from a law firm.

- Mr d'Huc rejected the suggestion that the respondent had disregarded the recommendations made by Aspiedent. He believed they had taken on board the recommendations and had catered to the claimant's needs wherever possible. He noted that there were a number of recommendations made to the

claimant by Dr Guest. Mr d'Huc said the claimant had not shared any evidence that he had followed those recommendations.

- With regard to the possibility of employing a support worker to review emails etc, that was something that could have been discussed via OH or otherwise if the claimant had chosen to engage. There was, in any event, evidence that the respondent had made reasonable adjustments, e.g. providing an office with natural light, limiting the amount of European travel, optional attendance at work social events, working from home full-time, support and guidance from Mr Cornwell when engaging with Group colleagues and support from HR and his matrix manager when transitioning into OneIT.

- Mediation was not appropriate given the extent of relationship breakdown. Mr d'Huc could not see any examples of where the claimant had engaged positively with external parties and typically rejected any request to work with them. He believed the claimant would only have engaged positively with mediation if his demands were met without compromise on his part.

- Mr d'Huc considered the fact that Mr Cornwell was leaving the business and that a new MD had been appointed. They were not due to take up their role until 1 July 2022. In the interim period, the claimant would have been required to report into a member of the UK statutory Board. That meant either Mr Coupe or Mrs Deakin but the claimant had raised a grievance against Mr Coupe stating he lacked trust and confidence in him as a manager and had questioned the professionalism and integrity of Mrs Deakin when she dealt with the 2021 Grievance.

- Mr d'Huc had considered whether the return to work meeting on 8 November 2021 was unfair. He decided it was not, given that the claimant had made it clear that no further treatment was required and that he did not want a phased return to work and was ready to take up his duties. There was no reason to believe at that time that the claimant would not be able to participate fully in the investigation. He found that the claimant was given every opportunity to participate in the investigation and subsequent hearing with reasonable adjustments being made to the process. It was made clear that should he not attend the hearing on 17 February 2022, it would go ahead in his absence. The respondent had tried to arrange OH appointment to get advice on the claimant's ability to participate. Since the matter started on 8 November 2021, Mr D'Huc's view was that it was reasonable to move the process on as the respondent had done.

- In the "Outcome" section of his letter, Mr d'Huc said he had taken into account the amount of time and the number of occasions that the claimant's communication with the SMT had been an issue, even with the change to reporting to Mr Cornwell. He believed the SMT had done everything it could to make adaptations, reasonable adjustments and offer support. He acknowledged it was every employee's right to raise a grievance or submit a complaint to an Employment Tribunal. However, he said "to use these rights as a threat is not conducive to a healthy working environment for anyone involved."

- Mr d'Huc stressed that the 3 September 2021 email was "really not my focus". Any employee could email the CEO of the Group. When reaching his decision, he had focussed on the effect that the claimant's communications had on Mr Cornwell and other members of the SMT. Mr d'Huc said that the claimant had caused a great deal of unnecessary stress to those people. He said that

  > **"When a manager feels fearful of providing feedback and as a consequence, projects are delayed, customers could be let down and the business could suffer, I find that the needs of the business are being neglected for one employee and as such the Company cannot sustain this. I also have to consider the responsibility that the Company has to its other employees and there has to be a balance of fairness for a company to meet everyone's needs, which, when one person takes up so much time and energy, is not possible and the Company suffers."**

645. Mr d'Huc confirmed that his decision was final and there was no further right of appeal.

646. On 13 May 2022 the claimant filed Tribunal claim 2403516/2022 complaining of unfair dismissal, discrimination arising from disability, harassment and victimisation. He had begun early conciliation on 14 March 2022. The ACAS Early Conciliation Certificate was issued on 25 April 2022.

Dr Ruthenberg's Report

647. Dr Ruthenberg's Report was based on 9 hours of interviews with the claimant over 3 meetings. The last meeting of 2 hours was face to face, the earlier meetings by Teams. Mrs Turner was present for the second Teams interview. Dr Ruthenberg had been sent a number of documents including the pleadings for Tribunal claim 2403516/2022, the 2021 Grievance documentation and some of the correspondence relating to the dismissal and appeal process. He had been sent the Aspiedent Report and the final version of Ms Jones's report. Based on the "documents read" list at Appendix 1 to his Report we find he had not been sent correspondence prior to 2021, e.g. the exchanges challenging pay bonuses in 2019 and 2020 or the December 2018 Expenses letter to Mr Cornwell. We find he had also not been sent the correspondence about the attempts to obtain an OH report in 2022 nor the exchange with Mr Cornwell on 24 September 2022.

648. Dr Ruthenberg found the claimant's social capacity at face value to be "deceptively good" (para 8.1). The claimant had learned social skills by observing others and become competent in "masking" in social circumstances to a significant extent. That masking was draining and anxiety provoking (para 8.3).

649. The claimant had set ways of engaging with his areas of interest and reached a threshold for being rigid in terms of the right and wrong way to do a task. Dr Ruthenberg commented that the claimant would be an extremely difficult worker to work alongside, especially if a co-worker had an approach however efficient but different from his (para 8.6).

650. The claimant's "unwavering insistence on acknowledgement of work well done, honesty, consistency and fair play were qualities he demanded of himself and both expected and assumed to be operative in those with whom he deals and to be the

'rules' within the workplace." Dr Ruthenberg reported that such expectations were not mere lifelong psychological characteristics or traits, but hard-wired ways of perceiving and being-in-the-world. Breaches of that code, especially from those in authority, would result in important existential and personality decompensation, taking the form of suspicious worry, tension, anxiety, mood lowering and ultimately withdrawal and deep resentment. Unfairness being perceived, especially in the face of valid work achievement would be extremely difficult experiences for the claimant to process (para 8.10)

651. Dr Ruthenberg reported that the most striking feature of the claimant's speaking style was his over-inclusiveness, his insistence on being highly detailed and precise, often correcting or extending earlier points made or indeed resorting to post discussion emails to correct or modify details deriving from discussion (para 9.2).

652. Although initially the claimant assumed the discussion forum was about him (so that he "talked at" Dr Ruthenberg) he learned quickly and the latter discussions were conducted in a better two-way fashion. He was never domineering or unable to see a counter point being made if made in an appropriate fashion (paras 9.2-9.6).

653. Dr Ruthenberg said he found none of the "militaristic" or "power obsessed" aspects to the claimant's personality style (a reference we find to the Aspiedent Report) and that he would be hard pressed to see how such characteristics could be inferred. In Dr Ruthenberg's judgment it was clearly the case that the claimant felt his performance and achievements were not sufficiently acknowledged or appreciated by Mr Cornwell but never felt this way in relation to Mr Bose. It is the case that "he never accepted the argument that his not becoming an IT Director was owing to the post not being available in the UK subsidiary. He was of the view that had he been fully appreciated such a post may have been actively worked towards by senior management." In Dr Ruthenberg's view "the absence of taking his request seriously, even if implausible to implement, was experienced by him as being fobbed off and not appreciated and became rigidly set in his mind-set as prejudice owing to his Autism". The claimant could only make sense of that refusal as relating to historic bias and prejudice deriving from his autistic disability. He felt that the only reasons for his not securing a pay rise, must have been owing to historic issues with his manager and to his disability (paras 9.7 and 9.8).

654. Dr Ruthenberg answered a series of questions in section 10 of his report. Of relevance to the issues we are deciding he said:

- In addition to over-inclusiveness, the established pattern of verbal communication style in ASD, is the characteristic directness, often bluntness with little appreciation of how such a style affects the person being addressed. There is no awareness of the need to package comments in socially acceptable terms. As a consequence, offence is often taken at the directness of approach, with the ASD person often surprised that any offence has been taken as none was intended. In Mr Turner's case his style is particularly direct, free of any 'padding', usually highly detailed and his manner may come across as unduly self-confident owing to his self-assurance and self-belief within his areas of expertise in IT (para 10.2)

- Because written communication is done removed from any face-to-face contact, it results in expressing points in an even more direct and blunt fashion. The claimant would have greater freedom to say what he wanted to say and to say it the way he wanted to say it and in as much detail as he chose to (para 10.3)

- It was blatantly clear that when the claimant received a meaningful and sufficiently inclusive summary of his position, i.e. a clear exhibition that his point had been heard and understood, he then listened to criticism or comment from that foundation (para 10.4(ii)).

- In Autism all stress (e.g. the claimant's cancer diagnosis) results in the exaggeration of core symptoms and associated features. Thus someone who is highly obsessional in nature will become more so (para 10.5)

- It was manifestly clear that the claimant was significantly unwell at the time of Ms Jones's investigation and could not have participated in either the investigation or the dismissal process (10.6).

655. Dr Ruthenberg had been asked to comment on the Aspiedent Report. Although acknowledging that Dr Guest was clearly conversant with ASD and highly knowledgeable about the condition, Dr Ruthenberg said he was unsure about the validity of her "findings" given her lack of clinical qualifications. We think it likely that referred to Dr Guest's suggestion that the claimant might have undiagnosed OCD issues. He found many points relevant and insightful but found others worryingly phrased as "near facts or truths" about the claimant which viewed as such, would be severely misleading. He did not specify which. He said many points were "inferential and unsubstantiated" and found little by way of corroborative clinical details in his assessment of the claimant.

656. The respondent asked Dr Ruthernberg to clarify whether (given para 8.10), the claimant's ability to continue as an employee would ultimately have been untenable regardless of the transpired events. In his Addendum Report, Dr Ruthernberg said that any answer to that question was naturally speculative. However,

> **"despite central 'hardwiring and deep resentment' etc., persons on the ASD spectrum do arrive at positions where logic dictates that further litigation/questioning is futile and getting on with the job is required. This can be seen as an aspect of their black and white highly pragmatic thinking once a final point has been reached. While equally speculative, this may well have been the claimant's ultimate logical reaction. His long service history, resistance to any change (as presented at length in the report), his knowledge of the systems and personnel at PH, his standing and seniority in the Company generally, may well have led him to a final position of just getting on with his work. Appropriate and informed counselling of his circumstances and options, would have been helpful if required. Fear of change and of anything new, is considerable in ASD in general and in the claimant in particular. Furthermore, the idea of leaving PH under a cloud and then to start something new, especially at a likely more junior level, would have been highly implausible to imagine as a voluntary choice".**

Discussion and Conclusions

657. On the disputed issues the Tribunal determined as follows:

Issue 3 Unfair Dismissal

Did the respondent dismiss the claimant for a potentially fair reason within the meaning of section 98 Employment Rights Act 1996?

The respondent alleges that the reason for the dismissal was capability and/or conduct and/or some other substantial reason, namely a breakdown in trust and in the working relationship between the claimant and senior leaders of the respondent.

658. Mr Boyd confirmed in his submissions that the sole reason relied on by the respondent was some other substantial reason, namely a breakdown in trust and in the working relationship between the claimant and senior leaders of the respondent, i.e. Mr Cornwell, Mr Coupe, Mrs Deakin and Mr Al-Qasmi. In this part of the judgment we refer to them collectively as "the UK SLT".

659. We accept that irretrievable breakdown in relationship is a potentially fair reason for dismissal.

Issue 4: If yes, did the respondent in fact dismiss the claimant for the potentially fair reason that it alleges?

660. Ms Dinnes confirmed in her submissions that the claimant's case was that there was not an irretrievable breakdown in working relationships between the claimant and the UK SLT. She submitted that Mr Marquard did not dismiss for a potentially fair reason because he relied on and was predisposed to accept the evidence of the UK SLT (and Mr Cornwell in particular). She also submitted there could not be a potentially fair reason because the reasons for dismissal arose from the claimant's disability and/or from his doing protected acts.

661. We have explained elsewhere why we have found that the claimant's dismissal did not arise from disability or his protected acts. We deal below (Issue 7) with the submission that the process carried out was not fair or reasonable.

662. Our central finding on this issue, however, is that the genuine reason Mr Marquard dismissed the claimant was that he was satisfied on the evidence before him that the working relationship between the claimant and the UK Senior Management Team had broken down irretrievably. We find that was a conclusion which was within the band of reasonableness given the evidence before him at the 17 February 2022 hearing. We accept that the reasons for his decision to dismiss were those set out in his dismissal letter dated 24 February 2022. That was a potentially fair reason for dismissal, namely "some other substantial reason justifying dismissal".

Issue 5: To the extent relevant, did the respondent conduct a reasonable investigation?

Issue 6: Did the respondent follow a fair procedure?

663. We deal with these 2 issues together. The respondent accepted this was not a conduct dismissal, so the **Burchell** test does not apply. However, based on **Coulson** We find that the ACAS Code does apply. We also bear in mind that in determining what a fair process is, **Vestric** and **Matthews** tells us there must be some sensible, practical and genuine efforts to see whether an improvement can be effected, albeit that does not mean "all" reasonable steps must be taken by the employer. We accept that we must not substitute our view as to the appropriate process but must assess what the respondent did against the band of reasonableness.

664. Ms Dinnes and Mr Boyd both made extensive submissions on this issue. Rather than set them out in full we will deal with the relevant points raised as they arise.

665. Ms Dinnes submitted that the respondent must have been aware that telling the claimant about the launch of an investigation at the end of his return-to-work meeting would be distressing to the claimant. It would have been evident, she submitted, that he was “mentally fragile” because he was still recovering from cancer. She also submitted that as an autistic individual, the claimant struggled to cope with surprises and changes.

666. We can see how telling an employee recovering from cancer on their first day back that they are going to be subject to an investigation could easily be viewed as unfeeling or unsympathetic. That is not the test we are required to apply. In this case the claimant at that meeting told the respondent that he wanted to return to work full-time, that no adjustments were needed and that he would let the respondent know if any support was required. In those circumstances we do not think it was beyond the band of reasonableness for Mr Al-Qasmi to decide it was appropriate to raise the investigation with the claimant. It seems to us that holding a return to work meeting giving the impression that it was “business as usual” but later telling the claimant that the UK SLT’s perspective was that the working relationship had potentially broken before that meeting would be more of a “change” or “surprise” than being upfront with him at the first opportunity. If the approach of delaying informing him was taken, the claimant might understandably feel that the return to work meeting had been at worst a sham and at best misleading. We do not find it was beyond the band of reasonableness for the respondent to inform the claimant of the investigation at the end of his return-to-work meeting on 8 November 2021.

667. We find it was reasonable to instruct an external third-party to investigate whether the working relationship had broken down. We accept Mr Boyd’s submission that given the seniority of those involved it was reasonable to conclude that it was not appropriate for a more junior UK employee to be appointed. Given the issues raised would be governed by UK Employment Law it was also reasonable to conclude that appointing a non-UK senior manager would not have been appropriate because they would have needed an understanding of UK employment law and practices. Appointing Ms Jones enabled the eventual decision maker to benefit from her advice about UK Employment Law and practice while providing an outsider’s view on the working relationship between the claimant and the SMT.

668. We do not accept Ms Dinnes’s submission that it was inevitable that Ms Jones’s investigation would find what Mr Cornwell and Mr Al-Qasmi wanted her to find, i.e. that the working relationship had irretrievably broken down. We found that Mr Cornwell did not take part in the process of instructing Ms Jones and that Mr Al-Qasmi also stepped

back from the process as much as was possible within the small UK HR Team. We do accept, however, that given they both had a role in initiating the investigation, there was a particular onus on the respondent to ensure that the claimant's perspective on the working relationship was taken into account in any investigation and subsequent decision. That seems to us consistent with the notion of a "fair process", the approach set out in **Vestric** and **Matthews** and the ACAS Code.

669. Ms Dinnes submitted that the scope of the investigation was skewed. In effect, her submission was that what started as an investigation into an email on 3 September spiralled into an exercise to "dig dirt" on the claimant going back years. We do not accept that the temporal scope of the investigation was unfair or unreasonable. We accept that in order to assess whether the working relationship had broken down, Ms Jones and the ultimate decision maker needed a context for the 3 September email rather than judging matters solely by that email taken in isolation.

670. We do not accept the suggestion that the investigation was an exercise in "digging dirt" on the claimant to ensure he was presented in the worst possible light, thereby enabling a conclusion that the working relationship had broken down. Mr Cornwell in his interview with Ms Jones referred to the claimant as "delightful" and a "clear expert in his field". We find he and Mr Al-Qasmi were throughout genuinely concerned to ensure a fair process was followed, e.g. by engaging a third party to investigate to obtain an objective assessment of the state of the working relationship.

671. We do accept that the initial evidence to Ms Jones's investigation came in large part from the UK SLT perspective. That was clearly the case for the interview evidence. It was also case for the majority of the documentary examples with which she was provided via Ms Johnson. There were some documents from the claimant's point of view such as the claimant's 2018 Tribunal claim and 2021 Grievance and Grievance Appeal documents. However, we accept that what those documents did do was to focus on the "flashpoints" or occasions when there had been conflict between the claimant and members of the UK SLT. That was understandable, because those flashpoints had, from the UK SLT's perspective, contributed to the breakdown in the working relationship. The risk that posed, however, was that the investigation ended up focussing on those flashpoints and not seeing them in the context of the "better times" when the working relationship was good or, at least, functioning.

672. It was part of the claimant's case that the picture presented to Ms Jones was skewed and too negative. We considered whether the approach taken by the respondent was within the band of reasonableness. Should, for example, Ms Jones have carried out an analysis of all exchanges between the claimant and the UK SLT over a set period of time to ensure any flashpoints were seen in context? The Bundle included a document where the claimant had carried out such an analysis of messages sent by him between 1 January 2021 and 30 June 2021 ("the Message Analysis Summary"). That was not provided to Ms Jones as part of the investigation nor submitted to Mr Marquard or Mr d'Huc.

673. It seems to us that the Message Analysis Summary illustrates the difficulties which such an approach involved. First, the outcome of any such analysis depended on the period selected for analysis. To take an obvious example, confining the analysis of messages to the first 6 months of 2021 rather than all of 2021 excluded the claimant's formal grievance, the 3 September 2021 email and the emails of 24-30

September 2021 which significantly altered the picture of the working relationship. Second, the task of analysing the messages was significant. The Message Analysis Summary covered a period of 6 months. During that period the claimant sent 993 messages to UK and international colleagues of which 56 were identified as being sent to the UK SLT. Each of those was analysed in the Message Analysis Summary by tone and allocated to a category. Even accepting that the initial "sift" of messages to identify recipients could be done relatively quickly by automated means, the analysis of the "tone" of emails between the claimant and UK SLT would have been time consuming, particularly if a longer period was selected for analysis. Third, analysis of "tone" is necessarily subjective, depending on the parameters applied and the subjective view of the person carrying out the analysis. It was not, ultimately, something that could be subject of a purely objective statistical analysis. Finally, and most significantly it seems to us, that approach would not answer the questions which the investigation was seeking to address, namely whether the working relationship had broken down irretrievably at the point when the investigation was taking place. That was not a numbers game depending on what percentage of emails were categorised as "warm" or "concerned" as the Message Analysis Summary did. We do not find that the investigation was flawed because that kind of analysis was not carried out. However, in the absence of that kind of analysis it was all the more important to take reasonable steps to ensure that the investigation took into account the claimant's perspective, the evidence he wanted to provide and did not merely focus on the incidents of conflict between the claimant and the UK SLT.

674. We accept that the respondent did take steps to try and obtain the claimant's input. He was invited to meet with Ms Jones or to provide written input before the draft report was finalised (pp.816-817). When the claimant indicated that he was not well enough to take part in the investigation the respondent then took steps to obtain an Occupational Health report to clarify whether and when the claimant would be well enough to take part in the investigation and how.

675. We find the respondent took reasonable steps to allay the claimant's concerns about the relevant experience and qualifications of the OH adviser. Ms Johnson confirmed Dr Rooms's experience and explained why the specific advice he was being asked to give did not require him to be an Autism or cancer specialist. We do not accept that it was unreasonable for the respondent to decide that the claimant's requirements for an OH specialist were too prescriptive. It had past experience of attempts to obtain OH advice being inordinately delayed by the claimant insisting on an OH adviser who met his criteria. It had to balance the need to deal with matters promptly and without unreasonable delay against the need to give the claimant an opportunity to put his case. Both of those are identified as elements of fairness in the ACAS Code (para 4).

676. The claimant was then sent Ms Jones's draft report and given an opportunity to provide his input. We find the timescale for his comments (22 December to 3 January) was relatively short. An extension was given for a response. However, that itself was relatively short, extending the deadline by 4 days to 7 January 2022. The original period was over the Christmas and New Year period and the respondent was on notice that the claimant was unwell by reason of his GP's letter and fit note.

677. The claimant was able to respond to a limited extent via his wife's letter dated 31 December 2022 but that itself referred to his inability to respond with "full and fair

representation". We find that Ms Jones did take into account the limited points made in that letter in preparing her final report. it seems to us that the letter Ms Johnson sent the claimant on 13 January 2022 (pp.892-893) acknowledged that the claimant had not provided his substantive feedback or comments on that report. We find that made it important that the claimant was given every opportunity to provide his input at the next stage of the process. That was due to be the meeting with Mr Marquard on 26 January 2022.

678. The claimant was invited to that meeting by a letter dated 13 January 2022. At this point, the primary means of communication between the claimant and the respondent was post rather than email. Even taking that into account, the claimant was being given around 10 days' notice of the hearing. The hearing was postponed on 25 January due to the bereavement suffered by the claimant and his family. The postponement was until 17 February 2022, i.e. around 21 days. The deadline for providing a written response was extended from noon on 15 February 2022 to 10 a.m. on 16 February 2022.

679. We do not find that the claimant acted unreasonably in deciding that it would need to proceed with the process without waiting for an OH report given the obstacles the claimant put in the way of obtaining one. We also think that the steps it took to involve the claimant were reasonable. It sought to involve him at the pre-draft, draft and final hearing stages. However, we do find the timescale it imposed on the claimant was not within the band of reasonableness. That applies, in particular, to the time given to the claimant to respond to the draft report and the length of postponement of the meeting with Mr Marquard.

680. We do not suggest that the claimant's absence on sick leave and the family bereavement meant the process should have been subject to a prolonged delay. It was not unreasonable to decide to proceed while the claimant was on sick leave, particularly when, as Mr Boyd submitted, he had placed obstacles in the way of obtaining an OH report on his ability to participate. We accept there was a need to deal with matters without unreasonable delay as referred to in the ACAS Code. We accept that given the claimant's seniority there was a need for the situation to be resolved and that there was a demand from the Group to know whether the claimant was going to be involved in proposed future projects (p.881). However, we accept Ms Dinnes's submission that the respondent did not provide a clear explanation of the need for the degree of urgency exhibited in the process.

681. We find the decision not to postpone the "dismissal hearing" for a longer period was not within the band of reasonableness. A longer period would have given time for Medigold to provide the information about Dr Rooms's qualifications and experience received on 17 February 2022, for the respondent to share that with the claimant and given him an opportunity to confirm whether he would attend the OH appointment. It would also have given the claimant and his representatives more time to prepare their written representations for that hearing. We accept an employee should not be entitled to dictate the process and its timeline. However, given our findings about the importance of giving the claimant a reasonable opportunity to participate in the process, we find the timescale imposed was outside the band of reasonableness and the process unfair as a result.

682. As to the hearing itself, we do not accept Ms Dinnes's submission that Mr Marquard's approach on the 17 February 2022 and in reaching his decision indicated that he was predisposed against the claimant. We accept that he took time to consider the documentation he was presented with both at the meeting and afterwards. He raised points potentially in the claimant's favour, e.g. the question of the impact of Mr Cornwell leaving and the appointment of a new MD. However, given that Mr Marquard was aware of the circumstances behind the claimant's non-attendance (having been involved in the decision to postpone) we do think he should have been particularly alive to the need to challenge Ms Jones's conclusions and recommendations in the absence of the claimant being able to do so himself.

683. That was particularly important, we find, because Ms Jones's report was in places couched in terms of final conclusions rather than recommendations, e.g. para 35 said that Mr Cornwell's "grievance is upheld". It was also apparent on the face of the report that there was a lack of evidence from the claimant's perspective. Para 36 said that unless there was "substantial evidence to counter what had been shared and impact my conclusions" Ms Jones could not see how the relationship could be repaired. We find the report placed the burden on the claimant to disprove the provisional conclusion and required him to provide "substantial evidence" to do so.

684. We accept that it was reasonable for Mr Marquard to rely on Ms Jones in some respects. She had expertise in relevant employment law and practice in the UK which Mr Marquard did not. We also accept her evidence that she did have an understanding of Autism and had worked with colleagues who had Autism. The claimant asserted she did not have the requisite knowledge. We find (based on his approach to the OH issue) that the claimant had a fixed view that only someone with a high degree of specialism could understand his way of thinking and the impact of Autism on his behaviour. We find it was within the band of reasonableness for the respondent to conclude that Ms Jones had sufficient knowledge of Autism to carry out the investigation.

685. However, we do find that Mr Marquard should have challenged Ms Jones more than he did. Although Ms Jones did accurately report positive evidence about the claimant (e.g. para 16) we find her report did not set out the "long view", putting the incidents of discord in the context of the overall working relationship. It did not directly address whether the 3 September 2021 should be viewed as a "blip" in an otherwise retrievable relationship or a "last straw" which rendered it irretrievable. We find that a reasonable employer would have asked what evidence Ms Jones had seen which might be "counter what had been shared", rather than putting the onus on the (absent) claimant. It would have been reasonable, for example, to ask Ms Jones to provide an overall perspective of the relationship over time so that Mr Marquard could judge whether the incidents in the report had rendered the breakdown in the relationship "irretrievable".

686. We considered whether the unfairness in the process was remedied by the appeal process. Mr d'Huc did have further information from the claimant and written comments from Ms Jones on the claimant's grounds of appeal. However, one of the reasons for his decision was, according to his outcome letter, the lack of positive evidence from the claimant. Mr d'Huc was aware of the reason the claimant was not in attendance. It seems to us that in a breakdown of relationship case, a fair process would require Mr d'Huc (like Mr Marquard) to be careful to establish what evidence the

claimant would have put forward to challenge Ms Jones's conclusions. However, Ms Jones did not attend the appeal hearing nor did Mr d'Huc ask her any written questions. He did not take the opportunity to interrogate Ms Jones's findings particularly when it came to the long-term view. We find a reasonable employer would have done so. We find the appeal did not remedy the issues we have identified when it came to the original decision to dismiss.

687. When it comes to this issue, therefore, our finding is that the respondent did not carry out a fair process by failing to allow further time for the claimant to be involved in the hearing with Mr Marquard and by his not sufficiently interrogating Ms Jones's conclusions at that hearing.

688. For those reasons, the unfair dismissal complaint succeeds.

Issue 7: If the respondent dismissed for a potentially fair reason, did the respondent act reasonably in all the circumstances in dismissing the claimant pursuant to section 98(4) ERA 1996?

689. We have found the dismissal was unfair because of the flaws in the process followed. If we are wrong about that, we would have found the dismissal was fair. Our central finding is that Mr Marquard's decision that the relationship between the claimant and the UK SLT had broken down irretrievably was within the band of reasonableness. We acknowledge that there was evidence of periods where the relationship was functioning even after "flashpoints" such as the 2018 Expenses Incident or the OneIT transition. However, we find that, to adopt Mr Boyd's phrase in his submissions, the foundations of the relationship had eroded away because of the claimant's "bloody mindedness" (to use the shorthand adopted at the Hearing - see para 726). The relationship was a ticking time bomb which exploded when the claimant sent his 3 September 2021 email during the ongoing grievance appeal process.

690. For the claimant, Ms Dinnes submitted that there were 4 bases on which the decision to dismiss was beyond the band of reasonableness. They were: the lack of a fair warning; the failure to consider alternatives (primarily mediation); the impact of Mr Cornwell's departure and reduced contact with the UK SLT; and the claimant being "blamed for disability". We deal with each in turn.

The lack of a fair warning

691. For the claimant, Ms Dinnes submitted that a reasonable employer would not have dismissed the claimant in circumstances where he had not been given a fair warning that he may be dismissed because of his communication style. She submitted there had been no such fair warning in this case. There had been ad hoc conversations where Mr Cornwell had expressed his frustration with the claimant, but no objectives or additional support were discussed. She submitted that it was agreed between the parties that the claimant was not warned in writing or otherwise that his communication was a serious problem and could lead to dismissal. Mr Cornwell and Mr Al-Qasmi had not communicated to the claimant that his communication had been threatening, aggressive or overly litigious. The claimant could not have known that the UK SLT felt there was a serious problem in the way he communicated or dealt with them. Had he known, he would have sought professional support in relation to any sensitive communications with the UK SLT.

692. Mr Boyd submitted that as this case was about breakdown in relationships it was artificial to expect "warnings" in the way one might expected in the context of a conduct case. We did not understand Ms Dinnes to be suggesting that a formal warning of that kind should have been issued. We accept Mr Boyd's submission hat this was not a conduct case.

693. Ms Dinnes submitted that Mr Al-Qasmi accepted in cross examination that the claimant only discovered there were relationship issues in 2021 when he was told that an external investigator had been engaged. Mr Boyd in his rebuttal submissions suggested this was an incorrect representation of what Mr Al-Qasmi's evidence. We prefer Mr Boyd's submission on this issue. We find Mr Al-Qasmi pointed out in his cross-examination evidence that he had told the claimant in the context of the 2019 DSAR issue that he was unhappy about meeting the claimant face to face because of the allegations the claimant had made in an email about him (p.363).

694. Mr Boyd submitted that the claimant would have been well aware of the concerns about his communications from his interactions with Mr Cornwell and other members of the UK SLT. The claimant's document at p.381, for example, referred to his being aware in 2019 about concerns that the working relationship had broken down.

695. We prefer Mr Boyd's submissions. We find the claimant was well aware that there were issues between him and the UK SLT (and Mr Cornwell in particular). His email to Ms Fuenfstueck explicitly said that Mr Cornwell had "a problem" with the claimant. Mr Cornwell had been specific about the issue when discussing the 2017 bonus, referring to the claimant's "constant pushback" being "tiresome" (something the claimant had strongly objected to at the time). Mr Cornwell made a similar comment in writing in January 2019 in response to the December expenses issue, saying he was finding the "**constant challenge and lengthy push back from you on matters related to what is basic business process difficult to manage".** The claimant similarly objected to Mr Cornwell's remark that he was tired of everything being about the claimant, made in April 2019. Mr Cornwell made similar comments in writing to the claimant in his email of 20 September 2019 (p.406-407), referring to the "kick back" when he challenged the claimant and the impact of that on Mr Cornwell. It seems to us the issue was not the claimant being unaware of the issues with the UK SLT but in any willingness on his part to accept that issues were in any way down to him rather than discrimination or victimisation on the part of the UK SLT.

The failure to consider alternatives (primarily mediation)

696. Ms Dinnes submitted that that the respondent failed to explore the alternatives to dismissal before dismissing the claimant. No reasonable employer, she submitted, would have dismissed the claimant without having attempted mediation and providing professional support for both the claimant and the UK SLT aimed at managing the claimant's Autism better in the workplace. She said that the claimant sent several emails suggesting mediation (pp.772-773, 776). Ms Jones had dismissed the suggestion of mediation in her report because the claimant did not have the right mindset for it and Mr Marquard's letter made no specific reference to mediation.

697. Mr Boyd submitted that mediation is a two-way street. It might be the case that when the claimant felt that his employment was in jeopardy, he embraced the notion of mediation. However, the damage had been done by that stage. Mediation could not repair relationships with the UK SLT because they were irremediably broken down. He submitted it was within a range of reasonable conclusions for Ms Jones to conclude (as she did at para 36 of her Report) that mediation would not work. The claimant's solicitors' letter of 8 February 2022 (pp.928-934) made no reference to the possibility of mediation.

698. We prefer Mr Boyd's submissions. We accept the claimant did refer to mediation in his email to Mr Al-Qasmi on 8 November 2021 (p.773). His later email of the same day (p.772) refers to ACAS conciliation rather than mediation. On 9 November he referred to being open to "discussion and mediation"

699. As Ms Jones noted at para 41.d of her report, the claimant's commitment to mediation had to be viewed in context. That context was his email of 3 September 2021 in which he said that Mr Cornwell "has a problem with me" and in which he accused Mr Al-Qasmi of not having the capability to resolve matters. We find that hard to square with the claimant's suggestion in his email at p.772 that his challenge "was to actions rather than a personal view of Mr Cornwell and his capacity to modify his approach". We also accept Mr Boyd's submission that by the time of the dismissal decision the claimant's stance had changed. His solicitors' letter of 8 February 2022 makes no reference to mediation, instead requesting (amongst other things) an apology for the impact of the investigation process, training for the UK SLT in working with individuals with Autism and an internal investigation into the "disproportionate and harmful reaction to the 3 September 2021" email.

700. At the dismissal hearing, when answering questions from Mr Marquard, Ms Jones expressed the view that mediation did not appear to be possibility because both parties had to be open to it for it to be beneficial. Her view, based on the information she had seen was that the claimant had shown distrust of the UK SLT and was not in a positive frame of mind in relation to them.

701. We find Mr Marquard accepted that conclusion. Although he did not specifically refer to "mediation" in his outcome letter he said that he had not been able to identify any signs within the report and the claimant's communications that his interactions with the UK SLT were likely to change. We find that was a conclusion which was within the band of reasonableness as was the resulting conclusion that mediation was not an appropriate alternative to dismissal in this case. We accept there had been periods when there had been an absence of conflict with the UK SLT. We find they did not reflect a change in the claimant's behaviour towards the UK SLT. Instead, they coincided with periods when the claimant was not seeking a pay rise or not being subjected to challenge. Ms Dinnes submitted that the conflicts were historical, but we find the allegations in the 2021 grievance, the criticisms in the 3 September email and the dig at Mr Coupe in the car repair email exchange in November 2021 show they were present and never far from the surface in 2021.

702. Mr d'Huc in his decision letter rejecting the claimant's appeal said that mediation was not appropriate given the extent of relationship breakdown. He said he could not see any examples of where the claimant had engaged positively with external parties and typically rejected any request to work with them. Mr d'Huc also

believed the claimant would only have engaged positively with mediation if his demands were met without compromise on his part. We find that conclusion was consistent with the evidence in Ms Jones's Report and well within the band of reasonableness.

703. Ms Dinnes also submitted that the respondent erred by not considering other alternatives, including the appointment of a support worker to review his emails. That was something which the claimant raised via his solicitors in their letter of 8 February 2022 (p.934) and in his grounds of appeal. Mr d'Huc dealt with it in his appeal outcome letter. His view was that had the claimant could have raised and discussed that at the OH assessment. He also noted the evidence in Ms Jones's report that Mr Cornwell had already provided support and guidance when engaging with Group colleagues and via Mr Al-Qasmi and Mr Bose when transitioning to OneIT. We find it reasonable for him to conclude that such steps had already been taken but had not prevented the breakdown in relationship and were unlikely to remedy it for the future.

The impact of Mr Cornwell's departure and reduced contact with the UK SLT

704. For the claimant, Ms Dinnes submitted that Mr Cornwell's resignation changed the landscape significantly. It was Mr Cornwell's grievance which started the investigation process, and the vast majority of communications which formed the basis of Ms Jones's report involved him. No reasonable employer would have proceeded with dismissal in these circumstances. She also addressed the suggestions that dismissal was still appropriate because the claimant's relationship with the rest of the UK SLT had irretrievably broken down and that dealing with the claimant would hamper the new Managing Director. She submitted they did not stand up to scrutiny. She accepted that the claimant's legal manager had to be a member of the UK SLT, but his contact with the UK SLT was limited to HR issues.

705. She submitted that the claimant had dealt with Mr Coupe and Mrs Deakin in relation to very sensitive issues and in extremely stressful circumstances and that "resolutions had been reached". She referred to pp.610-616 and 791-793. We do not find those pages reflect "resolutions having been reached". On page 610-616 the claimant relayed his disappointment with Mrs Deakin's handling of his grievance. He subsequently appealed against her decision, accusing her of bias and a conflict of interest. Pages 791-793 related to the Tax Code incident. There was no "resolution" to that except in the sense that the exchanges ended.

706. Ms Dinnes noted that Mrs Deakin and Mr Coupe's cross examination evidence was that issues would inevitably have arisen relating to pay and bonus reviews before the new Managing Director was due to start in July 2022. Ms Dinnes submitted there had never been issues raised by the claimant about annual pay reviews and that no issues about pay and bonus had been raised in 2021 about "standard matters" between January and June 2021. She submitted that with professional support for the claimant with sensitive communications, and training for the UK SLT on managing individuals with Autism there was no good reason why the claimant could not have dealt with Mrs Deakin and Mr Coupe on HR matters for a few months until the new Managing Director began work. She submitted it was striking how little effort was put into exploring this possibility and invited us to conclude that dismissing the claimant in those circumstances fell outside the band of reasonable responses.

707. For the respondent, Mr Boyd submitted that the decision to dismiss was within the band of reasonable responses given that the claimant would need to deal with either Mr Coupe or Mrs Deakin for a 2-month period. He also submitted that it was tolerably clear from the evidence that not being appointed to an IT Director role and the lack of a pay increase in mid-2021 was to use the claimant's phraseology, "catastrophic". He submitted that in April 2022, at the time of his next pay review, whether the decision maker was Mr Coupe or Mrs Deakin, any failure to provide the claimant with what he believed he was entitled to would have led to further complaint and in all likelihood to further litigation. Any future Managing Director would have faced the same sort of problem and risked "being tarred with the same discriminatory brush". A workable relationship was no longer possible.

708. Mr Marquard's decision to dismiss took into account this issue. His view (set out in his outcome letter) was that the claimant would still need to engage positively with the UK SLT in future. He also decided it was not reasonable to expect a new MD to "have to focus on resolving historical issues". We find he considered whether the claimant could report into someone outside the UK SLT but decided that was not an option because all country IT employees had legally to report to their country's management structure. Even with Mr Cornwell's departure that was not a feasible option given the claimant's previous interactions and communications with Mr Coupe and Ms Deakin.

709. We find that was a conclusion he was entitled to reach on the evidence and one within the band of reasonable responses. As we have said, we did not accept Ms Dinnes's suggestion that issues between the claimant and Mr Coupe and Mrs Deakin had been "resolved" or were "historical". The claimant had in the past expressed his deep lack of confidence and lack of trust in Mr Coupe. There was nothing to suggest that had changed. He had accused Mrs Deakin of bias in the grievance appeal process which had only concluded in September 2021. We do not accept Ms Dinnes's submission that there were no pay issues in 2021. That is what the 2021 grievance was about. It was also the case, we find, that the claimant had challenged his past pay rises (e.g. the 2020 pay rise) and that he felt strongly that he was underpaid and that the explanation or that could only be discrimination or victimisation. We find it was also within the band of reasonableness for Mr Marquard to conclude that any new Managing Director would have to focus on resolving historical issues, including the 2021 pay review issue and the claimant's broken relationship with the UK SLT.

710. We also accept Mr Boyd's submission that history supported the view that the introduction of a new line manager for the claimant would not resolve the issues with the working relationship. Contrary to what the claimant had told Ms Fuenfstueck in his 3 September email, he had had issues with managers before Mr Cornwell. The most obvious example was Mr Coupe but the claimant had also had issues with Mr Heinzel, Mr Cornwell's predecessor.

711. Taking all those matters into account, we find that the decision not to wait for the new MD to start before deciding whether to dismiss was within the band of reasonable responses.

712. We find the same applies to Mr d'Huc's decision to refuse the claimant's appeal on this issue. It was within the band of reasonableness for him to conclude that the claimant could not report to Mr Coupe or Mrs Deakin pending the

appointment of the new MD given that the claimant had raised a grievance against Mr Coupe stating he lacked trust and confidence in him as a manager and had also questioned the professionalism of Mrs Deakin.

The claimant being "blamed for disability".

713. Ms Dinnes submitted that a further material factor in the claimant's dismissal was the unfair characterisation of the symptoms of Autism, and that no reasonable employer would have dismissed for these reasons. She submitted that it was clear from the dismissal documentation (including Ms Jones's Report) that the impact of the claimant's ASD on his communication style and tendency to challenge decision was not appreciated when the decision to dismiss was made.

714. In particular she submitted that Ms Jones's Report, Mr Marquard's dismissal decision and Mr d'Huc's appeal rejection letter suggested there was an element of choice and therefore blameworthiness in respect of the claimant's communication style. That, Ms Dinnes submitted, showed a fundamental misunderstanding or an intentional mischaracterisation of the way in which ASD impacted on the claimant and led to him perceived as a trouble maker and someone who was simply being bloody-minded. He was understood by the UK SLT, and then by Mr Marquard and Mr d'Huc, as a problem rather than as an asset to the respondent. She invited us to conclude that that contributed decisively to the decision to dismiss. She submitted that no reasonable employer would rely on inaccurate and unfair statements about an employee's disability in their decision to dismiss, especially given the many attempts the claimant had made to explain his disability both during his employment and during the investigation/dismissal process.

715. As we have explained in relation to issue 10.4 we did not accept that the claimant's dismissal was something arising in consequence of his disability. We find that Mr Marquard (and Ms Jones's) conclusion that the behaviour which caused the breakdown of his relationship with the UK SLT (his "bloody mindedness") was not due to his disability is one which fell within the band of reasonableness. They had to decide on the evidence and information before them. That did not include Dr Ruthenberg's report which was created later. It did include the Aspiedent Report, though Mr Marquard treated that with caution because of the claimant's concerns about it. We find that it was reasonable for Mr Marquard to rely on Ms Jones's knowledge and experience. We do not find it outside the band of reasonableness to decide that it was not necessary to appoint a specialist in Autism. Apart from anything else, the Aspiedent experience had shown the difficulty of obtaining such "expert evidence" which the claimant would accept as applicable to him.

716. We do not accept that the claimant's disability was not taken into account. It is clear from Ms Jones's Report and Mr Marquard's decision that there was a recognition of the claimant's disability and of steps taken to accommodate that, e.g. working from home, Mr Cornwell assisting him with communications and UK SLT adapting their approach by, e.g. communicating by email. We find it was not a case of the claimant being "blamed for being disabled" as Ms Dinnes submitted, but the respondent making a decision that his "bloody mindedness" did not arise from his disability. We find that conclusion was within the band of reasonableness.

Conclusion on Issue 7

717. We find that the decision that dismissal was the appropriate sanction was one within the band of reasonableness.

Discrimination arising from disability (s.15 Equality Act 2010)

Issue 8: What were the matters "arising in consequence of [his] disability" on which the claimant relies? The claimant alleges that:

8.1 The claimant's manner of communication can be very direct and detailed, and he finds it more difficult to pick up on social cues. These consequences of his autism were exacerbated by his cancer diagnosis, which has placed the claimant under considerable mental strain;

8.2 The claimant has made complaints about being discriminated against on the grounds of his disability; and

8.3 The claimant's autism, cancer diagnosis and cancer treatment combined made him particularly vulnerable in terms of his mental health, to the extent that he was more likely to be signed off work when put under stress.

Issue 9: In relation to each of these:

9.1 Has that been proved by the claimant?

9.2 Does it fall within the statutory provisions.

718. The claimant is an autistic person. There is, it seems to us, a considerable difficulty in seeking to separate out those aspects of his personality and behaviours which "arise from" his Autism and those which do not. However, we have to decide the case that is in front of us. The claimant has specifically defined the "somethings arising" in consequence of his Autism. As the claimant himself acknowledged in his cross-examination evidence, other aspects of an autistic person's personality may not be linked to or arise from Autism. Not all aspects of the claimant's behaviour are relied on as something arising from his disability. Acknowledging the degree of artificiality that that gives rise to, we must make our decision based on the pleaded case.

719. During the hearing, by way of a shorthand, the Tribunal used the term "bloody mindedness" to refer to those behaviours which did not arise from the claimant's his Autism. We accept it may not be the most elegant phrase but was an useful shorthand in framing questions during oral evidence. However, we have been careful that in reaching our decision we have done so by reference to the relevant law, the case as pleaded and the parties' submissions, not by reference to that shorthand. In deciding the s.15 Equality Act 2010 complaint the primary question we had to answer was whether the particular manifestation of the claimant's Autism pleaded as "something arising" was an effective case of the alleged unfavourable treatment of him by the respondent.

720. We deal with each of the 3 pleaded "somethings arising" in turn.

8.1 - Manner of communication.

721. Ms Dinnes submitted that the evidence that at the hearing and Dr Ruthenberg's Report supported findings that the claimant's manner of communication was "highly detailed and precise", could at times be "particularly direct" and involved him being "unable to pick up on social cues". She relied on paras 9.2, 9.9-9.10. 10.2(i) and 10.2(ii) of Dr Ruthenberg's Report.

722. In his submissions, Mr Boyd drew a distinction between aspects of the claimant's manner of communication which the evidence suggested arose from his Autism ("over-inclusiveness" and "direct, occasionally blunt") and those which did not ("aggressive, confrontational or threatening"). He pointed out that Dr Ruthenberg's reference to the claimant's over-inclusiveness at para 9.2 related to the claimant's speaking, rather than written, style. He also pointed out that it appeared that it was the claimant himself, rather than Dr Ruthenberg who identified a "direct, occasionally blunt style of communication" at para 9.10.

723. We accept Ms Dinnes's submission that the claimant's manner of communication (including in writing) could be detailed and "over-inclusive". The respondent's UK SLT did not dispute that. There were numerous examples of that in the Bundle (e.g. his response to the 2017 Bonus at p.194-195 or his letter to Mr Cornwell regarding the December 2018 Expense at pp.324-326). We do not find anything in Dr Ruthenberg's Report, read as a whole, which suggests his comments at 9.2 would not also apply to written communications.

724. We also accept that the claimant's communications could be direct and "blunt" in the sense of lacking the usual "social niceties" or "padding" (e.g. his email to Mr Cornwell after the 17 September 2019 meeting (p.413)). We find that directness and a difficulty in picking up on social queues were characteristics of the claimant's manner of communication. We find, however, that although not intuitively able to pick up on social queues, he had learned some rules of social etiquette in the sense of being able to understand what was expected in certain circumstances, e.g. his email to Mrs Deakin congratulating her on her appointment as a statutory director in January 2021 (p.484).

725. Based on Dr Ruthenberg's Report (specifically paras 9.2, 9.9-9.10 and 10.2) we do find that those characteristics of the claimant's manner of communication were something arising from a consequence of his disability of Autism. We also find they were exacerbated at times of stress. We also accept that his cancer diagnosis and treatment was one such time of stress.

726. Given the way the parties put their respective cases, it is important we clarify what we mean and don't mean by "detailed", "direct" and "difficulty in picking up social cues". The respondent's case is that that the behaviour which led to the irrevocable breakdown in the claimant's relationship with the SMT was not his direct or over-inclusive manner of communication. Instead, it was what it describes as his tendency to be aggressive in communications, to assertively challenge everything, to seek to derogate or to do down colleagues and not accept any feedback or challenge. It says those characteristics (to which for consistency with the Hearing we will apply the shorthand "bloody mindedness") were not pleaded as being something arising from the claimant's Autism. Neither, it says, was the claimant's tendency to challenge any decisions adverse to him part of his "manner of communication".

727. The claimant did not seek to argue that any tendency to be "aggressive" was something arising from his disability. His case is that he was not aggressive. We do not understand the "something arising" pleaded at 8.1 to include a tendency to challenge any decision adverse to the claimant as part of his "manner of communication". If it was, we do not find it supported by Dr Ruthenberg's report. To the contrary, his para 10(4)(ii) indicated that the claimant was able to listen to criticism or comment. We do not find the claimant's "bloody mindedness" to be something arising in consequence of his disability.

728. We also do not understand the claimant's case to be that his lack of understanding of organisational hierarchy to be part of his "manner of communication" so that, e.g. he did not understand the ramifications of his writing to Ms Fuenfstueck on 3 September. If it was, we would have found it contradicted by the evidence. Although the claimant gave evidence that he does not see hierarchies in the same way as other people due to being an autistic person, that was contradicted by his letter to Ms Fuenfstueck on 14 April 2019 (p.366). In that letter he explicitly said that "even with my condition I know it is not conventional to write to you in this way, and I have considered it very carefully."

729. We also do not understand 8.1 to include a tendency to derogate or have a "dig" at colleagues as we found, for example, that the claimant did in his "car repair" email exchange with Mr Coupe in November 2021. If it was, we find there was nothing in Dr Ruthenberg's Report which suggested that tendency was something arising from his Autism. The report instead suggested that it was a characteristic of the claimant's communication style to avoid "padding" which would seem to us to include such passing digs and asides.

730. In summary, our finding is that the claimant's "manner of communication" in the sense of his direct, overinclusive and detailed writing style was something which arose from his Autism and was exacerbated by his cancer diagnosis. We find the other behaviours identified by the respondent at para 713 were not.

8.2 The claimant has made complaints about being discriminated against on the grounds of his disability

731. It was not disputed that the claimant had made complaints of being discriminated against on the grounds of his disability. In the claimant's submissions, Ms Dinnes submitted that the Tribunal should "conclude that this was a matter which was closely connected to the claimant's ASD". She also relied on para 8.10 Dr Ruthenberg's Report which referenced the claimant's strong sense of justice and fairness.

732. Mr Boyd submitted that the "something arising" in 8.2 was not something which fitted easily within the wording of s.15 when it was read with para 5.9 of the EHRC Code. The claimant having made complaints of disability discrimination was not the "result, effect or outcome" of his disability. He submitted that this aspect of the case overlapped with the s.27 victimisation complaints brought by the claimant.

733. We find that the claimant making complaints about his disability is something "arising as a consequence" of his disability in the sense that if he was not a disabled person, he would not have the basis for bringing a disability discrimination complaint. It seems to us that satisfies the "looser connection" required in a s.15 complaint

referred to in **Sheikholeslami.** For the avoidance of doubt, even allowing for that looser connection we do not accept that there is sufficient evidence (factual or medical) for us to conclude that the claimant's tendency to challenge (what we have referred to as "bloody mindedness" arose in consequence of the claimant's disability of Autism, even when exacerbated by his cancer diagnosis.

8.3 The claimant's Autism, cancer diagnosis and cancer treatment combined made him particularly vulnerable in terms of his mental health, to the extent that he was more likely to be signed off work when put under stress...

734. Ms Dinnes did not pursue a claim based on this "something arising" in her submissions for the claimant. Had she done so we would have preferred Mr Boyd's submission that there was no evidential basis for a finding that any of the alleged acts of unfavourable treatment were in any way influenced by this

Issue 10: Was the claimant subjected to unfavourable treatment because of these matters? The claimant alleges:

Issue 10.1 The respondent elected not to give the claimant a pay rise after he began a new role in May 2021;

735. It is not disputed that in May 2021 the claimant requested a pay review and that the outcome of that review was a decision not to increase his pay. We find that refusal of a pay rise was unfavourable treatment.

736. The key issue is whether that unfavourable treatment was because of the claimant's manner of communication (something arising 8.1) or his having brought discrimination complaints (something arising 8.2).

737. For the claimant, Ms Dinnes submitted that the decision to conduct a full pay review and then not award a pay rise were highly unusual. She relied on the claimant's evidence that it was usual to award a pay rise without conducting a full pay review when an employee was given additional responsibilities. She submitted that the pay rises given to Mr Pope and Mr Young supported the claimant's case that a pay rise was the usual practice on taking on new responsibilities.

738. Ms Dinnes also submitted that it was clear that by the time of the 2021 pay review decision Mr Cornwell, Mr Coupe and Mr Al-Qasmi were frustrated by the claimant's manner of communication. She submitted they resented giving the claimant a pay rise when he had cost the respondent money and had got his way in the past when it came to pay issues. The "only reasonable conclusion", she submitted, was that the claimant's historical communication style and the fact that he had raised complaints about discrimination in the past led to resentment which was an effective cause of the decision to not give the claimant any pay rise at all.

739. For the respondent, Mr Boyd submitted that the evidence did not support the claimant's submissions that there was an agreement with Mr Bose that the proposed pay review would lead to a pay rise for the claimant. We have explained in our findings of fact why we accept that submission and find there was no such agreement. We also accept his submission that the evidence does not support the claimant's case that pay rises were automatically given on taking up a new role particularly where that role was not a promotion or did not involve a change in Grade. We also accept his submission

that (at least when it came to the Group) there was a practice of obtaining benchmarking data. We do not accept there was such a practice when it came to the respondent.

740. Mr Boyd submitted there was a clear, non-discriminatory explanation for the decision not to give the claimant a pay rise. Mr Cornwell's evidence was that there was no rule or set practice across the business that pay rises were automatically given on promotion or when an individual changed role. The evidence supported a finding that Mr Cornwell had approached the issue fairly-it was he who made the point in email to Mr AL-Qasmi that if someone was underpaid for the role they were performing then they should address that. It was clearly a difficult financial situation for Group and the respondent in 2021.

741. It was accepted that the Mercer data placed the claimant at the median of the pay range for his role. Ms Dinnes submitted that left room for a pay rise to bring the claimant's salary up to a level nearer the top of that pay range. In response, Mr Boyd submitted that the Mercer pay range was for the UK as a whole. If the effect of higher salaries in London were stripped out, the likelihood was that the claimant was in fact higher in the pay range for the North-West where he was employed. It was also appropriate to take into account that the claimant was already the 4th highest paid employee in the respondent.

742. Mr Boyd submitted that Mr Pope and Mr Young were not appropriate comparators because they were in different circumstances. The respondent had provided evidence of why their salaries had been raised (compensation for lost overtime and a "flight risk"). He also submitted that the claimant's manner of communication was not a factor in the decision. The evidence showed that Mr Cornwell had no real issue with the claimant being over-inclusive or direct in his communications and had over the years made adjustments to accommodate that. Nor, he submitted, was the claimant having previously brought discrimination complaints an effective cause. He submitted that the claimant's submission appeared to be that Mr Cornwell had harboured a grudge since 2018 and exacted his revenge in 2021 by denying the claimant a pay rise. The evidence did not support a finding that the 2018 grievance was an effective cause. Instead, the evidence showed Mr Cornwell had shown a professional and positive attitude towards the claimant between 2018 and 2021.

743. We do find that by May 2021 the relationship between the claimant and the UK SMT was strained. As Mr Cornwell told Ms Jones in the subsequent investigation, it had reached the point where he was fearful of challenging the claimant in any way for fear of the claimant's reaction that challenge. We find that by 2021 the claimant's default position was to assert that any negative treatment of him was related either to his disability or to his 2018 Grievance and Tribunal claim. That led to members to members of the SMT being extra careful in how they communicated to or responded to the claimant. It is evident both from their evidence to Ms Jones their emails to each other that they would second guess themselves and ask UK SLT colleagues to sense check what they had written to the claimant. We accept that there was a degree of resentment towards the claimant always seeming to get his way, particularly on the part of Mr Coupe. He had vented that frustration to Mr Cornwell when he had decided to increase the claimant his 2019 Bonus.

744. We do not find, however, that the claimant's manner of communication was a significant influence on that situation. Nor was the fact of the claimant having made complaints of discrimination. It was what we have called his bloody mindedness and the management time and energy which it took to address his relentless pushback which caused the strained relationship. As we have said in discussing the "fair warning" issue under Issue 7 above, Mr Cornwell had expressed his concern about that tendency to challenge on a number of occasions. As with the victimisation complaint which we discuss below, we find that the effective cause of the resentment and fearfulness on the part of the UK SLT was not the manner of the claimant's communication nor his having made complaints of discrimination, but the relentlessness of his challenges to all adverse decisions and the manner of those challenges.

745. We find that Mr Coupe, Mr AL-Qasmi and, in particular, Mr Cornwell had taken steps to adjust their communication style with the claimant e.g. by communicating by email wherever possible, providing advance notice of issues and (in Mr Cornwell's case) assisting him with emails to colleagues. We find the problem came when the claimant's demands about promotion, salary increases or bonus payments were not met or when the claimant was subject to any kind of negative feedback.

746. We find that far from the strained relationship being a cause of the respondent (in the person of Mr Cornwell) rejecting the claimant's request for a pay rise, it meant the respondent approached the issue with a great deal of rigour. We find that Mr Cornwell was genuinely concerned to ensure that a fair decision was reached. That is evident from his communications with Mr Al-Qasmi. We find he was also concerned to ensure that the decision was demonstrably evidence based. That was important because, we find, he anticipated that the claimant would challenge any decision which did not go in his favour. That assumption was entirely reasonable given that the claimant had a history of challenging pay and bonus decisions.

747. We do accept that obtaining benchmarking data appears to have been the exception rather than the rule when it came to the respondent (as opposed to the Group). There was no evidence, for example, of such data being sought in deciding the pay rises for Mr Pope and Mr Young. It was not alleged that seeking benchmarking data was itself unfavourable treatment. We cannot see how an employee could reasonably view it as a disadvantage to obtain data to check whether they were fairly paid. For the avoidance of doubt, we do not accept the suggestion that the obtaining of the Mercer data was a sham to shore up a decision already made not to award a pay rise.

748. A s.15 claim does not rely on showing less favourable treatment than comparators. However, we accept that if there were appropriate comparators, the way they were treated might cast light on the reason why a claimant was subjected to unfavourable treatment. In this case, we do not accept that Mr Pope and Mr Young were in the same circumstances as the claimant. We have accepted the respondent's evidence that their pay rises did not come about solely because they changed roles, but due to factors specific to them. The decisions about their pay were also made in a different financial climate, in the sense that, when their pay rises were awarded, Ms Fuenfstueck had not issued her March 2021 warning about the need for to be cautious and keep a particularly close eye on personnel costs.

749. We do accept, however, that there was no evidence of benchmarking in their case or in other pay decisions by the respondent (as opposed to the Group). On balance, we find that is sufficient to pass the burden of proof to the respondent. We find, however, that the respondent has provided an adequate, non-discriminatory explanation for its decision not to award pay rise. Its decision was evidence based, relying on the Mercer data and taking into account the respondent's financial circumstances.

750. Our conclusion is that this complaint fails. Mr Cornwell's decision not to award the claimant a pay rise was not because of something arising from the claimant's disability.

Issue 10.2 The respondent launched an external investigation into the claimant for sending an email on 3 September 2021;

751. It was not suggested that the decision to launch an external investigation was not unfavourable treatment. We find that it was. Again, the issue was whether the something arising in 8.1 or 8.2 was an effective cause of it. It was not disputed that the immediate cause of the launching of the investigation was the claimant's email to Ms Fuenfstueck of 3 September.

752. Dealing first with 8.1. Ms Dinnes submitted that it was clear that it was the direct nature of that email which deeply upset Mr Cornwell, and Mr Al-Qasmi and was an effective cause of the unfavourable treatment. She characterised it as a "directly worded but factual email" sent by the claimant as an act of desperation, at a time when he was battling an aggressive form of cancer and was crying out for help and reassurance." She submitted that the "overreaction of Mr Cornwell and Mr Al-Qasmi" suggested that "other factors" were in play beyond the claimant's 3 September 2021 email. She submitted that was also consistent with the scope of the investigation being widened to include historical email correspondence and also consistent with the evidence given by the respondent's witnesses, with Mr Cornwell describing the email as the straw that broke the camel's back. She urged the Tribunal not to underestimate the claimant's difficulties in appreciating the unspoken rules of social engagement which come naturally to other people.

753. Mr Boyd submitted that it was "remarkable" to characterise the 3 September 2021 email as "a directly worded but factual email". It was, he submitted, fundamentally critical of the abilities and good faith of Mr Cornwell and Mr Al-Qasmi. He submitted that the issue with the email was not that it was "overinclusive" or "direct". The issue was that it was highly critical of Mr Cornwell and Mr AL-Qasmi. That was, he submitted, not a feature of the claimant's Autism, but of his "not getting his own way".

754. We prefer Mr Boyd's submissions. Ms Dinnes in her submissions relating to the unfair dismissal complaint (para 26) accepted that the email was "evidently very embarrassing for Mr Cornwell and Mr Al-Qasmi. We note that the claimant in the email itself said that he had "considered carefully" before reaching out to Ms Fuenfstueck. As we have previously noted, the claimant had on a previous occasion when he wrote to her acknowledged that "even with his condition he knew it was not conventional to write to her in that way". We do not find that his decision to write to Ms Fuenfstueck was something he did unknowingly because of a lack of appreciation of the rules of social engagement.

755. We also accept that it was not the claimant's manner of communication that was the issue. It was the content of his email, i.e. telling Ms Fuenfstueck that Mr Cornwell "had a problem with him", had "blocked his pay" rise because of bias and victimisation and that Mr AL-Qasmi did not seem capable of preventing escalation or negotiating a path of compromise and that Mr Marquard's appeal decision would be a "hard-line position without balanced consideration". It was sent while an internal process was underway and cast doubt on the genuineness of that process. We find the content of the email clearly had the potential to significantly undermine Mr Cornwell and Mr Al-Qasmi in the eyes of the Group's Chief Executive. In that context we do not accept Ms Dinnes's characterisation of Mr Cornwell raising his concerns about it as an "overreaction". We accept Mr Boyd's submission that the effective cause of launching the investigation was the concern that the email indicated the working relationship with the UK SLT had broken down. The claimant's manner of communication was not a significant influence on that decision.

756. When it came to something arising 8.2, Ms Dinnes submitted that the UK SLT's attitude to the claimant changed in 2018 when he raised his grievance and brought the 2018 Tribunal claim. She accepted that the UK SLT interpreted emails from the claimant as "aggressive" or "threatening". She accepted that they were "tone deaf" and "direct" and "detailed" and that was something arising from the claimant's Autism. It was clear, she submitted, that the threat of an Equality Act 2010 claim was something which was in the mind of the UK SLT by 2021 and was an effective cause of the decision to launch the investigation.

757. Mr Boyd submitted that it was clear that the 2018 and 2021 grievances and Tribunal claims were not what caused Mr Al-Qasmi to seek an outside investigation. He also submitted that in reality, this complaint was best seen as a victimisation complaint. We agree with Mr Boyd. It seems to us that 8.2 is best seen as a duplicate of the victimisation complaint. We set out our reasons for dismissing the victimisation complaint relating to this detriment/unfavourable treatment in relation to issue 18.2 below and do not repeat them here. In summary, we found that the claimant's grievances and Tribunal claims were not a significant influence on the decision to launch an investigation. Instead, it was the manner in which he did so (what we have referred to "bloody mindedness"). Those 2 things were separable. Putting it in terms of the s.15 complaints, we find that something arising 8.2 (bringing the discrimination complaints) was not a significant influence of unfavourable treatment 10.2. The claimant's "bloody mindedness" was, but we have found that was not something arising from his disability.

758. We do not find that either of the "somethings arising" in 8.1 or 8.2 were a significant influence on the launching of the investigation and this complaint fails.

Issue 10.3 The respondent proceeded with the investigation and dismissal process in the absence of the claimant and the claimant was unable to participate; and

759. It was not suggested that the decision to proceed with the investigation in the absence of the claimant was not unfavourable treatment. We find that it was.

760. Ms Dinnes's submission relied on the disproportionate or unreasonable nature of the decision to continue with the investigation and dismissal process in the absence

of the claimant. That "harsh treatment" she submitted could only be understood by refence to the UK SLT's historical frustration with the claimant's manner of communication and his tendency to raise discriminatory issues. She submitted that the respondent had not given any plausible explanation for proceeding with the processes in the claimant's absence rather than, e.g. waiting for the claimant to return from sickness absence.

761. Mr Boyd submitted that at the point the claimant was told about the investigation, he had returned to work and indicated that he was fit to return to work full time. His initial absence was certified as due to cancer and nothing else. Mr Boyd submitted that the evidence showed the respondent had made significant efforts to try and engage with the claimant including trying to establish whether he was well enough to engage in the process but the claimant had put up unnecessary blockages and impediments to it doing so.

762. The decision not to postpone the initial investigation was, we find, made by Mr Al-Qasmi. The decision not to postpone the "dismissal hearing" was made by Mr Marquard in consultation with Ms Johnson.

763. We have found, in the context of the unfair dismissal complaint, that the respondent acted unreasonably in not giving the claimant further time to recover. However, we do not accept the claimant has proved facts from which we could conclude that the failure to postpone the investigation or the dismissal hearing were significantly influenced by his manner of communication (8.1) or his having brought discrimination complaints (8.2). We accept Mr Boyd's submission that the respondent tried to take steps to establish whether the claimant was well enough to take part in the investigation. The claimant frustrated those attempts through his insistence on stringent conditions being complied with when it came to the OH adviser engaged to provide that opinion. We find that the "direct" or "over inclusive" manner of communication in the exchanges was not a significant influence on the decisions to proceed rather than postpone. What was a significant influence was the "bloody mindedness" when it came to what the claimant would accept in terms of OH practitioner.

764. We keep in mind that there can be more than one significant influence on a decision. We have considered the submission which we understand to underlie the claimant's case on this point, which is that the respondent's desire to hurry through the process and "get rid" of the claimant could ultimately be traced back to his manner of communication or his having previously brought complaints of discrimination. We do not find the evidence supports that. As we have said in relation to the victimisation complaint, the act of bringing discrimination complaints was not a significant influence on the decisions taken. What was a significant influence was the manner of doing so, i.e. the claimant's "bloody mindedness" and the toll that had taken on his relationship with the UK SLT and its drain on the respondent's business.

765. This complaint fails.

Issue 10.4: The respondent dismissed the claimant and refused his appeal.

766. It was not suggested that the decisions to dismiss the claimant and refuse his appeal did not amount to acts of unfavourable treatment. We find they were.

767. The decision to dismiss was made by Mr Marquard. The decision to refuse the appeal was made by Mr d'Huc. The question we had to decide was whether something arising 8.1. (Manner of communication) or 8.2 (bringing discrimination complaints) was a significant, (i.e. more than trivial) influence on each of their decisions.

Mr Marquard's decision to dismiss

768. For the claimant, Ms Dinnes submitted that Mr Marquard's decision to dismiss the claimant was made "ostensibly" on the basis that his relationship with the UK SLT had irretrievably broken down. That decision echoed Ms Jones's report which found that the working relationship had irretrievably broken down. Ms Dinnes submitted that Ms Jones's report "recommended the claimant's dismissal". We find that is not accurate – para 37 of Ms Jones's report recommends that "consideration be given to ending the employment relationship" (para 37 at p.900).

769. Ms Dinnes submitted that the only reasons given for the alleged breakdown in relationship related to the claimant's verbal and written manner of communication and his tendency to raise discrimination and the possibility of discrimination claims. She said the UK SLT referred to the problem being that the claimant's emails felt "aggressive" and "threatening". She accepted that was how they felt to the recipients. She submitted, however, that those were descriptions of how it felt to receive a "very directly worded, tone deaf email about a decision they had made". She submitted that If we accepted that the claimant was dismissed for these reasons alone and accepted that the claimant's communication style and tendency to raise discrimination as an issue were significantly influenced by ASD, it followed that the claimant was dismissed solely due to matters arising from his disability.

770. Mr Boyd submitted that the respondent understood the claimant's case to be that (in relation to 8.1) features of the claimant's Autism caused him to communicate with the UK SLT in a certain manner that in due course led to the breakdown of relationships, the breakdown of the relationships led to the termination of his employment and therefore he was dismissed because of his Autism. That analysis, he submitted was an oversimplification. The key to Mr Marquard's decision was his conclusion that the relationship seemed to have broken down irretrievably. Mr Boyd submitted that was an "unimpeachable one", based on the information before Mr Marquard. Unless there was something that stood out like the proverbial sore thumb from the material in Ms Jones's report, it was logical that he would conclude that the relationship had indeed broken down. He submitted that that was a conclusion that was not materially influenced by ether of the "somethings arising" at paragraphs 8.1 to 8.2.

771. In relation to 8.1, Mr Boyd submitted that the "thematic" reason for the breakdown of relationships was, as said by several witnesses, more to do with the claimant challenging business decisions that he did not agree with (not that he could not understand), and particularly decisions relating to pay and career progression. He submitted the evidence supported a finding that the UK SLT found the claimant to be aggressive and threatening. The experience of the UK SLT was, he said, a "real and not illusory matter" and the impact on them was profound. He referred us to the evidence about the

772. When it came to the complaint based on 8.2, Mr Boyd further relied on the "separability" point also raised in relation to the victimisation complaints.

773. As we explain in our findings of fact, we found that Mr Marquard's reasons for dismissing the claimant were those set out in his letter of 24 February 2022.

774. When it comes to "something arising" 8.1, we accept the point made in Ms Dinnes's submission that we need to look not only at the "headline" reason why Mr Marquard decided to dismiss (breakdown in relationship) but at the causes of that breakdown (**Sheikholeslami).**

775. We find it was in part the claimant's communication with Ms Fuenfstueck about the UK SLT on 3 September 2021. That was the last straw, but the breakdown was the result of the claimant's communications with the UK SLT since 2017.

776. We accept Mr Boyd's submission that the analysis does not end there. We need to decide what aspect(s) of the communication contributed to the breakdown. Did it include the "manner of communication" in 8.1., i.e. the claimant's communications being "direct" and "over-inclusive" such that it had a significant influence on the decision to dismiss? We find it did not. Neither Mr Marquard's reasons for dismissal nor Ms Jones's report refer to the claimant's manner of communication in the 8.1. sense. Instead, the focus is on the "aggressive and threatening tone" of the communications and the UK SLT working in fear of such threats. Mr Marquard's findings in relation to the claimant's manner of communication was that the UK SLT had taken steps to understand his diagnosis and support him. As with Issue 10.2, we do not find that the claimant's manner of communication as defined in 8.1 was a significant influence on Mr Marquard's decision to dismiss, either directly or as a contributory factor in the breakdown of relationship.

Mr d'Huc's decision to reject the appeal

777. For the claimant, Ms Dinnes submitted that in refusing the claimant's appeal Mr D'Huc relied on the fact that he had seen no positive communications between the claimant and the UK SLT, that communication issues had occurred between the UK SLT and the claimant many times, that claimant took a significant amount of time to manage, and the effect of the claimant's communications on the UK SLT. She submitted that it followed that Mr d'Huc's decision to refuse the appeal and uphold the claimant's dismissal was also solely based on matters arising from his disability i.e. C's communication style.

778. Mr Boyd submitted that the points made in relation to Mr Marquard's decision to dismiss could be made with even more force in relation to Mr d'Huc's decision to refusal of the appeal.

779. As with Mr Marquard' decision to dismiss, we prefer Mr Boyd's submissions. We find the claimant's manner of communication in the 8.1. sense was not a significant influence on Mr d'Huc's decision. His central conclusion, we find, was that it had become an impossible position because whenever feedback was given which the claimant did not like he would become threatening or aggressive in tone, e.g. the 2018 and 2019 bonus issues. That was not based on the claimant's "direct" or "over-inclusive" manner of communication. As with Issue 10.2, we do not find that the claimant's manner of communication as defined in 8.1 was a significant influence on Mr d'Huc's decision to refuse the appeal, either directly or as a contributory factor in the breakdown of relationship.

780. As with the decision to dismiss, it seems to us that the complaint based on 8.2 in relation to the dismissal and refusal of appeal duplicates the victimisation complaint in 18.3. We have set out our reasons for dismissing that complaint below and do not repeat them here. In summary, we found that the claimant's raising grievances and Tribunal claims were not a significant influence on the decision to refuse the appeal. Instead, it was the manner in which he did so (what we have referred to "bloody mindedness"). Those 2 things were separable. Putting it in terms of the s.15 complaints, we find that something arising 8.2 (bringing the discrimination complaints) was not a significant influence on the unfavourable treatment 10.4. The claimant's "bloody mindedness" was, but we have found that was not something arising from his disability.

781. This complaint fails.

Issue 11: Has the respondent shown that the treatment was a proportionate means of achieving a legitimate aim? The respondent alleges that its legitimate aim is as follows:

Issue 11.1 The carrying out a pay review process - to make decisions on pay reviews that were appropriate and in line with market conditions and the performance of the business.

782. Mr Boyd confirmed in his submissions that had we found that the refusal to grant the pay rise was because of something arising in consequence of the claimant's disability, the respondent would not have sought to rely on the statutory defence. Had we decided issue 10.1 in the claimant's favour, therefore, the complaint relating to the refusal of a pay rise under s.15 would have succeeded.

Issue 11.2 Launching an external Investigation – to deal with the grievance in a fair and reasonable manner.

783. If we are wrong on issue 10.2 and the something arising in 8.1 or 8.2 was an effective cause of the launching of an external investigation, Mr Boyd relied on that being a proportionate means of achieving the legitimate aim of dealing with the grievance in a fair and reasonable manner. Had we been required to deal with this issue we would have accepted that as a legitimate aim.

784. Ms Dinnes submitted that there were other more proportionate steps which could have been taken short of launching an investigation. She suggested that relevant factors included that the issue was one of Mr Cornwell's (over) reaction to the claimant's behaviour and that the claimant was facing life threatening cancer and the grievance appeal. She said that it was "difficult to imagine any circumstances where it was appropriate to hire an external investigator with no professional experience of ASD to examine the communications of an autistic individual". She submitted that it was not proportionate to hire an external investigator without first taking steps to resolve the communication difficulties between the UK SLT and the claimant. She also submitted that it would also have been appropriate to warn the claimant that the UK SLT was "finding his communication difficult to manage" and "to seek professional support and training" for the UK SLT.

785. In his submissions, Mr Boyd relied on the points made in relation to the "fair warning" issue in the unfair dismissal complaints (Issue 7). He also submitted that it was clearly proportionate to hire an external investigator where a Manging Director had raised a grievance and there were serious concerns that the working relationship had broken down. If a more junior employee had been appointed that would have been legitimately subject to criticism. Appointing a non-UK senior manager would have not been appropriate because they would have needed an understanding of UK employment law. Appointing an external consultant who could advise the person appointed to make the decision on UK Employment Law struck the correct balance. He submitted that Ms Jones was perfectly suited to carrying out a robust investigation. We accept his submission that the claimant has asserted a lack of "professional knowledge of Autism" on her part without engaging with her to test that.

786. We prefer Mr Boyd's submissions. We have explained when dealing with issue 7 in relation to the unfair dismissal complaint why mediation was not at that stage appropriate and why we found fair warning had been given. Had we been required to decide the issue we would have preferred Mr Boyd's submissions and found that the respondent's instructing an external person to carry out an investigation was a proportionate means of achieving its legitimate aim.

Issue 11.3 Proceeding with the investigation and dismissal process in the absence of the claimant and the claimant being unable to participate - to deal with the grievance in a fair and reasonable manner.

787. Had we found that this complaint amounted to unfavourable treatment because of something arising for the claimant's disability we would have not accepted that the respondent's approach was a proportionate means of achieving what we accept was a legitimate aim. We have explained in the context of the unfair dismissal complaint why we considered that the decision not to postpone the dismissal hearing was not within the band of reasonableness. Had we been required to, we would have found it was also not a proportionate means of achieving this legitimate aim. It would have been proportionate to give the claimant more time to agree to undergo an OH assessment and to provide more evidence to the investigation process. We accept it would not have been proportionate to delay the process indefinitely.

Issue 11.4 Dismissal of the claimant and refusing his appeal - following a fair process to determine whether the working relationship between the claimant and the respondent's senior management had broken down irretrievably and if so, what the outcome should be.

788. Had we found that the decision to dismiss the claimant and refuse his appeal was because of something arising in consequence of his disability we would have found that this complaint succeeded. Mr Boyd's submissions did not address this legitimate aim. Ms Dinnes submitted the legitimate aim was circular and made no sense. Dismissing the claimant could not be a proportionate means of achieving the legitimate aim of "following a fair process to determine whether the working relationship had broken down". We agree. We accept there might be legitimate aims which could have been relied on, e.g. ensuring the effective working of the UK SLT, but that is not what was pleaded. Had we been required to decide this issue, we would

find that the legitimate aim pleaded could not justify the claimant's dismissal or the refusal of his appeal.

Harassment on the grounds of disability (s.26 Equality Act 2010)

Issue 12: What "unwanted conduct" does the claimant rely upon? The claimant alleges that the following was unwanted conduct:

> ***Issue 12.1: The respondent launched an external investigation into the claimant for sending an email on 3 September 2021;***
>
> ***Issue 12.2 The respondent proceeded with the investigation and dismissal process in the absence of the claimant, while the claimant was under considerable mental strain and was unable to participate; and 12.3. The respondent dismissed the claimant because of the symptoms of his disability and the fact that he had made disability discrimination complaints previously.***

Issue 13: Did the alleged conduct take place?

789. It was not disputed that the conduct took place. It was also not disputed that the conduct was unwanted.

I***ssue 14: Was the alleged conduct related to a relevant protected characteristic, namely the claimant's disability?***

790. Ms Dinnes's submission was that unwanted conduct was related to the claimant's disability because the decisions to launch the investigation, continue in the claimant's absence and dismiss all arose ultimately from his disability. Mr Boyd submitted the unwanted conduct was not related to a relevant protected characteristic.

791. The parties' submissions in effect repeated those relating to the s.15 complaints. We have found the unfavourable treatment at 10.2 -10.4 (which mirror the unwanted conduct at 12.1-12.3) were not because of something arising in consequence of the claimant's disability. On the same basis, we find that the unwanted conduct was not related to the claimant's disability.

792. The harassment complaints fail on that basis

Issue 15 Did the alleged conduct have the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, subject to the considerations of s.26(4) Equality Act 2010?

793. The claimant accepted that the unwanted conduct did not have a harassing purpose. Had we been required to decide the issue we would also have found that the conduct did not meet the threshold for having a harassing effect. We accept the claimant found the unwanted conduct to have that effect, but we do not accept it was reasonable for it to have that effect. Viewed objectively, it was not reasonable for the launching of the investigation, the process followed and the decision to dismiss to have a harassing effect given the threshold required for that effect. The process and decision was undoubtedly stressful and upsetting, but we do not find that viewed objectively that meets the definition in s.27 Equality Act 2010.

Victimisation (s.27 Equality Act 2010)

Issue 16: Has the claimant proved the protected acts he relies upon? These are:

16.1 2018 grievance and Employment Tribunal claim;

16.2 2021 grievance and Employment Tribunal claim; and

16.3 The claimant's email of 3 September 2021.

Issue 17: Does any protected act fall within of section 27(2) Equality Act 2010?

794. The respondent accepted that 16.1 and 16.2 were protected acts for the purposes of s.27(2) of the Equality Act 2010. It did not accept that 16.3 was. Mr Boyd did not deal with this issue in his submissions.

795. Ms Dinnes submitted that the references in the 3 September 2021 email to "bias" and "victimisation" together with the reference to the Tribunal time limit and the contents of the attached 2021 Grievance were sufficient to make it a protected act for the purposes of s.27(2)(c) and (d) of the Equality Act 2010.

796. We accept that submission. Had the email been sent in isolation, we would not have found it sufficient to be a protected act. It referred to "victimisation" and "bias" but in a broad way which did not on the face of it link the "victimisation" to the claimant's 2018 grievance or Tribunal claim. While we accept that a protected act need not refer explicitly to the Equality Act 2010 or set out the elements of a claim under that act, we do not find that the reference to the Tribunal time limit would have been enough to make it a protected act.

797. However, the claimant attached to the email his 2021 Grievance. In that he made it clear he was alleging disability discrimination and victimisation in breach of the Equality Act 2010 because of his 2018 Grievance and Tribunal claim. Given that the email expressly asked Ms Fuenfstueck to read the attachments we find the correct approach is to view the email and attachments as one. When that is done we do find that the email was a protected act for the purposes of s.27(d) (making an allegation of breach of the Equality Act 2010. If we are wrong about that we would have found that it fell withing the "catch-all" category at s.27(2)(c).

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Issue 18: Was the claimant subjected to a detriment because of a protected act?

798. We deal with each of the 3 alleged detriments in turn.

Issue 18.1: The claimant alleges that The respondent elected not to give the claimant a pay rise after he began a new role in May 2021;

799. The protected act relied on for this detriment was the 2018 Grievance and Tribunal Claim (16.1). The other protected acts post-dated the detriment.

800. In her submissions, Ms Dinnes relied in part on the points made in relation to Issue 10.1, i.e. what she characterised as the unusual approach taken in dealing with the claimant's pay review request. She also submitted that the 2018 Grievance and

Tribunal claim were clearly still in the minds of Mr Cornwell and Mr Al-Qasmi in 2021. She relied on the references to them made in their evidence to Ms Jones's investigation.

801. Mr Boyd also relied on his submissions in relation to issue 10.1 The respondent, he submitted, had provided an adequate non-discriminatory explanation for the decision to refuse the pay rise. He did not suggest that separability was a relevant issue for this detriment.

802. In deciding issue 10.1 we concluded that the approach which was taken in deciding whether to award the claimant a pay rise was due in part to Mr Cornwell anticipating that the claimant would challenge any decision which did not go in his favour. However, we do not find that that fear was a significant influence on the decision not to grant a pay rise. Instead, it resulted in the respondent ensuring it had taken a rigorous, evidence-based approach to making the decision. We accept there had been resentment in the past at the claimant getting bonus awards that Mr Cornwell felt he did not deserve, e.g. the 2019 bonus award which prompted Mr Coupe's "sticks in the throat" comment. We do not find that leads to the conclusion that Mr Cornwell and Mr Al-Qasmi (who ultimately made the pay rise decision) would have denied the claimant a pay rise which the evidence showed he deserved. We find that Mr Cornwell was genuinely concerned to ensure that if a pay rise was merited, it would be granted. There was no evidence that Mr Al-Qasmi had expressed the sort of resentment referred to by Mr Coupe.

803. We do not accept that the claimant has shown facts from which we could conclude that the decision not to award him a pay rise was significantly influenced by his 2018 Grievance and Claim. If we are wrong about that and the burden did pass, we would have found that the respondent has provided an adequate, non-discriminatory explanation for its decision not to award pay rise. Its decision was evidence based, relying on the Mercer data and taking into account the respondent's financial circumstances and was not materially influenced by the protected act at 16.1.

804. Our conclusion is that this complaint fails. The decision not to award the claimant a pay rise was not an act of victimisation.

Issue 18.2: The claimant alleges that the claimant was investigated for sending the Email of 3 September 2021

805. It was not disputed that the launching of an investigation amounts to a detriment.

806. The parties also agreed that the email was the trigger for instigating Ms Jones's investigation.

807. For the claimant, Ms Dinnes submitted that all 3 protected acts significantly influenced the decision made by Mr Cornwell and Mr Al-Qasmi to investigate the claimant "as a way of removing the claimant from the business". She repeated the substance of the submissions made in relation to issue 10.2. She submitted that it was clear from their evidence to Ms Jones's investigation that the members of the UK SLT complained about the claimant raising disability discrimination and the possibility of litigation.

808. For the respondent, Mr Boyd relied on the points made in relation to 10.2. he also submitted that the issue of severability was relevant to this complaint. He relied on what was said in **Fecitt,** i.e. that where the issue is the manner in which a protected act is done the need to resolve a difficult and dysfunctional situation could "provide a lawful explanation for imposing detrimental treatment on [in that case] an innocent whistleblower."

809. We bear in mind the importance placed in the case-law on being sceptical and cautious in identifying reasons for alleged detriments separate from the protected acts themselves. Equally, we bear in mind that the fact that someone has done a protected act does not mean that an employer is precluded in acting towards them in any way which causes them a disadvantage (see **Fecitt**). Otherwise, an employer would be entirely hamstrung in seeking to resolve a situation involving allegations of discrimination or s.27 victimisation by the fear of any action it took in itself giving rise to a victimisation claim.

810. We do find in this case that the protected acts and the manner in which they were made are separable. As we said in relation to 10.2, we found the effective cause of launching the investigation was the concern that the 3 September 2021 email indicated the working relationship with Mr Cornwell and Mr Al-Qasmi had broken down. The 2021 Grievance had not caused the launch of an investigation. Instead, the respondent had sought to deal with it through a formal grievance process which we find to have been reasonable and fair. As part of that process, Mrs Deakin had sought to investigate the allegations of discrimination raised by the claimant. She had been stymied in doing so because of the claimant's objections and pre-conditions for contacting Mr Bose, who the claimant said had evidence of discrimination. The claimant's appeal against the Grievance outcome had also not prompted the launching of the investigation.

811. The 2021 Tribunal claim was not issued until 21 September 2021. We found that before that date, Mr Al-Qasmi was already taking steps to seek legal advice on the appropriate steps to take in response to the claimant's 3 September email. There was no suggestion in Ms Dinnes's submissions that the issuing of that Tribunal claim was what triggered the investigation.

812. In other words, the claimant had raised allegations of discrimination and victimisation before and that had not prompted action. He had also written to Ms Fuenfstueck direct before, and that had not prompted action. Mr d'Huc in the dismissal appeal outcome letter confirmed that writing to the Group CEO was not the issue per se. We find that it was the way the claimant raised the issues which triggered that. As we have said in relation to 10.2, he raised the allegations in an email to the Group CEO, in which he clearly cast doubt on the good faith and competence of Mr Cornwell and the competence of Mr Al-Qasmi. He did so while an internal grievance appeal was still underway.

813. In those circumstances, we find that that the alleged detriment was not "because of" (in the sense of being significantly influenced by) the protected act (specifically the 3 September email) but because of the way in which that act was done. We accept as genuine Mr Cornwell's view that the working relationship with the claimant had broken down. The launch of the investigation was, to adopt the language

used in **Fecitt**, a genuine attempt by the respondent to address a "dysfunctional" situation.

814. The complaint of victimisation based on this detriment fails.

Issue 18.3: The claimant alleges that he was dismissed and his appeal was denied.

815. This issue involves 2 detriments. The first is Mr Marquard's decision to dismiss. The second is Mr d'Huc's decision to refuse the claimant's appeal against hat dismissal. It was not disputed that either amounts to a detriment.

Mr Marquard's decision to dismiss

816. For the claimant, Ms Dinnes submitted that Mr Marquard based his decision to dismiss on Ms Jones's recommendation. Ms Jones's report was based on evidence and documentation provided by the UK SLT, which specifically complained about the claimant raising disability discrimination and the possibility of litigation. Ms Dinnes submitted that Mr Marquard's decision wholly supported Ms Jones's conclusions and recommendations and specifically referred to comments made by Mr AL-Qasmi and Mr Cornwell to Ms Jones which emphasised the negative impact of the claimant raising grievances and claims. She pointed out that his outcome letter stated that "It is important that both sides have to have mutual respect and must not have to work in fear of threats of discrimination, victimisation and potential litigation." Those comments alone, she submitted, indicated that the claimant 's 2018 and 2021 grievances and Tribunal claims had a significant influence on Mr Marquard's decision to dismiss the claimant. She also submitted that it was clear from Mr Marquard's letter that the 3 September email was of central importance, referring to the serious allegations made about Mr Al-Qasmi and Mr Cornwell. She submitted that it was clear from his cross-examination evidence that Mr Marquard was referring to the grievance about disability discrimination attached to the email and the reference to victimisation made in it.

817. Mr Boyd relied on the "separability" point made in relation to 10.4 and 18.2.

818. We have found that Mr Marquard relied heavily on Ms Jones's report and did not read the Appendices in any detail. Of the 3 protected acts relied on by the claimant it is clear that he was aware of the 3 September 2021 email to Ms Fuenfstueck. It was referenced in his letter and was specifically referenced in the introduction to Ms Jones's Report. When it comes to the other protected acts, the 2018 grievance is specifically referenced in the Report as marking the turning point in the claimant's attitude towards the UK SLT (and Mr Coupe in particular) rather than as marking a turning point in their treatment of the claimant. The Report does not refer specifically to the 2018 Tribunal Claim nor to the 2021 Grievance and Tribunal Claim. In his cross-examination evidence, which we accept, Mr Marquard said that those matters were not in his mind when he made his decision.

819. In her report, Ms Jones reported that the UK SLT recognised that employees would and had the right to disagree with decisions taken, but that in the claimant's case, it is the "tone and approach that has become very difficult" (para 30). She said that "preventing and limiting the claimant's threats to raise a grievance, go to ACAS or raise a tribunal claim had led to senior leaders "giving in" and compromising their own judgments and decision making" (para 30). She also reported that the UK SLT "felt

there was no compromise with the claimant, it was his way or the highway to a tribunal on all matters" (para 27). We accept that was the way the UK SLT genuinely felt.

820. We do not accept Ms Dinnes's characterisation of Mr Marquard's cross examination evidence. She put to him that in summary, UK SLT's complaints were about (i) the claimant's manner of communication (ii) the fact the claimant had raised discrimination in the past and the fear of a repeat and (iii) the time spent dealing with the claimant and the stress that generated. Mr Marquard rejected that. He accepted that dealing with the claimant was time consuming and also accepted that there was a fear of more complaints. He said, however, that more important was that the claimant had questioned the leadership style of Mr Cornwell, questioned Mr Al-Qasmi's capabilities and questioned Mrs Deakin's capability to manage the grievance. His conclusion based on the evidence he had seen was that there was no trust from the claimant in the UK SLT, that the day-to-day relationship had broken down and that there was no willingness to change that.

821. We find that accurately reflects Mr Marquard's reasons for dismissal. We find that the fact of the claimant having brought previous grievances and Tribunal claims was not, per se, a significant influence on Mr Marquard's decision to dismiss. We note that in the UK SLT's interviews with Ms Jones (which Ms Dinnes referred to in her submissions) the UK SLT acknowledged the claimant's right to challenge decisions including by way of grievance and Tribunal. The issue was with UK SLT having to "work in fear of threats of discrimination, victimisation and potential litigation". We have considered carefully whether that is something which is separable from the bringing of discrimination complaints. We have decided it is. We accept Mr Boyd's submission that while the manner in which the claimant raised the threat of discrimination complaints was a significant influence on Mr Marquard's decision to dismiss, the fact of bringing the complaints was not.

822. When it comes to the 3 September 2021 email, our conclusion is the same. We find that the email per se was not a significant influence on Mr Marquard's decision, but the manner of it. We accept his cross-examination evidence that it was not making allegations of discrimination or victimisation against Mr Cornwell and Mr Al-Qasmi which was the issue. We find that consistent with the fact that there was no suggestion of dismissing the claimant as a result of making the 2021 grievance which made exactly those allegations. We find that the 2 significant issues for Mr Marquard were those set out in his outcome letter. The first was that writing direct to Ms Fuenfstueck while the grievance appeal process was ongoing undermined that process and those involved in it. The second was the serious allegations he made about Mr Cornwell's and Mr Al-Qasmi in the email (as opposed to in the attached grievance). We find Mr Marquard viewed those allegations as being about their competence and capabilities rather than being by way of allegations of discrimination and victimisation.

823. This complaint fails. We find that none of the protected acts were a significant influence on Mr Marquard's decision to dismiss

Mr d'Huc's decision to refuse the appeal

824. Ms Dinnes submitted that in refusing the appeal against dismissal, Mr d'Huc also referred to the claimant's protected acts in support of his conclusion. She invited us to find that they were a significant influence on his decision, in the sense of being more than a trivial influence.

825. The respondent also relied on the separability point when it came to this detriment.

826. We prefer the respondent's submissions. We found that the appeal outcome letter accurately reflected Mr d'Huc's reasons for rejecting the appeal. In the "Outcome" section of his letter, Mr d'Huc acknowledged it was every employee's right to raise a grievance or submit a complaint to an Employment Tribunal. However, he said "to use these rights as a threat is not conducive to a healthy working environment for anyone involved."

827. In his outcome letter Mr d'Huc stressed that the 3 September 2021 email was "really not my focus". Any employee could email the CEO of the Group. When reaching his decision, he had focussed on the effect that the claimant's communications had on Mr Cornwell and other members of the SMT" and that "when a manager feels fearful of providing feedback and as a consequence, projects are delayed, customers could be let down and the business could suffer, I find that the needs of the business are being neglected for one employee and as such the Company cannot sustain this."

828. As with Mr Marquard's decision to dismiss, we find that it was not the making of discrimination complaints or the act of writing to Ms Fuenfstueck per se which influenced Mr d'Huc's decision, but the manner in which that was done. The 2 are in this case separable. We find that while the manner of doing them was a significant influence on his decision, the protected acts themselves were not.

829. Complaint 18.3 fails.

Issues on Remedy

830. The parties were agreed that this hearing would deal with liability only. It was agreed, however, that as is the Tribunal's common practice we would make our findings on **Polkey** and "contributory fault" (Issue 22) in this judgement.

831. Although not specifically identified in the list of issues, it was also agreed that we would in this judgment decide whether the ACAS Code applied and, if so, whether and what uplift we would apply to any compensation awarded.

Issue 22: To what extent should any award be reduced due to Polkey or by reason of contributory fault?

The Polkey Issue

832. In her supplementary written submissions Ms Dinnes submitted that the claimant's dismissal was so far from fair that it was very difficult to make a sensible prediction about what would have happened had appropriate steps been taken in relation to the claimant. On balance, she submitted that the most credible conclusion to draw from the evidence was that had the issues with the claimant's communication style been addressed directly and appropriately, there was a strong chance of the relationship recovering.

833. In his submissions, Mr Boyd relied on Dr Ruthenberg's comments about the extent of the claimant's upset following the decision not to appoint him to the role of

IT Director and the decision not to give the claimant a pay rise. Ms Dinnes submitted that ignored Mr Ruthenberg's response to the respondent's questions in which he "tentatively rejected R's suggestion that the employment would have become untenable from C's point of view" (pp. 1369-1370, paras 3, 4 & 5). She submitted that Mr Boyd's suggestion that the working relationship was effectively doomed because of the claimant's alleged bitterness towards the UK SLT also ignored the fact that it was the UK SLT and not the claimant who raised issues with the relationship in 2021. She submitted that it was evident from the documentation that the claimant fought for his job to the last (pp. 985-988) which was consistent with the fact that he had been employed by the respondent for his entire working life and was particularly resistant to change on account of his Autism

834. Mr Boyd submitted that all the evidence supported the conclusion that the working relationship had broken down irretrievably. It was clear from the evidence that not being appointed to an IT Director role and the lack of a pay increase in mid-2021 was "catastrophic" for the claimant (to use the claimant's own repeated phraseology). In April 2022 at the time of his next pay review, whether the decision maker on that was Mr Coupe or Mrs Deakin any failure to provide the claimant with what he believed he was entitled to would have led to further complaint and in all likelihood further litigation. Any future Managing Director would have faced the same sort of problem. In effect, Mr Boyd submitted, despite the claimant's protestations, relationships with him and present or future members of the UK SLT were poisoned, and damaged in a manner where a workable relationship was no longer possible

835. We have found that the claimant's dismissal was unfair because of 2 flaws in the process followed by the respondent. The first was in not allowing further time in the process prior to dismissal. The second was in Mr Marquand not sufficiently challenging Ms Jones at the dismissal hearing.

836. The Polkey exercise is of its nature speculative. We considered what would have happened had the respondent followed a fair procedure by allowing the claimant more time. We accept the respondent could not have delayed indefinitely. We find it would have been reasonable to postpone the dismissal hearing for a period of 6 weeks. That would have given time for the claimant to consider the information about Dr Rooms's qualifications and decide whether to attend an OH appointment. It would have given him more time to recover and potentially attend the hearing. It would have given him more time to provide further information.

837. Based on the evidence we saw and heard, we find that the claimant would not have accepted the respondent's assurances about Dr Rooms's qualifications and would not have attended the OH appointment. We have taken into account Dr Ruthenberg's view at answers 3,4 and 5 to the respondent's questions (pp.1369-1370). We note he refers to his view as "speculative". We mean no disrespect in departing from his view. It seems to us that the factual evidence clearly shows the claimant had an absolutely fixed position that only an Autism specialist (as defined and evidenced to his satisfaction) could understand the impact of his Autism on him. Based on the background to the obtaining of the Aspiedent report (which itself was rejected in part by the claimant) and of the attempts to set up an OH appointment as part of the investigation process we find that there was a 100% chance the claimant would not have agreed to attend an OH appointment even had a 6-week

postponement been granted. We find that additional time would not have resulted in the claimant being well enough to attend the dismissal hearing.

838. We find that after a 6-week delay, the hearing could fairly have proceeded, and it would have proceeded without the claimant. We find there is a probability that the claimant would have supplied further evidence, most specifically in the form of the Message Analysis Summary. We have set out the flaws in that evidence when discussing Issue 6.

839. We find that had Mr Marquard have challenged Ms Jones more forcibly at the hearing it would have been clearer that the overall picture was one of periods of calm punctuated by flashpoints rather than constant friction. We find, however, that that would not have resulted in a different outcome. A decision that the relationship had broken down was, we find, one that was inevitably within the band of reasonableness even had that broader perspective been clearer.

840. We do not accept Ms Dinnes's submission that it was the UK SLT and not the claimant who raised issues with the relationship in 2021. It was the claimant's email to Ms Fuenfstueck which triggered the process which resulted in the claimant's dismissal. We prefer Mr Boyd's submission that the claimant did harbour bitterness towards the UK SLT which meant the relationship with it (even absent Mr Cornwell) was doomed. The claimant in his communications suggested on a number of occasions that his challenge was to the logic of decisions not to the people making those decisions. We find that does not square with the evidence. His 2018 grievance referred to his loss of trust in Mr Coupe's impartiality, objectivity and ability to represent his interests. He accused Mrs Deakin of bias and Mr Al-Qasmi of lacking capability. He said Mr Cornwell "had a problem with him". He accused the UK SLT of being "dysfunctional". Those are not challenges to logic but to the persons concerned.

841. We find that even had a fair process been followed, there was a 100% change that the claimant would have been fairly dismissed 6 weeks later than he was.

The "contributory fault" issue

842. Ms Dinnes submitted that the claimant it could not be "culpable and blameworthy" conduct where the communication issues giving rise to the claimant's dismissal arose from his Autism. We accept that proposition.

843. However, our finding was that the conduct which led to the claimant's dismissal was not something arising in consequence of the claimant's Autism. We prefer Mr Boyd's submission that the claimant was blameworthy and culpable to a very large extent in the breakdown in relationships The evidence supports the conclusion that the claimant was aware that writing to Ms Fuenfstueck was unusual even with his Autism (his email of 14 April 2019). Had the claimant not emailed on 3 September the process leading to his dismissal would not have happened. We find that in light of that, and his previous "bloody mindedness" which had brought working relationship to the edge of the precipice prior to that email, a deduction of 100% is appropriate both in relation to the compensatory and basic awards. We reduce both to zero.

The ACAS Code Issue

844. We have not made an award to which any ACAS uplift could apply. Had we been required to, we would have concluded in light of **Coulson** that the ACAS Code did apply and that the respondent had acted unreasonably in breach of it by failing to postpone the hearing for a further 6 weeks. Given the respondent's resources we would have applied an uplift of 25%

Summary

845. All the claimant's complaints fail apart from his complaint of unfair dismissal. The claimant would have been fairly dismissed 6 weeks later than he was had a fair process been followed. The award of compensation for the unfair dismissal is reduced to zero because of the claimant's culpable and blameworthy conduct.

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Approved by Employment Judge McDonald

Date: 5 November 2025

JUDGMENT AND REASONS SENT TO THE PARTIES ON
Date: 5 November 2025

FOR THE TRIBUNAL OFFICE

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

Annex
Agreed List of Issues

Preliminary issues

Time limitation

1. The claimant confirmed that in respect of Claim 1 the act relied upon is the refusal to make a pay award June 2021. Therefore, the respondent accepted that there were no limitation issues.

Disability

2. The respondent accepts that the claimant was disabled at the time his claims relate to and that it had actual knowledge of the claimant's disabilities. The claimant received a diagnosis of autism in October 2015 and a diagnosis of cancer on 3 August 2021.

Unfair Dismissal

3. Did the respondent dismiss the claimant for a potentially fair reason within the meaning of section 98 Employment Rights Act 1996?

    3.1 The respondent alleges that the reason for the dismissal was capability and/or conduct and/or some other substantial reason, namely a breakdown in trust and in the working relationship between the claimant and senior leaders of the respondent.

4. If yes, did the respondent in fact dismiss the claimant for the potentially fair reason that it alleges?

5. To the extent relevant, did the respondent conduct a reasonable investigation?

6. Did the respondent follow a fair procedure?

7. If the respondent dismissed for a potentially fair reason, did the respondent act reasonably in all the circumstances in dismissing the claimant pursuant to section 98(4) ERA 1996?

Discrimination arising from disability (s.15 Equality Act 2010)

8. What were the matters "arising in consequence of [his] disability" on which the claimant relies? The claimant alleges that:

    8.1 The claimant's manner of communication can be very direct and detailed, and he finds it more difficult to pick up on social cues. These consequences of his autism were exacerbated by his cancer diagnosis, which has placed the claimant under considerable mental strain;

    8.2 The claimant has made complaints about being discriminated against on the grounds of his disability; and

    8.3 The claimant's autism, cancer diagnosis and cancer treatment combined made him particularly vulnerable in terms of his mental health, to the extent that he was more likely to be signed off work when put under stress.

9. In relation to each of these:

    9.1 Has that been proved by the claimant?

    9.2 Does it fall within the statutory provisions.

10. Was the claimant subjected to unfavourable treatment because of these matters? The claimant alleges:

    10.1 The respondent elected not to give the claimant a pay rise after he began a new role in May 2021;

    10.2 The respondent launched an external investigation into the claimant for sending an email on 3 September 2021;

    10.3 The respondent proceeded with the investigation and dismissal process in the absence of the claimant and the claimant was unable to participate; and

    10.4 The respondent dismissed the claimant and refused his appeal.

11. Has the respondent shown that the treatment was a proportionate means of achieving a legitimate aim? The respondent alleges that its legitimate aim is as follows:

    11.1 The carrying out a pay review process - to make decisions on pay reviews that were appropriate and in line with market conditions and the performance of the business.

    11.2 Launching an external Investigation – to deal with the grievance in a fair and reasonable manner.

    11.3 Proceeding with the investigation and dismissal process in the absence of the claimant and the claimant being unable to participate - to deal with the grievance in a fair and reasonable manner.

11.4 Dismissal of the claimant and refusing his appeal - following a fair process to determine whether the working relationship between the claimant and the respondent's senior management had broken down irretrievably and if so, what the outcome should be.

Harassment on the grounds of disability (s.26 Equality Act 2010)

12. What "unwanted conduct" does the claimant rely upon? The claimant alleges that the following was unwanted conduct:

    12.1 The respondent launched an external investigation into the claimant for sending an email on 3 September 2021;

    12.2 The respondent proceeded with the investigation and dismissal process in the absence of the claimant, while the claimant was under considerable mental strain and was unable to participate; and 14.3. The respondent dismissed the claimant because of the symptoms of his disability and the fact that he had made disability discrimination complaints previously.

13. Did the alleged conduct take place?

14. Was the alleged conduct related to a relevant protected characteristic, namely the claimant's disability?

15. Did the alleged conduct have the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, subject to the considerations of s.26(4) Equality Act 2010?

Victimisation (s.27 Equality Act 2010)

16. Has the claimant proved the protected acts he relies upon? These are:

    16.1 2018 grievance and Employment Tribunal claim;

    16.2 2021 grievance and Employment Tribunal claim; and

    16.3 The claimant's email of 3 September 2021.

17. Does any protected act fall within of section 27(2) Equality Act 2010?

18. Was the claimant subjected to a detriment because of a protected act? The claimant alleges that:

    18.1 The respondent elected not to give the claimant a pay rise after he began a new role in May 2021;

    18.2 The claimant was investigated for sending the Email; and

    18.3 The claimant was dismissed and his appeal was denied.

Remedy

19. What financial losses have been suffered by the claimant?

20. What financial losses have been caused by the dismissal and/or discrimination and/or detriment?

21. Has the claimant failed to mitigate his losses?

22. To what extent should any award be reduced due to Polkey or by reason of contributory fault?

23. What injury to feelings award should be made?