EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001930/2024

Held in Edinburgh on 29-30 September and 1-2 October 2025

Employment Judge Sangster

Mr L Nelson	**Claimant** **In Person**
DPD Group UK Limited	**Respondent** **Represented by** **Mr F Currie** **Barrister**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the claimant's complaints do not succeed and are dismissed.

REASONS

Introduction

1. The claimant presented complaints of disability discrimination (direct discrimination, discrimination arising from disability, and failure to make reasonable adjustments) and detriment as a result of making protected disclosures.

2. At a preliminary hearing, held on 5 June 2025, the claimant was found to be a disabled person, at the relevant times, as a result of having osteoarthritis and Freiburg's Disease in his right foot.

3. A joint set of productions, extending to 588 pages, was lodged.

4. The claimant gave evidence on his own behalf. The respondent led evidence from the following individuals:

    4.1. Michael Beaton (**MB**), General Manager, Aberdeen;

    4.2. Caroline Curtis (**CC**), Network People Manager;

    4.3. Stephen Ellis (**SE**), Associate Director for Infrastructure & Security;

    4.4. Kevin Grant (**KG**), Distribution Centre Manager, Edinburgh;

    4.5. Dennis Henderson (**DH**), Regional Manager, North East/West England;

    4.6. Sally Harris (**SH**), Head of Health & Safety;

    4.7. Stephen Linnen (**SL**), Distribution Centre Manager, Eurocentral;

    4.8. Elayne Montgomery (**EM**), People Business Partner, Cumbernauld;

    4.9. Anton Walker (**AW**), Regional Network Support Manager for Scotland; and

    4.10. Jamie Walton (**JW**), Distribution Centre Manager, Newcastle;

5. Other individuals referenced in this judgment are:

    5.1. Mark Austin (**MA**), General Manager – Health & Safety.

Issues to be determined

6. The issues to be determined were discussed at the start of the hearing. It was noted that a draft list of issues had been prepared in advance of the second preliminary hearing for case management, but had not been updated to reflect the clarification provided at that hearing.

7. Following the discussion, the Employment Judge prepared a draft list of issues to be determined. That list was provided to the parties for consideration after the morning break and parties confirmed, following the lunch break, that they were content this reflected the issues to be determined.

8. The agreed list of issues is contained in the schedule to this Judgment.

Findings in Fact

9. This judgment does not seek to address every point about which the parties have disagreed. It only deals with the points which are relevant to the issues which the Tribunal must consider to decide if the complaints made succeed or fail. If a particular point is not mentioned, it does not mean that it has been overlooked, it simply means that it is not relevant to the issues. The relevant facts, which the Tribunal found to be admitted or proven, are set out below.

10. The respondent is a parcel delivery business.

11. The claimant commenced employment with the respondent, as a Warehouse Operative, in October 2018. He was based at the respondent's Edinburgh Depot.

12. In June 2022, a parcel containing a sawblade fell onto the claimant's right foot, whilst he was at work. The claimant was absent for 3 weeks, as a result. No adjustments were identified as being required when the claimant returned to work.

13. The claimant raised a number of grievances in the period from 2021 to 2023. For example, in February 2021 in relation to face masks and dangerously loaded trailers; thereafter regarding calculation of holiday pay; and, on 8 June 2023, regarding bullying/victimisation/intimidation by three named individuals (a Shift Manager, an Operations Manager and a Depot Manager) and dangerously loaded trailers (the **Previous Grievances**). Each of the Previous Grievances, and subsequent appeals, were addressed by the respondent in accordance with their procedures

14. The claimant's duties generally involved unloading trailers. In June 2023, he was asked to undertake duties in a different area of the warehouse. He indicated that he was unable to do so, as those duties would require additional walking and he was restricted in doing so as a result of an impairment to his right foot. The respondent was unaware, at that time, of any issue with the claimant's right foot. They instructed an occupational health assessment, so that they could better understand the issues in relation to the claimant's right foot, the impact on him and any adjustments which may be required to support him in the workplace. The claimant attended an occupational health assessment on 29 June 2023. A report, dated 3 July 2023, was reviewed by the claimant, before being provided to the respondent. The report confirmed that the claimant had osteoarthritis impacting his right foot. It was noted that this resulted in restrictions on the claimant's ability to undertake normal day to day activities. For example, he found walking difficult, but could stand and felt that he was 'work stable' while undertaking duties unloading trailers. The report stated that it was likely the claimant would be covered by the disability provisions of the Equality Act 2010. The report recommended that the claimant's duties be restricted to the unloading area, where he was mainly standing, not walking. It was noted however that the safety boots he wore were uncomfortable and that alternative safety footwear, appropriate for the claimant, should be explored. Safety sandals were suggested.

15. The claimant attended a meeting with EM and KG on 28 July 2023, to discuss the report. He informed them at that meeting that he also had Freiburg's Disease in his right foot, as well as osteoarthritis. He indicated that these

conditions caused pain in his right foot, which was exacerbated by the safety boots provided by the respondent. It was agreed that the claimant's duties would be restricted to unloading trailers, to restrict his requirement to walk. The potential of wearing safety sandals was discussed. EM indicated that she had taken advice from the respondent's Health & Safety team in relation to this, and their view was that safety sandals would not be appropriate for a warehouse environment, so would not be permitted. Specialist safety boots, designed for individuals with osteoarthritis, could however be purchased instead. The claimant indicated that he did not want to proceed with that option and wanted to be able to wear safety sandals instead. As safety sandals did not meet the requisite safety standards, and he did not wish to explore the alternatives proposed by the respondent at that stage, the claimant continued to wear the safety boots supplied by the respondent.

16. The claimant raised a formal grievance on 14 August 2023 (**Grievance 1**) regarding the respondent's decision that he would not be permitted to wear safety sandals. SH was appointed to hear the claimant's grievance. She held a grievance hearing with the claimant on 30 August 2023. At the grievance hearing, she explained that safety sandals would not be appropriate in a warehouse environment, as parts of the claimant's foot would be exposed and this would create a health and safety risk. For example, a risk of scratches from damaged pallets, bits of wood or nails, as well as from exposure to liquid/chemical spillages. The claimant also raised the prospect of safety clogs. It was noted that these would also present a safety risk, as they were not laced up or otherwise fixed to the foot, so could fall off. It was agreed however that the claimant would send to SH details of the types of footwear he thought would be suitable, so that she could review these. The claimant did so, and further meetings were held, between the claimant and SH, on 8 & 13 September 2023. At these meetings, it was noted that the footwear the claimant had suggested did not meet the requisite safety standards for a warehouse environment. As an alternative, it was agreed that a specialist footwear supplier would attend the respondent's premises on 21 September 2023, to scan and measure the claimant's feet, to enable them to provide a specialist insole for the claimant. I was agreed that they would also bring approximately 10 pairs of different specialist shoes/boots, so that he could select a pair most comfortable/suitable. At a further meeting between the claimant and SH on 27 September 2023, the claimant confirmed that this had been done, that he had selected shoes and insoles which he was happy with, and he was awaiting delivery of them. SH wrote to the claimant confirming this, and that it brought the grievance process in relation to Grievance 1 to an end (subject to any appeal).

17. The shoes and insoles arrived mid-October 2023. The claimant wore these for around 1½ hours and indicated that they were not comfortable or suitable. He

reverted to wearing his previous footwear. He was invited to a review meeting, to discuss the issue.

18. On 7 November 2023, the claimant raised a formal grievance regarding the length of time it was taking for the respondent to provide him with appropriate footwear (**Grievance 2**). SE was appointed to hear Grievance 2. He held a grievance meeting with the claimant on 6 December 2023. CC was also present, and the claimant was accompanied by a trade union representative. SE & CC indicated that, having explored various options to resolve the issues the claimant was experiencing prior to the meeting, the respondent had identified a company who would conduct a consultation with the claimant to assess the particular issues he was experiencing, and would then make entirely bespoke safety boots for the claimant. It was agreed that this would be instructed. The claimant attended a consultation/assessment and then, in March and April 2024, appointments for fitting. The appointments were arranged in working time, with the respondent paying all expenses for the claimant to attend these appointments, including the cost of a hire car for the claimant to travel to Newcastle for a fitting appointment, which was his preference rather than travelling by train, as he had done previously. Whilst the respondent tried to expedite the manufacture and provision of the boots, the earliest these could be provided was mid-April 2024. They cost £2,300. The claimant attended a further meeting with SE on 16 May 2024. At that stage, he had been wearing the boots for a number of weeks. He confirmed that they were very comfortable and had resolved the issues he had previously experienced with pain in his right foot while at work. That brought Grievance 2 to a conclusion.

19. On/around 24 May 2024, the claimant raised with MA concerns regarding poorly loaded trailers. MA took those concerns seriously, raising them with senior managers and suggesting steps to address them. He instructed that feedback, in relation to the steps to be taken and his response to the points raised, be provided to the claimant.

20. At the end of June 2024, the claimant raised that the soles of the bespoke boots were wearing down extremely quickly. Arrangements were made for them to be re-soled, with a harder wearing sole. This was done while the claimant was on holiday for a week, at the start of July. While it had been hoped that the boots would be repaired in time for the claimant's return, this was not possible. The claimant was accordingly given 2 days' paid leave until his boots were ready. When the boots were returned by the manufacturer, they included a letter stating *'The enclosed custom footwear has now been re-soled using a more hard-wearing outsole. After inspection I noticed that the upper material has a few signs of wear, to the left boot there is a deep scuff/tear on the side of the upper material. I would recommend considering the purchase of another*

pair of the safety footwear towards the end of the year as the upper material wear may become an issue.'

21. On 25 July 2024, the claimant sent an email to the respondent's CEO and COO stating that he wished to raise a formal grievance in relation to bullying by senior management in the respondent's Edinburgh Depot (**Grievance 3**). He logged exactly the same complaint with the Safecall, the respondent's whistleblowing platform. CC met with the claimant on 9 August 2024 to discuss his complaint. At the outset of that meeting, the distinction between the grievance and whistleblowing processes was discussed and it was agreed that the complaint would be dealt with as a grievance, rather than under the whistleblowing procedure. In the meeting the claimant stated that his grievance related to issues dating back to 2021, which had been raised in the Previous Grievances. He also stated that for the previous three years he had been *'raising health and safety concerns about the state of the trailers'* and *'nobody's listening. Everything's being swept under the carpet. The trailers are still dangerous to this day.'* He went on to state that the trailers were '*not secured. Parcels are not secured. You've got broken pallets lying everywhere. [when opening] the back door of the trailer all the boxes fall out on you. So you're actually getting hit just opening the door.*' He stated *'the reason I think it hasn't been solved is because…they're saving millions of pounds on transport fees with running the trailers the way they do…they've saved millions of pounds doing that knowingly in my opinion.'* It was agreed that CC would arrange the process for addressing the claimant's grievance regarding bullying, with any further concerns, unrelated to the grievance, being logged on the respondent's whistleblowing platform.

22. CC discussed with the claimant who should be appointed to investigate and hear his grievance. She asked if the claimant wanted this to be addressed by someone outside of the Edinburgh Depot. He indicated that that was his preference.

23. Following the meeting with the claimant, CC appointed AW as grievance manager in relation to the claimant's grievance. He was a senior manager, working in Glasgow. She determined that he would be independent/impartial and had sufficient experience to enable him to undertake the role. In making this decision, CC was cognisant of the fact that the claimant had named one individual who was more senior than AW in his grievance, but had not provided details of any specific allegations against that individual, either in the grievance or in her discussion with him. Had the claimant presented evidence of wrongdoing by anyone more senior in the hierarchy than AW, CC would have advised AW to step aside from hearing the grievance and appointed someone more senior to do so.

24. AW wrote to the claimant inviting him to a grievance meeting on 22 August 2025, which the claimant attended. He raised no concerns in relation to AW's appointment, either at or during the meeting. AW did not uphold the claimant's grievance. He found that concerns raised by the claimant regarding the OH appointment he was asked to attend in June 2023 were unfounded and that the remaining concerns raised by the claimant had been raised in the Previous Grievances, which had been considered and addressed at the time they were raised. He noted that the evidence provided by the claimant related only to the Previous Grievances, and the claimant was not able to provide any current evidence of bullying and victimisation. He indicated that, as a result, he was unable to investigate further, or take any further action. AW's letter confirming the outcome of the grievance stated that the claimant could appeal to DH, if he was dissatisfied with the outcome. CC had identified DH as an appropriate appeal manager. He was a Regional Manager in the North of England. He lived in Newcastle. She determined that he would be independent/impartial and had sufficient experience to enable him to undertake the role. In making this decision, CC was cognisant of the fact that the claimant had named one individual who was of the same level as DH in his grievance, but had not provided details of any specific allegations against that individual, in the grievance, in her discussion with him or with AW. Had the claimant presented evidence of wrongdoing of another Regional Manager in the appeal process, CC would have advised DH to step aside from hearing the grievance appeal, and appointed someone more senior to do so.

25. The claimant submitted an appeal against the grievance outcome on 4 September 2024. He addressed his appeal to DH. He raised no concerns regarding DH's appointment or suitability to hear the appeal.

26. On 10 September 2024, the claimant reported that the harder wearing/firmer sole on his boots was causing him discomfort. He asked for the boots to be re-soled with the softer sole. This was arranged and done before the end of that month. The claimant was offered alternative duties while the boots were being re-soled, but he chose to take holidays instead.

27. The claimant attended an appeal meeting, chaired by DH on 13 September 2024. The meeting lasted 2 hours. In the meeting the claimant clarified that the main issue he was raising was that the Previous Grievances were not handled properly. The claimant clarified that, aside from an issue with the fire alarm going off for 3 hours due to a fault (which impacted everyone in the depot), there were there was nothing recent, from 2024, that he wanted to raise as a concern.

28. DH issued his outcome letter, extending to 7 typed pages, in relation to the claimant's grievance appeal, on 23 September 2024. He did not uphold the appeal and was particularly concerned that, despite having been given ample

opportunity to do so, the claimant was unable to provide any evidence or examples to substantiate the serious allegations he was making. DH's conclusions in relation to the 5 elements of the claimant's appeal (point 5 being in relation to the fire alarm), were summarised as follows:

- *'Grievances 1 - 3 were all heard through the grievance process and were all exhausted and concluded therefore should no longer form part of any future grievance*
- *Grievance 4 was never formally raised but from the information provided by yourself was not exclusive to you and indeed two other people were managed in the same way therefore in terms of bullying or victimization, I can see none of this*
- *Grievance 5 - This is an issue and needs some further action however every individual has the responsibility to look after their own safety and that of others. You had options on the day in terms of what action you took and you chose to work like everyone else.'*

29. He referenced a number of issues raised by the claimant, stating *'I can find absolutely no evidence that substantiates that any of the grievances raised have any substance. By your own admission – All of these grievances went through a process and were concluded and any issues in relation to yourself had been dealt with…'* He noted that the claimant had raised very serious allegations against almost every senior manager in the Edinburgh depot, but did not provide corroboration in any shape or form: no specific dates or issues were provided. He concluded by stating:

'The purpose of the grievance procedure/appeal process is to allow employees to raise genuine concerns around people or process. Within this entire grievance process and appeal there is absolutely no evidence at all to substantiate any points raised. All grievances were held up to 3 years ago and concluded therefore I cannot see the reason for raising grievance and further appeal to the decision.

The grievance procedure is a crucial part of our process and is not there to be abused.

In my opinion - I believe this grievance and appeal has been made in bad faith with deliberate intention to waste company time , I also believe that due to the statement made in relation to specific individuals - I believe this case to be made with malicious intent to cause reputational harm to senior managers.

Due to these concerns I will be recommending a full investigation is launched into the raising of this grievance as I have real concerns that they were raised with malicious intent in relation to individuals and made in bad faith with intent to waste company time and resources.'

30. On the same date as receiving the appeal outcome letter, the claimant received notification that a disciplinary investigation would be conducted regarding the allegation that he had raised his grievance in bad faith, with the intention and resulting in the waste of company time and with malicious intent to cause reputational harm. He was invited to an investigation meeting in relation to this.

31. The claimant engaged in early conciliation from 21-25 October 2024.

32. JW conducted the investigation, interviewing the claimant and 3 others, as well as collating relevant documentation. In his investigation report, dated 4 November 2024, he concluded there was a case to answer. MB then wrote to the claimant on 14 November 2024, inviting him to a disciplinary hearing on 22 November 2024 in respect of the allegation.

33. The claimant commenced a period of sickness absence due to stress at work on 19 November 2024. He presented his claim to the Employment Tribunal on 21 November 2024. He did not attend the disciplinary hearing scheduled for 22 November 2024, as he remained absent from work due to illness. His medical certificate indicated that he was unfit to work until 9 December 2024. It was accordingly expected that he would return to work on 10 December 2024. By letter dated 5 December 2024, the claimant was invited to a rearranged disciplinary hearing on 13 December 2024. The letter stated that *'I am hoping that you feel well enough to engage in this process; however if that is not the case, please let me know and I will arrange for our Occupational Health Provider, Spire to conduct a telephone medical assessment*.' This was in accordance with the respondent's Disciplinary Procedure, which stated that '*If an employee goes off sick at any point during the process the employee will be advised, in writing, that the disciplinary process is being suspended and they may be referred to our Occupational Health Providers to determine fitness to attend.'*

34. The claimant returned to work on 10 December 2024. By email dated 12 December 2024, he indicated that he wished to raise a grievance in relation to MB writing to him in relation to the disciplinary hearing, while he was signed off sick (**Grievance 4**). CC took legal advice as to how to respond to this grievance.

35. The claimant did not attend the disciplinary hearing on 13 December 2024, despite having returned to work on 10 December 2024. He provided no explanation for failing to do so. The disciplinary hearing was then postponed to 9 January 2025, after the respondent's peak period. The claimant was informed of the date of the rescheduled meeting by letter dated 18 December 2024.

36. Also on 18 December 2024, the claimant was informed (in a meeting with KG and also in a letter from him) that it was acceptable for the respondent to write to the claimant while he was absent from work due to sickness, and that MB was simply following the company's process in doing so. As such, the respondent would not be taking any further action regarding Grievance 4. This response was in accordance with the legal advice the respondent had received.

37. On 20 December 2024, the claimant sent an email to KG stating that his boots needed replacing, as wear and tear had made them not fit for purpose. KG asked the claimant if they were safe to continue using and, if so, how long he felt they would last for. He offered to move the claimant to alternative duties if the boots were not safe to continue using. The claimant replied that they were ok for now, but would need replaced in a couple of weeks.

38. KG made enquiries regarding replacement boots and whether adaptions could be made to make the boots more robust, so they lasted a little longer, or an alternative manufacturer could be identified. His ability to make these enquires was hampered by the festive holiday period. It was ultimately determined that the same manufacturer would be used, and also agreed that two pairs of boots would be ordered, so that, going forward, there would be a pair available for the claimant to wear if one pair became unusable. These were ordered, at a cost of £3,871.46 plus VAT, in mid-January 2025. As had been the case whenever the claimant was unable to undertake his duties previously because of issues with the safety footwear, it was agreed that the claimant could be transferred to office based work when his current boots became unusable, until the boots arrived. The claimant did not however take up this option.

39. The claimant did not attend the disciplinary hearing scheduled for 9 January 2025. The hearing was rearranged again, to 23 January 2025, and the claimant was informed of this date, and that the hearing would proceed in his absence if he did not attend, by letter dated 10 January 2025.

40. On 21 January 2025, the claimant submitted a further grievance stating *'Although I appreciate that the order for new footwear has been submitted, I now wish to raise a formal grievance for the lack of duty of care concerning my footwear. As previously mentioned, I submitted a letter from the manufacturer, back in July 2024, that I would need a replacement pair by the end of the year. I would like to know why an order for footwear has not been made until now. I should not have to wait any length of time at all.' (**Grievance 5**)*

41. The claimant did not attend the disciplinary hearing on 23 January 2025 and provided no explanation for his failure to do so. The disciplinary hearing proceeded in his absence and MB adjourned to consider all the evidence and make a decision. His decision was that the allegation was substantiated,

concluding that the allegations which the claimant had raised in Grievance 3 had been raised, and addressed, in the Previous Grievances. No new evidence was presented by the claimant. JW concluded that this demonstrated that Grievance 3 was raised in bad faith, with the intention of wasting company time. He also noted that the claimant had made further, broad and serious accusations in the process, but could not provide any evidence or examples to substantiate these allegations, when asked to do so. He concluded that this demonstrated malicious intention to cause reputational harm to the individuals named. Having reached these conclusion, JW determined that the appropriate sanction was that the claimant be issued with a first and final written warning. He wrote to the claimant setting out his decision, and the basis for this, on 27 January 2025, and confirmed that the claimant had a right of appeal.

42. The claimant exercised his right of appeal. SL heard his appeal on 12 February 2025 and confirmed, by letter dated 14 February 2025, that the appeal was not upheld.

43. On 4 February 2025, KG responded to the claimant in relation to Grievance 5 stating that he had reviewed the letter from the manufacturer. He stated that this has been vague in relation to the longevity of the boots and was treated as advisory. He stated that *'We have renewed the boots based on your specific feedback regarding their condition. Based on the performance of the boots we have also taken the precaution of ordering 2 pairs which should avoid any impact if longevity continues to be an issue. I hope this answers your concerns, however if not please let me know.'* As with Grievance 4, CC had taken legal advice regarding how the respondent should respond to Grievance 5. The claimant responded stating that he was *'extremely unhappy with this answer and still expected all grievances [he had] raised to be heard.'* KG responded on 7 February 2025 stating that he was sorry that the claimant felt unhappy, but that it was in accordance with the respondent's grievance policy to try to resolve matters informally. (The Grievance Policy states *'It is expected that most grievances will be resolved informally'* and provides for informal resolution, with the ability to proceed to the formal stage if the individual is dissatisfied with the decision at the informal stage or *'if the matter is serious and/or an employee wishes to raise the matter formally'*.) KG stated that the respondent had repeatedly provided the claimant with responses to Grievance 4 & Grievance 5. He reiterated the responses previously provided. In response to Grievance 4 he stated that if he had concerns regarding the disciplinary process/outcome, then those concerns could be raised by way of an appeal under the Disciplinary Procedure. In relation to Grievance 5 he indicated that the 2 pairs of boots ordered were expected mid-February. He stated that this resolved the matter, so he was unclear as to the basis of the claimant's repeated pursuit of a formal grievance regarding it. He stated that, as a result,

it would be *'an unnecessary, unreasonable and disproportionate use of management time to deal with the above as formal grievances.'*

44. The claimant submitted his resignation to KG on 20 February 2025, indicating that his last day of work would be 22 February 2025. He had secured alternative employment prior to doing so. He was asked by KG to take 24 hours to reflect on his decision, and given the ability to retract it. The claimant declined to do so.

45. The claimant was paid full pay for any absences from July 2023 to the termination of his employment.

Submissions

Claimant's submissions

46. The claimant provided a handwritten submission, extending to 1½ pages. In summary, he stated:

    46.1. The respondent did not recognise that the claimant's condition was covered by the EqA, and the medical report did not take into account his Freiburg's Disease.

    46.2. His complaint of 25 July 2024 (Grievance 3) concerned historical grievances which were not investigated previously. He expected Safecall to investigate, rather than the respondent to do so again.

    46.3. He made a protected disclosure on 9 August 2024 regarding dangerously loaded trailers. A complaint he had made on numerous occasions in the past.

    46.4. He was subjected to the detriments asserted.

Respondent's submissions

47. The respondent lodged a 10 page typed skeleton argument in advance of the hearing, which they also supplemented orally in submissions. In summary, they stated:

    47.1. The claimant's direct discrimination complaint must fail: any hypothetical comparator, whose circumstances are not materially different – namely a Warehouse Operative with foot pain, would have been treated in the same way.

    47.2. The complaint of discrimination arising from disability must also fail, as there is no link between the asserted 'something' arising from disability and the claimant's dismissal. Failing which dismissal was a proportionate means of achieving a legitimate aim.

47.3. In relation to the reasonable adjustments complaint, the PCPs are not accepted and proposed adjustments were either made, or would not remove any substantial disadvantage asserted.

47.4. The claimant did not make a qualifying disclosure. The test set out in ***Kilraine v Wandsworth LBC*** [2018] EWCA Civ 1436 are not met.

47.5. There is no causal link between the alleged disclosure and the detriments asserted.

Relevant Law

Direct Discrimination

48. Section 13(1) EqA states:

'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'

49. The basic question in a direct discrimination case is: what are the grounds or reasons for treatment complained of? In ***Amnesty International v Ahmed*** [2009] IRLR 884 the EAT recognised two different approaches from two House of Lords authorities - (i) in ***James v Eastleigh Borough Council*** [1990] IRLR 288 and (ii) in ***Nagaragan v London Regional Transport*** [1999] IRLR 572. In some cases, such as ***James***, the grounds or reason for the treatment complained of is inherent in the act itself. In other cases, such as ***Nagaragan,*** the act complained of is not inherently discriminatory but is rendered so by discriminatory motivation, being the mental processes (whether conscious or unconscious) which led the alleged discriminator to act in the way that he or she did. The intention is irrelevant once unlawful discrimination is made out. That approach was endorsed in ***R (on the application of E) v Governing Body of the Jewish Free School and another*** [2009] UKSC 15.

50. For direct discrimination to occur, the relevant protected characteristic needs to be a cause of the less favourable treatment *'but does not need to be the only or even the main cause' (paragraph 3.11, **EHRC: Code of Practice on Employment (2011)**)*. The protected characteristic does however require to have a '*significant influence on the outcome'* (***Nagarajan v London Regional Transport*** 1999 ICR 877).

Discrimination arising from disability

51. Section 15 EqA 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."

52. Guidance on how this section should be applied was given by the EAT in ***Pnaiser v NHS England*** [2016] IRLR 170, EAT, paragraph 31. In that case it is pointed out that 'arising in consequence of' could describe a range of causal links and there may be more than one link. It is a question of fact whether something can properly be said to arise in consequence of disability. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

53. There is no need for the alleged discriminator to know that the 'something' that causes the treatment arises in consequence of disability. The requirement for knowledge is of the disability only (***City of York Council v Grosset*** [2018] ICR 1492, CA).

54. The burden is on the respondent to prove objective justification. To be proportionate, a measure has to be both an appropriate means of achieving the legitimate aim and reasonably necessary in order to do so (***Homer v Chief Constable of West Yorkshire Police*** [2012] IRLR 601). The Tribunal requires to balance the reasonable needs of the respondent against the discriminatory effect on the claimant (***Land Registry v Houghton and others*** UKEAT/0149/14). There is, in this context, no 'margin of discretion' or 'band of reasonable responses' afforded to respondents (***Hardys & Hansons v Lax*** [2005] IRLR 726, CA).

Failure to make reasonable adjustments

55. Section 20 EqA states:

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

56. The duty comprises three requirements. The first requirement is a *'requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.'* The third requirement is a '*requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant*

matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid'.

57. Section 21 EqA provides that a failure to comply with the first or third requirement is a failure to comply with a duty to make reasonable adjustments and that A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

58. Further provisions in Schedule 8, Part 3 EqA provide that the duty is not triggered if the employer did not know, or could not reasonably be expected to know that the claimant had a disability and that the provision, criteria or practice is likely to place the claimant at the identified substantial disadvantage.

Burden of proof

59. Section 136 EqA provides:

'If there are facts from which the tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned the tribunal must hold that the contravention occurred. But this provision does not apply if A shows that A did not contravene the provision.'

60. There is accordingly a two-stage process in applying the burden of proof provisions in discrimination cases, explained in the authorities of ***Igen v Wong*** [2005] IRLR 258, and ***Madarassy v Nomura International Plc*** [2007] IRLR 246, both from the Court of Appeal. The claimant must first establish a first base or *prima facie* case of direct discrimination or harassment by reference to the facts made out. If the claimant does so, the burden of proof shifts to the respondent at the second stage to prove that they did not commit those unlawful acts. If the second stage is reached and the respondent's explanation is inadequate, it is necessary for the Tribunal to conclude that the complaint should be upheld. If the explanation is adequate, that conclusion is not reached.

61. In ***Madarassy***, it was held that the burden of proof does not shift to the employer simply by a claimant establishing that they have a protected characteristic and that there was a difference in treatment. Those facts only indicate the possibility of discrimination. They are not, of themselves, sufficient material on which the tribunal 'could conclude' that, on a balance of probabilities, the respondent had committed an unlawful act of discrimination. The Tribunal has, at the first stage, no regard to evidence as to the respondent's explanation for its conduct, but the Tribunal must have regard to all other evidence relevant to the question of whether the alleged unlawful act occurred, it being immaterial whether the evidence is adduced by the claimant or the respondent, or whether it supports or contradicts the claimant's case, as

explained in ***Laing v Manchester City Council*** [2006] IRLR 748***,*** an EAT authority approved by the Court of Appeal in ***Madarassy***.

Protected Disclosure

62. Section 43A of the Employment Rights Act 1996 (**ERA**) provides:

"In this Act a 'protected disclosure' means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

63. A qualifying disclosure is defined in section 43B ERA as *"any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following:*

a. That a criminal offence has been committed, is being committed or is likely to be committed;

b. That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;

c. That a miscarriage of justice has occurred, is occurring or is likely to occur;

d. That the health or safety of any individual has been, is being or is likely to be endangered;

e. That the environment has been, is being or is likely to be damaged; or

f. That information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed."

64. In ***Kilraine v London Borough of Wandsworth*** [2018] EWCA Civ 1436, at paragraphs 35 and 36, the Court of Appeal set out guidance on whether a particular statement should be regarded as a qualifying disclosure:

"35. The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a 'disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the matters set out in sub-paragraphs (a) to (f).' Grammatically, the word 'information' has to be read with the qualifying phrase 'which tends to show [etc]' (as, for example, in the present case, information which tends to show 'that a person has failed or is likely to fail to comply with any legal obligation to which he is subject'). In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1)."

"36. Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in section 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill J in Chesterton Global at [8], this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters, and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief."

65. In ***Simpson v Cantor Fitzgerald Europe*** [2020] ICR 236, the EAT confirmed these principles, stating:

'43...As the Court of Appeal in Kilraine v Wandsworth London Borough Council [2018] ICR 1850 made abundantly clear, in order for a statement or disclosure to be a qualifying disclosure, it has to have sufficient factual content and specificity such as is capable of tending to show breach of a legal obligation.

69. The tribunal is thus bound to consider the content of the disclosure to see if it meets the threshold level of sufficiency in terms of factual content and specificity before it could conclude that the belief was a reasonable one. That is another way of stating that the belief must be based on reasonable grounds. As already stated above, it is not enough merely for the employee to rely upon an assertion of his subjective belief that the information tends to show a breach.'

Detriment Claim – Protected Disclosures

66. Section 47B ERA states that

'A worker has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.'

67. In ***Shamoon v Chief Constable of the Royal Ulster Constabulary*** [2003] IRLR 285 confirms that a worker suffers a detriment if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work. An 'unjustified sense of grievance' is not enough.

68. Whether a detriment is 'on the ground' that a worker has made a protected disclosure involves consideration of the mental processes (conscious or unconscious) of the employer acting as it did. It is not sufficient for the Tribunal to simply find that 'but for' the disclosure, the employer's act or omission would not have taken place, or that the detriment is related to the disclosure. Rather,

the protected disclosure must materially influence (in the sense of it being more than a trivial influence) the employer's treatment of the whistleblower (***Fecitt and others v NHS Manchester*** [2012] IRLR 64).

69. Helpful guidance on the approach to be taken by a Tribunal when considering claims of this nature is provided in the decision of ***Blackbay Ventures Ltd (t/a Chemistree) v Gahir*** [2014] IRLR 416 at paragraph 98.

Discussion & Decision

Direct Discrimination

70. The Tribunal considered whether the failure to provide suitable footwear to the claimant constituted direct disability discrimination, as he asserted. The Tribunal concluded that the claimant was not given/provided with footwear which was suitable/appropriate for him in the following periods:

    70.1. From 28 July 2023 to April 2024, the latter being the date on which the bespoke boots were delivered;

    70.2. From June to July 2024, when the boots were having the sole replaced; and

    70.3. From January 2025 onwards (rather than from October/November 2024 onwards as asserted by the claimant). In relation to this noted that the claimant stated, on 20 December 2024, that the boots were *'ok for now, but would need replaced in a couple of weeks'*. He therefore considered, as at 20 December 2024, that the boots were suitable: they did not require to be replaced at that stage.

71. The Tribunal considered whether failure to provide suitable footwear in those periods amounted to less favourable treatment. The claimant relied on hypothetical, rather than actual, comparators. The Tribunal accepted, as asserted by the respondent, that the appropriate hypothetical comparator is a Warehouse Operative with foot pain.

72. The Tribunal concluded that any Wearhouse Operative with foot pain would have been treated in the same manner in these periods, for the following reasons:

    72.1. As is clear from paragraphs 15-18 above, from 28 July 2023 to April 2024, the respondent attempted to explore what could be done to alleviate the pain experienced by the claimant, whilst ensuring safety. They considered the suggestions from the claimant, but discounted these as not meeting the respondent's safety standards. They then explored the potential of specialist shoes and insoles being provided. Arrangements were made for the claimant's feet to be scanned and

measured, at the respondent's premises, on 21 September 2023. It then took some time for the selected shoes and insoles to arrive, which occurred in mid-October 2023. When it became clear that those shoes were not in fact suitable, alternatives required to be considered. By 6 December 2023, arrangements were being made for specialist, bespoke boots to be manufactured for the claimant. This required appointments for measuring and fitting, as well as time to manufacture the bespoke boots. There was no evidence to suggest that this chronology would have been any different for a hypothetical comparator, namely a Warehouse Operative with foot pain.

72.2. From June to July 2024, when the boots were having the sole replaced. It was not envisaged that the soles of the boots would wear down so quickly. Steps were taken to re-sole the boots as soon as this was identified. There was no evidence to suggest that the respondent's actions would have been any different for a hypothetical comparator, namely a Warehouse Operative with foot pain.

72.3. From January 2025 onwards. The Tribunal concluded that the letter from the manufacturer (see paragraph 20 above) was indeed vague: it simply stated '*I would recommend* ***considering*** *the purchase of another pair of the safety footwear* ***towards the end of the year*** *as the upper material wear* ***may*** *become an issue.'* (Emphasis added). The respondent did consider the purchase of another pair of boots towards the end of the year. They did so on 20 December 2024, when the claimant raised the issue with them. At that stage however the claimant indicated that the boots were OK for now, but would need replaced in a couple of weeks. The respondent then explored options for replacement boots, and these were ordered mid-January 2025. There was no evidence to suggest that this chronology would have been any different for a hypothetical comparator, namely a Warehouse Operative with foot pain.

73. A hypothetical comparator in these circumstances would accordingly have been treated in exactly the same way as the claimant was treated.

74. Given these findings, the Tribunal concluded that the claimant did not establish that he was treated less favourably than someone would be treated by the respondent in the same, or not materially different, circumstances. As he did not establish a *prima facie* case, the burden of proof did not shift to the respondent.

75. Even if the burden of proof had shifted to the respondent however, the Tribunal would have reached the conclusion that the claimant's disability did not influence the respondent's actions, and there was no basis upon which it could

be inferred that the respondent's treatment of the claimant, was because of disability. It was for the reasons set out above.

76. For these reasons, the claimant's complaint of direct disability discrimination does not succeed.

Reasonable Adjustments

77. The respondent accepted they had the PCP asserted, namely a requirement to wear safety footwear (or footwear that is compliant with health and safety requirements and otherwise suitable). They accepted that the provision of suitable safety footwear could amount to an auxiliary aid. They accept that the PCP, and failure to provide suitable safety footwear, may have put the claimant at a substantial disadvantage, in comparison with workers who were not disabled, as he experienced pain when wearing the standard safety footwear provided by the respondent. Their position however is that they took such steps as were reasonable to avoid that disadvantage and to provide the auxiliary aid.

78. The Tribunal concluded that the respondent knew, or ought to have known, that the claimant was a disabled person in relation to osteoarthritis from the provision of the OH report to them, on/after 3 July 2023, and from 28 July 2023 in relation to Freiburg's Disease, which is the date the claimant informed the respondent of this. The Tribunal also concluded that the respondent could reasonably have been expected to know that the PCP/failure to provide the auxiliary aid was likely to place the claimant at the identified substantial disadvantage, from the same dates. The substantial disadvantage being the pain experienced by the claimant when wearing the respondent's standard safety footwear.

79. The Tribunal then considered whether supplying alternative safety footwear, suitable for the claimant, would have eliminated or reduced the disadvantage to the claimant. There was no doubt that it would have done so. The disadvantage was removed in periods when suitable safety footwear was provided in April 2024. The Tribunal accordingly considered whether the respondent took such steps as it was reasonable to have taken to provide the auxiliary aid, or avoid the disadvantage in the periods identified in paragraph 70 above. The Tribunal concluded that the respondent did take such steps as were reasonable to have taken to do so. Those steps included the following:

    79.1. Referring the claimant to occupational health as soon as he intimated that he had an issue with his right foot (paragraph 14 above);

    79.2. Arranging to meet with him, on receipt of the occupational health report, to discuss the adjustments which could be put in place, such as the provision of specialist safety boots (paragraph 15 above);

79.3. Arranging for the claimant be measured for, and provided with, specialist safety shoes and insoles, as soon as he indicated that he was agreeable to the respondent doing so (paragraph 16 above). It is noted that these were provided mid-October 2023 and that the respondent believed this would resolve the issues the claimant was experiencing (as did the claimant);

79.4. Once it became apparent that the previous option had not in fact resolved the issue, the respondent started to explore alternative options and agreed with the claimant that they would have bespoke boots made for him, which was subsequently done. The bespoke boots were provided to the claimant in April 2024 and resolved the issues the claimant was experiencing (paragraph 18 above);

79.5. They arranged for the soles of the boots to be replaced, with a harder wearing sole, as soon as the claimant brought to their attention that the soles were wearing down, in June 2024 (paragraph 20 above);

79.6. They arranged for the harder wearing sole to be replaced with the softer sole in October 2024, when the claimant indicated the harder sole was causing him discomfort (paragraph 26 above); and

79.7. They instructed replacement boots as soon as practicable after the claimant informed them that the current boots would require to be replaced in the near future (paragraphs 37-38 above).

80. Whilst there was some delay in the process of trying to find suitable footwear for the claimant, that was due to the shoes and insoles, which were provided in mid-October 2023, not being suitable, as everyone expected they would be, and then delays in the manufacture process for the bespoke boots. There was no evidence to suggest that the respondent unreasonably delayed in taking any steps. The claimant was offered alternative duties whenever suitable footwear was not available for him to undertake duties in the warehouse, and the respondent ensured that the claimant did not lose pay, if he did require to take time off during the process. The Tribunal concluded that there were no further steps which it would have been reasonable for the respondent to have taken.

81. The only step suggested by the claimant, and put to the respondent's witnesses by the claimant, was the provision of safety sandals or clogs. The Tribunal accepted however that SH explored these options and that neither met the requisite safety standards for a warehouse environment, for the reasons stated in paragraph 16 above.

82. For these reasons, the claimant's complaint that the respondent failed to make reasonable adjustments does not succeed.

Discrimination Arising from Disability

83. The Tribunal then considered the claimant's complaint that he was treated unfavourably because of something arising in consequence of his disability. The claimant asserted that the respondent failed to provide suitable footwear because he required specialist footwear, and that requirement arose in consequence of his disability.

84. The first question to consider was whether the respondent knew, or could reasonably have been expected to know, that the claimant had the disability. As indicated in paragraph 78 above, the Tribunal concluded that the respondent knew, or ought to have known, of this from the provision of the OH report to them on/after 3 July 2023 in relation to osteoarthritis, and from 28 July 2023 in relation to Freiburg's Disease, when they were informed of both conditions. The Tribunal accepted that the requirement for specialist footwear arose from these conditions.

85. The Tribunal then considered whether the claimant was treated unfavourably. In determining this, no question of comparison arises. The EHRC Code of Practice on Employment indicates that unfavourable treatment is treated synonymously with disadvantage. It is something about which a reasonable person would complain. Taking that into account, the Tribunal found that the claimant was not provided with safety footwear, which was suitable for him, in the periods set out in paragraph 70 above, and that this amounted to unfavourable treatment.

86. The next question concerns the reason for the alleged treatment. The Tribunal required to determine whether the reason for the unfavourable treatment established was something 'arising in consequence of' the claimant's disability. In doing so, the Tribunal required to consider whether, objectively, the something arising in consequence of the claimant's disability operated on the mind of the respondent, whether consciously or subconsciously, to a significant extent and so amounted to an effective cause of the treatment.

87. The claimant asserted that the respondent failed to provide suitable footwear because he required specialist footwear. The Tribunal did not accept this was the case. In this complaint the claimant is, in essence, stating that but for his disability and its consequences, he would not have been subjected to unfavourable treatment. That is however not sufficient: for example, mishandling of a grievance is not discriminatory simply because the grievance concerns discrimination. While there may have been some delays in the provision of suitable footwear for the claimant, there was no evidence to connect those delays with the asserted something arising in consequence of the claimant's disability. The respondent did not provide suitable footwear to the claimant for the following reasons:

87.1. In the period up to April 2024, as they were trying to identify suitable footwear for the claimant. They tried to do so in the period up to mid-October 2023 by exploring which specialist shoes and insoles would work best for the claimant and procuring these. Thereafter, the respondent did not provide suitable footwear because bespoke boots were being manufactured and that process took some time. That was the effective cause for the unfavourable treatment, not the fact the claimant required specialist footwear.

87.2. In the period from June-July 2024, as the boots were being re-soled. That was the effective cause for the unfavourable treatment, not the fact the claimant required specialist footwear.

87.3. In the period from January-February 2025, as new boots were being manufactured, and the claimant had only informed the respondent on 20 December 2024, that the boots he had were becoming unusable due to wear and tear. That was the effective cause for the unfavourable treatment, not the fact the claimant required specialist footwear.

88. Even if the Tribunal had not reached these conclusions, the Tribunal would have concluded that the treatment was a proportionate means of achieving a legitimate aim. The aim relied upon was compliance with health and safety requirements. The Tribunal accepted that the respondent genuinely had that aim, and that it was legitimate. The Tribunal was mindful that, in order to be proportionate, the treatment has to be both an appropriate means of achieving the aim relied upon and also reasonably necessary in order to do so, and that the respondent's reasonable needs should be balanced against the discriminatory effect on the claimant. The steps set out in paragraphs 79-80 above were a proportionate means of achieving that aim and reasonably necessary to do so, despite the impact on the claimant.

89. The claimant's complaint of discrimination arising from disability accordingly does not succeed.

Disclosures - s43A-H ERA

90. The Tribunal then considered whether the claimant had made a qualifying disclosure. The Tribunal was mindful that five elements require to be considered in determining whether an asserted disclosure amounted to a qualifying disclosure (as set out in the list of issues). Unless all five conditions are satisfied, there will not be a qualifying disclosure.

91. The Tribunal's conclusions in relation to what the claimant stated to CC on 9 August 2024, in relation to the loading of trailers, is set out in paragraph 21 above. The claimant reported to CC that trailers were dangerous because parcels in trailers were not secured, that boxes fell on Warehouse Operatives,

hitting them, when they opened the trailer doors. He stated that there were broken pallets in the trailers. He stated that the respondent was not resolving the problem, because it would cost more to do so. The Tribunal found that these statements had sufficient factual content and specificity capable of tending to show that the health and safety of any individual had been, was being, or was likely to be, endangered. The Tribunal found that the claimant believed that the information disclosed tended to show that this was the case. The Tribunal found that that belief was reasonably held. The Tribunal concluded that the claimant reasonably believed that the disclosure of information was made in the public interest: The respondent is a large employer, and it related to the safety of all of the respondent's Warehouse Operatives. It was therefore a qualifying disclosure. Given that it was made to his employer, it was also a protected disclosure.

Detriment – S47B ERA

92. The Tribunal then considered whether the claimant was subjected to any detriment by an act, or a deliberate failure to act, by the respondent and, if so, whether this was on the ground that he made the protected disclosure established, on 9 August 2024. The Tribunal was mindful of the fact that the test is whether a protected disclosure was a material factor (in the sense of it being more than trivial) for the treatment. The Tribunal's conclusions in relation to each are set out below.

    92.1. **AW not being sufficiently senior to hear the claimant's grievance on 22 August 2024.** The Tribunal concluded that this conduct was not established. AW was sufficiently senior to hear the claimant's grievance. He was Regional Network Support Manager for Scotland. While the claimant made very broad allegations about senior managers within the Edinburgh Depot (up to Regional Manager level), he did not provide any basis for doing so and did not provide any evidence, or examples, to substantiate the allegations made against the Regional Manager named. The Tribunal accepted AW & CC's evidence that, had the claimant presented evidence of wrongdoing by any individual more senior in the hierarchy than AW, he would have taken advice and would have been advised to step aside from hearing the grievance. This did not however occur. In these circumstances, detriment is not established – it is not something which a reasonable worker would or may view as a disadvantage. Finally, even if the conduct and detriment were established, as set out in paragraphs 22 & 23, AW was appointed by CC to hear the claimant's grievance as he did not work in the Edinburgh Depot, so was felt to be sufficiently independent and was qualified to do so. There was no evidence to suggest that the Protected Disclosure

influenced CC's decision to appoint AW to hear the claimant's grievance in any way.

92.2. **DH not being sufficiently senior to hear the claimant's grievance appeal on 13 September 2024.** The Tribunal concluded that this conduct was not established. DH was sufficiently senior to hear the claimant's grievance appeal. He was a Regional Manager. While the claimant made very broad allegations about a Regional Manager in his grievance, he did not provide any basis for doing so and did not provide any evidence, or examples, to substantiate that allegation. The Tribunal accepted DH & CC's evidence that, had the claimant presented evidence of wrongdoing by a Regional Manager, he would have taken advice and would have been advised to step aside from hearing the grievance appeal. This did not however occur. In these circumstances, detriment is not established – it is not something which a reasonable worker would or may view as a disadvantage. Finally, even if the conduct and detriment were established, as set out in paragraph 24, DH was appointed by CC to hear the claimant's grievance appeal as he did not work in the Edinburgh Depot, so was felt to be sufficiently independent and was qualified to do so. There was no evidence to suggest that the Protected Disclosure influenced CC's decision to appoint DH to hear the claimant's grievance appeal in any way.

92.3. **Instigating/subjecting the claimant to a disciplinary investigation regarding acting in bad faith.** The Tribunal accepted that this conduct was established and amounted to a detriment – it was something about which a reasonable worker would or may view as a disadvantage. The Tribunal concluded however that the reason for disciplinary proceedings being recommended and instigated were as set in paragraphs 28-29 above. There was no evidence to suggest that the fact that the claimant made the Protected Disclosure influenced this in any way.

92.4. **Denying the claimant the right to raise a formal grievance against MB in December 2024.** The Tribunal accepted that this conduct was established and amounted to a detriment – it was something about which a reasonable worker would or may view as a disadvantage. The Tribunal concluded however that the respondent did so in the belief that the claimant's grievance was entirely without merit, as MB was acting in accordance with the respondent's disciplinary procedure, and they were entitled to refuse to hear a grievance on this basis, having taken legal advice. There was no evidence to suggest that the fact that the claimant made the Protected Disclosure influenced the respondent's decision, not to hear his grievance, in any way.

92.5. **Denying the claimant the right to raise a formal grievance, regarding failure in duty of care regarding footwear, on 21 January 2025.** The Tribunal accepted that this conduct was established and amounted to a detriment – it was something about which a reasonable worker would or may view as a disadvantage. The Tribunal concluded however that the respondent did so in the belief that they had done all they could to address the issues regarding provision of footwear, up to and including ordering 2 pairs of bespoke boots, and had addressed the claimant's previous grievance and appeal in relation to this. They could not see, as is clear from the terms of KG's email of 7 February 2025 (paragraph 43 above) what could be gained from proceeding with a further formal grievance in relation to this issue, given the steps which had been taken. In addition, they understood, having taken legal advice, that they were entitled to refuse to hear a formal grievance in these circumstances. The fact that the claimant made the Protected Disclosure, in relation to how trailers were loaded, did not influence this decision in any way.

92.6. **Giving the claimant a Final Written Warning in January 2025.** The Tribunal accepted that this conduct was established and amounted to a detriment – it was something about which a reasonable worker would or may view as a disadvantage. The Tribunal concluded however that the reason for final written warning being given were as set in paragraph 41 above. There was no evidence to suggest that the fact that the claimant made the Protected Disclosure influenced this in any way.

93. For these reasons, the claimant's complaint that he was subjected to a detriment as a result of making a protected disclosure does not succeed and is dismissed.

Date sent to parties **23 October 2025**

Schedule to Judgment

List of Issues

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1. Direct Discrimination – s13 EqA

1.1. Did the respondent subject the claimant to less favourable treatment (i.e. did the respondent treat the claimant less favourably than it treated or would have treated others ('comparators') in not materially different circumstances) by not being given/provided with suitable footwear in the periods from 28 July 2023 to April 2024, from June to July 2024 and from October/November 2024 onwards.

1.2. If so, was this because claimant is a disabled person?

2. Discrimination Arising from Disability – s15 EqA

2.1. Has the respondent shown that it did not know, and could not reasonably have been expected to know, that the claimant had the disability?

2.2. Was the claimant treated unfavourably by the respondent failing to provide suitable footwear in the periods set out above?

2.3. If so, was this due to something arising in consequence of disability? Namely his need for specialist work shoes.

2.4. If so, was the treatment pursuant to a legitimate aim, namely compliance with health and safety requirements.

3. Reasonable Adjustments - s20 & 21 EqA

3.1. Did the respondent have a PCP of a requirement to wear safety footwear (or footwear that is compliant with health and safety requirements and otherwise suitable)?

3.2. Did the respondent fail to provide an auxiliary aid, namely suitable footwear, in the periods set out above?

3.3. If so, did the PCP/failure to provide the auxiliary aid put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled at any relevant time?

3.4. If so, did the respondent know or could it reasonably have been expected to know the claimant was likely to be placed at any such disadvantage?

3.5. If so, would the steps identified by the claimant, namely supplying suitable footwear have alleviated the identified disadvantage?

3.6. If so, would it have been reasonable for the respondent to have taken that step at any relevant time and did they fail to do so?

4. Time Limits

4.1. Were the complaints made within the time limit in section 123 EqA?

5. Qualifying Disclosure – s43B ERA

5.1. Did the claimant make one or more qualifying disclosures, as defined in section 43B ERA? The claimant relies on a disclosure made to CC in a meeting on 9 August 2024, that trailers were dangerously loaded.

5.2. In relation to this asserted disclosure, the Tribunal will decide:

5.2.1. Did the claimant disclose information?

5.2.2. Did the claimant believe the disclosure of information was made in the public interest?

5.2.3. Was that belief reasonable?

5.2.4. Did the claimant believe it tended to show that the health or safety of any individual had been, was being or was likely to be endangered?

5.2.5. Was that belief reasonable?

5.3. If the claimant made a qualifying disclosure, was it also a protected disclosure (s43C ERA)?

6. Detriment – s47B ERA

6.1. Did the claimant suffer a detriment on the ground that he has made a protected disclosure pursuant to section 47B ERA? The detriments relied upon by the claimant are as follows:

6.1.1. The manager hearing the grievance on 22 August 2024 (AW) was not senior enough;

6.1.2. The manager hearing the grievance appeal on 13 September 2024 (DH) was not senior enough and was “responsible for initiating the investigation” into the Claimant;

6.1.3. In September 2024 being subject to a disciplinary investigation into his conduct re acting in bad faith;

6.1.4. He was, in December 2024, denied the right to raise a formal grievance against disciplinary officer MB;

6.1.5. Being denied the right to raise a formal grievance, regarding failure in duty of care regarding footwear, on 21 January 2025; and

6.1.6. He was, in January 2025, given a Final Written Warning.

7. Remedy

7.1. If the claimant establishes any of their complaints, to what remedy are they entitled? Specifically:

7.1.1. What financial losses has the detriment/discrimination caused the claimant?

7.1.2. What injury to feelings has the detriment/discrimination caused the claimant and how much compensation should be awarded for that?

7.1.3. Is it appropriate to adjust any award?